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THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, November 24, 2004

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

Prayers.

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, we have some very special guests with us today.

I draw your attention to the presence in our gallery of our former colleague and former Governor General of Canada, the Right Honourable Roméo LeBlanc.

On behalf of all honourable senators, I wish to welcome him back to this chamber.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: I also want to draw to your attention the presence in the gallery of George Bowring and Pauline Michel, our new Parliamentary Poet Laureate.

Welcome to you both.

Honourable senators, we also have the privilege of welcoming to our gallery His Excellence Oum Sarith, Secretary General of the Cambodian Senate; His Excellence Chan Ven, Deputy Secretary General of the National Assembly of Cambodia; and Moul Sasnak, advisor to the Secretary General of the Cambodian Senate.

Welcome to the Senate of Canada.

[*English*]

Finally, honourable senators, I draw your attention to the presence in the gallery of a group of students from a second year political history class at Carleton University. The students in the gallery are accompanied by Professor Kerry Badgley of Archives Canada.

On behalf of all honourable senators, welcome.

[*Translation*]

SENATORS' STATEMENTS

TRIBUTES

THE HONOURABLE YVES MORIN, O.C.

The Hon. the Speaker: Honourable senators, I received a notice earlier today from the Leader of the Government who requests, pursuant to rule 22(10), that the time provided for the consideration of Senators' Statements be extended for the

purpose of paying tribute to the Honourable Senator Yves Morin, who will retire from the Senate on November 28, 2004.

I remind honourable senators of the rule regarding the time limit of three minutes per senator.

[*English*]

Hon. Michael Kirby: Honourable senators, it is with enormous regret that I rise to say farewell to our colleague, and my good friend, Yves Morin, who is retiring from the Senate today.

Senator Morin has been a member of this chamber since early 2001. During this nearly four-year period, he has made a truly outstanding contribution to health policy, both as a member of the Standing Senate Committee on Social Affairs, Science and Technology and as a special adviser on health research to the Minister of Health.

Dr. Morin was appointed to the Senate after a long and distinguished career as a cardiac surgeon, as a health professions educator at Laval University, where he was Dean of Medicine, and as a medical researcher, who was a member of the committee that recommended the creation of the Canadian Institutes of Health Research. His service to medicine in Canada has been recognized by his appointment to both the Order of Canada and l'Ordre National du Québec.

• (1340)

It was his extraordinary experience in medicine that Senator Morin brought to bear on the health policy work of the Standing Senate Committee on Social Affairs, Science and Technology. The committee's work in the health care field, beginning with its six-volume report on the acute care system and continuing with the three-volume report on mental health that was released yesterday, benefited enormously from Senator Morin's experience. Indeed, Senator Morin's contribution is one of the principal reasons that the committee's health care reports — and I suspect the same will be true for its mental health report — have had the very significant public policy impact they have had.

Yves edited every word of every draft of every volume. He recruited experts from across the country to review specific sections of the various reports to ensure that they constituted a significant contribution to health policy. In short, consistent with his academic background, Senator Morin ensured that the committee's health care reports passed a stringent peer review test, and passed with flying colours.

Senator Morin did a lot of his work on the health reports from his home in Quebec City and, during the summer, from his country home in Les Eboulements. Indeed, I personally owe a heartfelt thanks to his wife, Marie, who is sitting in the gallery. The tolerance and understanding she showed when my repeated phone calls, faxes and emails interrupted their time together, particularly on weekends throughout both the summer of 2002 and the summer of 2004, was very much appreciated.

Thank you very much, Marie, for letting me encroach on your private time with Yves as much as I did.

Yves, your commitment to the cause of improving the health of Canadians and Canada's health care system is outstanding. Your willingness to use that commitment to help the Senate, and in particular the Social Affairs Committee, become the principal focal point for health policy debate in Canada is something for which all of us in this chamber will be forever grateful.

Much more importantly, your work on health policy over the past four years is your lasting legacy to all the people of Canada. On their behalf, I want to thank you for all you have done. On my own behalf, I want to thank you for becoming such a dear friend in the past four years.

[Translation]

Hon. Wilbert J. Keon: Honourable senators, I stand before you today to mark the departure of our colleague and friend, Senator Morin. I have known him for many years, as we both pursued the same area of cardiology in our careers. He made a significant contribution to medicine regionally, nationally and internationally.

[English]

Yves, as we have known him, was everywhere. I wish to mention just a few of the organizations in which he played a role. They include: the Canadian Cardiovascular Society; the Heart and Stroke Foundation; the Medical Research Council of Canada; the Canadian Institutes of Health Research, during their creation; the Association of Canadian Medical Colleagues, as Dean of Laval University; and the World Congresses of Cardiology, which we hosted in Canada and participated in abroad. The last committee I shared with him was the Scientific Advisory Committee to the Minister of Health chaired by Roberta Bondar. He was a monumental contributor at every level.

Senator Morin came here three and a half years ago from a lifetime of service to Canadians, to his patients, to his university, and through medical research. He carried these qualities here and, in so doing, he has added very greatly to this place.

Senator Morin's focus on the interest of patients is evident at many levels. He has spoken often about health care concerns, reminding us about activities across Canada in areas such as cancer, multiple sclerosis, osteoporosis, AIDS, diabetes, stroke awareness, Alzheimer's, Parkinson's and, earlier this month, chronic pain.

He took the fire safe cigarette bill, a private member's bill that had made it through the other place, and ensured its passage here. Without his perception that it would save the lives of Canadians, and his skilful persistence, this bill would likely have languished. It will come into force at the end of this year. It will save lives, particularly lives among the less fortunate in our society.

He also led us through complex and difficult discussions on the assisted human reproduction bill. I believe that most of us were torn by the many competing and conflicting issues that were raised by this bill. Senator Morin constantly reminded us that, though we might have had serious difficulties with specific aspects of this bill, failure to pass it would, in the end, do much more harm than good to Canadians by leaving this broad and pivotal area of health care and research essentially uncontrolled.

Senator Morin's focus on research was also evident in his work for the Library of Parliament, which he has supported vigorously through the joint committee and on which so many of us depend for continuing objective analysis.

Personally, I have been continually grateful to Senator Morin for his dedicated, incisive and constructive work on the Standing Senate Committee on Social Affairs, Science and Technology. The two major recent reports from the committee on the federal role in health care, and the first report on mental health published this week, have both benefited enormously from his input, perhaps most notably by his insistence that they address issues of research and of ethics. I intend to ensure we do not forget these lessons.

Honourable senators, in addition to this place losing a dedicated servant of Canada, we will also lose a colleague who focuses on service and not on personal glory or recognition, and a friend whose wise counsel, lively curiosity and intellect, and delightful sense of humour have enlightened and enlivened this place.

Old friend, leaving this place does not mean your work is done. You are still young and possess a veritable encyclopedia of knowledge that will continue to be drawn upon.

Honourable senators, although we will miss him, we will be back to visit him very often.

Hon. Senators: Hear, hear!

• (1350)

Hon. Yves Morin: Honourable senators, I should like first to thank Senator Kirby for his kind and generous words. I was very fortunate to be a member of the Standing Senate Committee on Social Affairs, Science and Technology, and I learned a lot. We produced a report that had a major impact on the health policy of this country. I was also fortunate to be a Senate representative at the last first ministers health conference in September. That is when I realized that our report was truly the basis of the reform recommended by the Prime Minister and agreed upon by the first ministers around the table.

Yesterday, Senator Kirby tabled a report on the first stage of the committee's study on mental health. There will be further consultation during the coming year. I am sure it will have the same impact on an extremely neglected sector of our health care delivery system.

I was honoured a few minutes ago when Senator Kirby asked me to make some contribution to this coming report, and I will do so with pleasure.

I wish also to thank my very good friend Senator Keon. We were friends before coming to the Senate. I knew how much he contributed to the development of cardiology and heart research in this country. I am happy to know that he will be present in the committee as deputy chair and that his counsel will be invaluable both to the committee and to the Senate for many years to come.

I wish to thank Your Honour for your indulgence on the many occasions when I displayed my complete ignorance of the rules of procedures and debate.

I would also like to express my gratitude to the Leader of the Government and to the Leader of the Opposition. Both of them have shown tremendous kindness to me on many occasions, and I thank them for their assistance.

It was a great honour for me to serve my country in the Senate. As Senator Keon stated, I have had many jobs in my life, but by far this was the best job I have ever had. We have the opportunity to deal with critical issues that have a major impact on the future and the life of Canadians.

[*Translation*]

Then there is the contact with fascinating people. You, honourable senators, are proof of that. Once again, I thank you for your help over the past four years. I would also like to thank all the others in the Senate who have provided me with assistance: the clerk, the table officers, the stenographers, the interpreters and the pages. I would like them to know what a lot of help they have been to me.

My dear friends, I would never have managed without the tireless support of my assistant, Louise Delphy. Her knowledge of the Hill, her enthusiasm and efficiency, have been of great help to me in my senatorial duties.

Finally, as you will understand, I would like to pay particular tribute to my wife, Marie. She had to take charge of the family for far too long during my very demanding career as a cardiologist and cardiac surgeon. As Senator Keon well knows, this keeps us away from home a great deal. Then, as my cardiology days came to an end, I got called to the Senate and the absences started up again. In order to lessen the shock of my return home, I have heard that Marie is learning to give the same military salute as we get from the security officers here.

Thank you and good luck once again! I will close with the words of Mr. Chrétien: Long live Canada!

[*English*]

DISTINGUISHED VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, before proceeding to Senators' Statements, I draw your attention to the presence in our gallery of our former colleague, the Honourable Douglas Roche.

Welcome back.

[Senator Morin]

[*Translation*]

THE RIGHT HONOURABLE ROMÉO LEBLANC, P.C.

Hon. Marilyn Trenholme Counsell: Honourable senators, I would like to take this very special opportunity to pay tribute to the most distinguished citizen of New Brunswick, the Right Honourable Roméo LeBlanc.

During this year when we have celebrated the four-hundredth anniversary of the arrival of Europeans in Canada — our own dear Acadians — it is appropriate to honour the first Acadian ever named Governor General of this great country. Before that honour, he was well known as a teacher, journalist, member of Parliament, minister, senator and Speaker of the Senate. Today, the Right Honourable Roméo LeBlanc spends his days by the sea, surrounded by his family and closest friends, with all his memories. He has great hopes for his beloved country.

Through all these years and even today, Roméo, as he is known to his friends, is a living example of humanity and humility. Born in the tiny village of l'Anse-aux-Cormier, he has never lost his appreciation for the simple and basic things of life. The values learned in that place have been at the heart of all his incredible contributions during six decades as he helped to build a better society in Canada.

The Governor General's Caring Canadian Award, which he created during his term as Governor General, bears witness to his commitment to honouring those men and women whose outstanding contribution to their communities ensures the well-being of their fellow citizens. The Right Honourable Roméo LeBlanc has always said, "They do so much, and ask so little in return."

We salute Roméo LeBlanc, an Acadian, a New Brunswicker, a Canadian, a friend, and a man of great distinction and much inspiration. From the bottom of our hearts, we thank you, and may God bless you forever.

[*English*]

THE HONOURABLE JOHN BUCHANAN, P.C., Q.C.

CONGRATULATIONS ON BEING INDUCTED INTO
THE MAPLE LEAF FOUNDATION ACADEMY
OF DISTINGUISHED CANADIANS AND AMERICANS

Hon. J. Michael Forrestall: Honourable senators, two weeks ago, one of our colleagues was honoured by the New England-Canada Business Council and the New England government through what is known as the Maple Leaf Foundation of Boston. Senator John Buchanan claims to be a Scotsman, but he is as much Irish as he is a Scot.

• (1400)

Senator Buchanan, at a black-tie dinner in the presence of 700 guests who included former Premier Lougheed, Premiers Charest of Quebec and Williams of Newfoundland, and the Honourable Ron Irwin, Canadian Consul General, was inducted into the academy of distinguished Canadians and Americans. Honourable senators, allow me to read briefly from the citation:

On the occasion of the twentieth anniversary of The Maple Leaf Banquet, the trustees of the Maple Leaf Foundation are creating the Academy of Distinguished Canadians and Americans. Tonight we take great pleasure in inducting the Honourable John M. Buchanan, P.C., Q.C., as the Academy's first member. Senator Buchanan was appointed to the Senate of Canada in 1990. He was first elected to the Nova Scotia Legislature in 1967, elected Premier in 1978, and re-elected in 1981, 1984, and 1988, making him the third Premier in the history of the province to be elected to four consecutive terms. Recognized with five honorary degrees through multiple elections, and by higher educational institutions, Senator Buchanan has been an ardent exponent of the economic and cultural ties between our two countries. For his vision and his passion of expression we salute him tonight, and with admiration induct John M. Buchanan into the Academy of Distinguished Canadians and Americans.

A certificate was presented to him from the Governor of Massachusetts and congratulatory letters were received from Ambassador Paul Cellucci and former Governor of Massachusetts, Ed King. I join them in my personal congratulations, Senator Buchanan.

[Translation]

PARLIAMENTARY POET LAUREATE

CONGRATULATIONS TO PAULINE MICHEL ON APPOINTMENT

Hon. Viola Léger: Honourable senators, what a pleasure it is to welcome our second poet laureate, Pauline Michel. Novelist, scriptwriter, actress, singer, teacher and now, Parliamentary Poet Laureate, Ms. Michel will be able to witness our democracy in action from a front-row seat.

[English]

Ms. Michel has established herself not only as a poet but also as a multidisciplinary artist in Quebec and in French-speaking communities around the world. Fluent in both French and English, Ms. Michel has a Bachelor of Education from l'université de Sherbrooke, as well as "licence ès lettres modernes" from l'université de Laval. She has also worked as a teacher at the secondary-school and university levels. She has published several books, novels, poetry, songs, children's stories and so on.

[Translation]

In an interview, Ms. Michel, you said you wanted to introduce artists to the world of politics. I would add that you will also be introducing the world of politics to artists. As a poet, you have a

gift for telling stories and describing the realities of the human condition in words that are to the point and carefully chosen for their simplicity and expressiveness. That is why, as an artist, I have often used poetry in the Senate.

[English]

As a token to welcome you, here are the poetic words from the extraordinary Cirque du Soleil show, "O":

Travel far enough away
my friend
and you'll discover
something of great beauty:
yourself.

[Translation]

To round out our welcome, and in anticipation of what you will write for us, here is *Roseau pensant* by Serge Patrice Thibodeau:

Reed in thought: the fragility of man.
Reed made flute: the fragility of song.
Reed as pen: the fragility of the written word.
In the unexpected storm, at the mercy of murderous winds,
And beaten by rain, the reed bends but does not give way.
Just as every new love dances in delight at its far from
certain future...

Congratulations, Ms. Michel.

[English]

NATIONAL CHILD DAY

Hon. Norman K. Atkins: Honourable senators, last Friday morning, Senator Callbeck and I had the pleasure of attending an event to celebrate National Child Day, which is dear to Senator Pearson's heart. The agenda included a reception in the Senate foyer followed by a program in the Senate chamber. This year's theme was "Respect Me, Respect You," in support of a Canada fit for children.

I cannot describe to senators how remarkable I thought this whole program was. It was a wonderful combination of such people as Max Keeping and Stuntman Stu as masters of ceremony, mixed with performances by some outstanding young talent, including groups such as the Canadian Floor Masters, an acrobatic dance group, a very entertaining group of Aboriginal drummers, as well as musical performances by Alex Leafloor and Brad Barkman. Jason Levesque was truly outstanding in his solo performance at the beginning of the show.

Also impressive was the number of young students who spoke on different subjects that centred on the theme of the event. I took note of the fact that the Senate chamber was filled with young people who were very attentive throughout the whole program and appeared to find it most enjoyable.

The National Chief of the Congress of Aboriginal Peoples, Chief Dwight Dorey from Nova Scotia, eloquently addressed the audience as did Senators Mercer and Munson. The amount of time and work that our colleagues must have put into this project deserves, at least in my opinion, many accolades. Their dedication to this cause was quite obvious and I congratulate both senators and their staff for their efforts to create a splendid event.

PALLIATIVE CARE

Hon. Sharon Carstairs: Honourable senators, last week I attended the Second Conference on Palliative Care in Portugal, Lisbon, sponsored by the Gulbenkian Foundation. Since their first conference two years ago attracted 150 people, the organizers made arrangements for 500 people to attend this year. In reality, 600 Portuguese residents attended. They turned 300 people away, and they recognized that they could have easily planned for 1,000. This is, once again, a recognition of a world-wide need for quality end-of-life care for the dying and shows that not only in the Western world, but also in Third World countries, citizens want changes to be made in the ways in which we care for dying people.

Canada was represented by three speakers. Dr. Harvey Chochinov, a professor at the University of Manitoba and the Research Chair for Palliative Medicine, presented on the issue of dignity and reminded the delegates that the dignity shown to patients in the eyes and actions of the physician is a clear, determining factor in how patients see themselves and their own sense of dignity.

Dr. Jose Pereira, the Head of Palliative Medicine at the Foothills Hospital in Calgary and professor at the University of Calgary, spoke to the importance of communication with the patient and family and to the ethical importance of telling the patient all, but not more than, the patient wants to know.

In my role as Minister with Special Responsibility for Palliative Care, I spoke of the achievements made by the Government of Canada and the role played by government in determining health policy.

There were also speakers from Germany, Spain, and the United Kingdom, but the fact that more speakers attended from Canada than from any other country shows the leadership role that Canada is playing internationally. The Senate of Canada deserves a great deal of credit for this. It was the Senate that did the landmark work in the production of both of its reports, *Of Life and Death*, in 1995, and *Quality End-of-Life Care: The Right of Every Canadian*, in 2000.

• (1410)

Much more work needs to be done in this country to ensure that Canadians receive the care they need at end of life. We have made significant strides and those strides are being recognized by the rest of the world. The Senate's original work showed that only \$200,000 per year was being spent on palliative care research. The announcement in September 2004 that \$16.4 million has been targeted in this area for the next five years shows how far we have come. We must not be complacent. We must continue to push the agenda to ensure that all Canadians receive the care they need.

I will be reporting to honourable senators again in June 2005, the tenth anniversary of our first report. Much of the news will be good, but some will be bad. We are still not doing enough.

[Senator Atkins]

THE GREY CUP

CONGRATULATIONS TO TORONTO ARGONAUTS

Hon. J. Trevor Eyton: Honourable senators, I rise today to pay tribute to the Toronto Argonauts, this year's winner of the Grey Cup.

For those few who did not notice or are unaware, they defeated British Columbia last Sunday here in Ottawa by the score of 27 to 19. That magnificent win was accomplished before a sellout crowd of more than 50,000 enjoying perfect weather and perfect playing conditions. I know all of us, including even those from British Columbia, will be pleased to learn that the Argonauts have won the Grey Cup 14 times, more than any other CFL team. Just as remarkable, they have competed for the Grey Cup only 20 times. Their winning percentage, when it counts, is truly impressive.

The selected star of the game and outstanding player was Damon Allen, the Argonauts' quarterback, who completed 23 of his 34 passes for a total of 299 yards and one touchdown. I am particularly drawn to him because he accomplished all of this as a 41 year old, giving inspiration to all of us old-timers.

I know all honourable senators will want to congratulate and pay tribute to the team and its manager, Michael Clemons. In his playing days he was known as "Pinball." Now that he is behind the bench and has won a Grey Cup, he wants to be known as "Michael."

I want to acknowledge the tremendous contribution to this effort made by the Argonauts' new owners, Howard Sokolowski and David Cynamon. It was only with their vital support that the Argonauts have become national champions.

As for British Columbia, there is always next year.

ROUTINE PROCEEDINGS

STUDY ON ISSUES RELATED TO MANDATE

INTERIM REPORT OF ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES COMMITTEE TABLED

Hon. Tommy Banks: Honourable senators, I have the honour to table the third report of the Standing Senate Committee on Energy, the Environment and Natural Resources, an interim report entitled *The One-Tonne Challenge: Let's Get On With It!*

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

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

LIBRARY OF PARLIAMENT

FIRST REPORT OF JOINT COMMITTEE PRESENTED

Hon. Marilyn Trenholme Counsell, Joint Chair of the Standing Joint Committee on the Library of Parliament, presented the following report:

Wednesday, November 24, 2004

The Standing Joint Committee on the Library of Parliament has the honour to present its

FIRST REPORT

Your Committee recommends that it be authorized to assist the Speaker of the Senate and the Speaker of the House of Commons in directing and controlling the Library of Parliament, and that it be authorized to make recommendations to the Speaker of the Senate and the Speaker of the House of Commons regarding the governance of the Library and the proper expenditure of moneys voted by Parliament for the purchase of books, maps or other articles to be deposited therein.

Your Committee recommends that its quorum be fixed at seven (7) members, provided that both Houses are represented, including a member from the opposition and a member from the government, whenever a vote, resolution or other decision is taken, and that the Joint Chairs be authorized to hold meetings to receive and publish evidence when a quorum is not present, provided that at least (4) members are present, including a member from the opposition and a member from the government.

Your Committee further recommends to the Senate that it be empowered to sit during sittings of the Senate.

A copy of the relevant Minutes of Proceedings (*Meeting No 1.*) is tabled in the House of Commons.

Respectfully submitted,

MARILYN TRENHOLME COUNSELL
Joint Chair

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Trenholme Counsell, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

States, who will be in Ottawa in six days' time to address a joint session of the Senate and the House of Commons. The minister advised that indeed the invitation had been extended.

I read today in the *Toronto Star* that a spokesperson for the Prime Minister's Office by the name of Scott Reid said that they are not ready to announce the details of the visit of the President. Could the minister advise this chamber if the President has responded to the Canadian government's invitation to speak to both Houses of Parliament?

Hon. Jack Austin (Leader of the Government): Honourable senators, I have not received any information that would allow me to amend the answer I gave yesterday.

Senator Kinsella: Could the minister, as a member of the government, tell us if the government has invited the President to meet with Mr. Harper, the Leader of Her Majesty's Official Opposition?

Senator Austin: Honourable senators, I very much regret that I do not have any information on the organization of the President's visit and therefore cannot answer the question.

Senator Kinsella: Perhaps my question could be in the form of a representation. In light of the description that the minister's colleague, Mr. Valeri, Leader of the Government in the House of Commons, is giving to the visit, namely, "an all business visit to the capital," will the Government of Canada raise, for example, the issues of softwood lumber and BSE in this business meeting with Mr. Bush? Will it raise human rights issues, such as the whereabouts of prisoners taken by Canadian forces in Afghanistan and delivered or passed on to U.S. forces and the application or non-application of such basic human rights standards as habeas corpus as it affects prisoners in Guantanamo Bay?

• (1420)

Could the minister speak to some of these issues here in this chamber? If he cannot, would he take them, by way of representation, to his colleagues who are planning the business meeting?

Senator Austin: Honourable senators, I will indeed carry Senator Kinsella's representation to the Minister of Foreign Affairs, who has the responsibility for preparing the substantive agenda for this meeting. If softwood lumber is not on the agenda, I am in big trouble.

QUESTION PERIOD

FOREIGN AFFAIRS

UNITED STATES—VISIT BY PRESIDENT

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, my question is to the Leader of the Government in the Senate. Yesterday we inquired as to whether the Government of Canada had extended an invitation to the President of the United

UNITED NATIONS

EXPANDED MANDATE— PRIME MINISTER'S PLAN FOR INTERVENTION

Hon. Donald H. Oliver: Honourable senators, my question is directed to the Leader of the Government in the Senate. At a meeting of Pacific Rim countries in Chile last weekend, the Prime Minister called for an expanded UN mandate that would allow the United Nations to intervene when sovereign countries fail to protect their citizens. This is an admirable proposal and a

laudable goal, but there are certain problems. One is that it is not the UN mandate that is the obstacle to intervention but the political will of countries to intervene. Another problem is that the UN and other organizations have found creative ways to intervene in the past, but those interventions had mixed results. Does the Prime Minister have a concrete plan for how such interventions can succeed and, if so, would the honourable leader share it with this chamber?

Hon. Jack Austin (Leader of the Government): Honourable senators, Senator Oliver raises an issue that is paramount in Canada's foreign policy at this moment, and that is the doctrine that the Prime Minister has presented at the UN arguing that it take a positive and active role in intervening where states have failed and are failing to protect their populations.

I can assure the honourable senator that the Prime Minister is actively engaged, both at the APEC conference in Chile that has just finished and in his meetings at the Francophonie and those planned for Khartoum in another day, to aggressively make these points of Canadian foreign policy.

I believe that there is a will in the international community to respond but, as Senator Oliver said, there is an enormous resistance also on the part of leading members of the United Nations who adhere more closely to older doctrines of state sovereignty and non-interference.

These changes in international culture take time and cannot be achieved overnight. However, the crisis in Darfur, and perhaps the crisis in Zaire, will indicate a need for action that will affect the resistance of some countries to move.

Senator Oliver: I thank the honourable leader for that response.

Should the United Nations agree to expand its mandate, has the government proposed that Canada will be a leading contributor of troops to these interventions and, if so, from where will those Canadian troops come?

Senator Austin: Honourable senators, in advancing the new doctrine of international responsibility, the Prime Minister is indicating that Canada intends to be in the vanguard in providing international support. There are so many other fora: capacity building, the transfer of materials, training, and the provision of basics such as housing, clothing, education and health care.

I would ask my honourable friend not to focus simply on a military presence, although I clearly recognize, as does Senator Oliver, that order is the first requirement of any attempt to assist another society. For example, Canada is very active in Haiti today in assisting to stabilize the country as well as in providing training and other assistance.

Beyond order, there is a need to assist certain societies with simple knowledge — simple to us because we have practised this knowledge for a long time — knowledge that goes with the basic building of political, social and economic blocks in a society. I believe that it is a broader-brush concept of assistance.

[Senator Oliver]

[*Translation*]

HUMAN RESOURCES AND SKILLS DEVELOPMENT

POST-SECONDARY EDUCATION FINANCIAL ASSISTANCE

Hon. Pierre Claude Nolin: Honourable senators, my question is for the Leader of the Government in the Senate and concerns the reform of the post-secondary education system in Canada. Our health system was not the only victim of the deep cuts made by your government between 1994 and 1999 in the transfers to the provinces. Post-secondary education was also hit by this unilateral decision which has had a negative impact not only on the quality of education, but also on students' quality of life and their potential for job success.

Colleges and universities have been forced to counterbalance this decline in government funding by a drastic increase in tuition fees, which have skyrocketed by more than 99 per cent since 1994, according to Statistics Canada. Statistics Canada also estimates that, from 1995 to 2000, the average student debt increased by 30 per cent, to reach more than \$29,000.

Honourable senators, frankly, this situation is unacceptable. It is normal to incur some debt to pay for one's education, but is it acceptable that students have to run debts sometimes as high as \$40,000 or \$60,000, leaving them heavily burdened before they even start looking for their first job? In the face of this alarming situation, could Senator Austin tell this house whether his government intends to increase transfers to the provinces for post-secondary education so that students no longer have to borrow on their future?

[*English*]

Hon. Jack Austin (Leader of the Government): Honourable senators, I will not engage in a discussion of fiscal management during the 1980s and the 1990s except to say that all Canadians agreed that the situation in the 1990s had to be put right, and it was put right with the support of all Canadians. As I said in my Address in reply to the Speech from the Throne on November 2, it is now time for Canadians to enjoy the benefits of those very tough days.

With respect to the more detailed question from Senator Nolin, I think it is recognized worldwide that Canada has one of the best student financial assistance systems in the world, and the Speech from the Throne announced measures that would improve the current plan. That is why a new grant for students from low-income families has been announced to cover a portion of that tuition cost up to \$3,000 during their first year of post-secondary education, effective August 2005. That is why, as well, we are putting in place the Canada Learning Bond to help children in low-income families to start saving for post-secondary education at a young age.

Our research shows that Canada ranks third in the Western world, after the Netherlands and Ireland, in ensuring access to post-secondary education for low-income citizens. As Senator Nolin knows, the student assistance program is a partnership between the federal government and the provinces. Each plays a role, by agreement, in enhancing assistance to students.

Senator Nolin: I thank the minister for the partial answer. However, some of those students were visiting Parliament this week, and I am sure that the Leader of the Government has met with them. I have met with some of them, as have my colleagues, I am sure. They are most concerned. They have heard what we were just told, but they want more, and I think they must have more.

• (1430)

Is the government ready to embark upon a national strategy to rejuvenate post-secondary education? We are living in a federation. It is not the sole responsibility of the federal government, and it is surely not the sole responsibility of the provincial governments. Under the leadership of this government, can we not expect to see the emergence of a national strategy as partners? That is what those students want, and they are hoping they will get it.

Senator Austin: I am in total accord with the direction of the honourable senator's question. The government is modernizing the student aid to post-secondary education programs. We will invest close to \$137 million in fiscal 2005-06 in that modernization program.

Just to give a bit of background, the student loan program helps close to 330,000 students with approximately \$1.6 billion of loans annually. We created a Canada Millennium Scholarship Program under Prime Minister Chrétien, funds from which have been awarded to almost 90,000 students at a cost of \$285 million a year. Canada Study Grants are issued to 56,000 students, totalling \$75.5 million annually. The Canada Education Savings Grants program has paid out \$2 billion in grants since 1998.

I do want to address the question more specifically. This is an important topic. Please allow me to continue just a bit longer, although I know some on the other side are concerned that I answer questions in too much detail and go on too long with the answers.

We do recognize that debt is a serious problem for students, but the statistics show that 80 percent of the students who complete their studies repay their loans in full and on time, so that the student body as a whole is a beneficiary. Some students do encounter problems, and we have a number of initiatives to help them manage their debt. We have provided interest relief for people who have graduated, \$77 million to approximately 128,000 students in fiscal 2002-03, and we provide an extended period for loan repayment of up to 15 years on the basis of application and demonstrated need. We allow debt reduction for borrowers with financial difficulties, and we reduced the debt of approximately 1,500 students again in fiscal 2002-03 and provided tax relief for interest on student loans of \$65 million in the year 2002.

I will not go on, honourable senators. There is, as Senator Nolin indicates, always room for improvement, but the federal government, along with the provinces, has an active policy of positive intervention in terms of assisting students in the post-secondary area. I know that there are calls for free post-secondary education, but the studies I have seen indicate that that is not a program that is fiscally possible in today's Canada.

Senator Nolin: Honourable senators, they are not asking for free post-secondary education. I hope the minister has already received some of the representatives of those students. If he has not, I implore him to do so. I am sure they would be delighted to hear his speech, and perhaps they will give their own incentive to improve the goodwill from the government, but in listening to them the honourable senator will recognize that they have a specific list of requests. We have a very good model, but that is no reason not to try to improve it.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— CONTRACTS WITH SIKORSKY—DELIVERY DATES

Hon. J. Michael Forrestall: Honourable senators, I have a very short question. I would invite a similar type of answer.

Yesterday, I asked questions of the Leader of the Government having to do with the contractual arrangements between the Government of Canada and Sikorsky. The question specifically was aimed at whether or not Sikorsky, at the time of the signing of the contract, had indicated the possibility of deferring or delaying a stipulated date for delivery of the contracts. The minister replied that the government is continuing to deal with Sikorsky on the details of the contract. I think that speaks for itself. He also told us that he had no way of answering my other questions at that stage.

Honourable senators, we all know now that, as the Leader of the Government was telling me one thing here in the chamber, his colleagues were in fact signing a contract. There must be some information with respect to the date of delivery, its firmness and/or any change in that. Could the minister enlighten us on that, and would the government undertake to advise, in a timely fashion, of any request to defer or delay the stipulated delivery dates? The Leader of the Government will, of course, understand the importance of that.

Hon. Jack Austin (Leader of the Government): Honourable senators, again I must applaud the senator's ability to follow this file so very closely. He was asking me the question yesterday at virtually the same time or just before, as I understand it, this contract was signed. Of course, I am not privy to the most immediate details of contract negotiations by any department. Perhaps the honourable senator is privy to such details in respect of the Department of National Defence.

In any event, as the senator and the chamber are aware, yesterday the government announced the signing of two separate but interrelated contracts with Sikorsky International Operations Inc. for the maritime helicopter project. The first contract is worth \$1.8 billion and covers the acquisition of 28 fully integrated, certified and qualified helicopters with their mission systems installed. The second contract is valued at \$3.2 billion and is for 20-year in-service support for the helicopters.

Senator Forrestall: What is the total?

Senator Austin: It is \$3.2 billion over 20 years. That includes the construction of a training facility as well as a simulation and training suite. I am told that the delivery of the first helicopter, to be called the CH-148 Cyclone, is required to be no later than November 2008, with the remaining helicopters to be delivered at the rate of one per month thereafter. The contract has a series of bonuses for early delivery, but it also imposes penalties for late delivery, making it very much in the company's interest to deliver the helicopters as soon as possible.

Senator Forrestall, as my retirement date is in 2007, I cannot give an assurance as to what will take place in 2008.

Senator Forrestall: Mine will be in that period too.

I have another question for clarification. Canadians will take from those two figures that we, in fact, have lost not the \$500 million that is popularly referred to as the total cost of cancellation of the EH-101 contract, but now, indeed, that we have wasted well in excess of \$1 billion of Canadian taxpayers' dollars for this nonsense.

• (1440)

The leader did not respond to the second part of my question. Would he let us know if there is any request for a deferment or a delay in the stipulated dates of the contract. I would just mention that my knowledge comes from these modern machines that feed the world with information. People in Russia and in China had this information at the same time I had it. If there is a request for a delay, would he let us know the nature of that request and the length of time involved?

Senator Austin: Honourable senators, I will make best efforts to do so, but I do want to tell Senator Forrestall something that he already knows but which I need to put on the record, and that is, in answering questions, I am obliged to be guided by the departments and ministries. I cannot simply repeat information I read in newspapers or take off a website.

Senator Forrestall: Does that apply to the leader's own website?

TRANSPORT

CANADA-UNITED STATES BORDER—REQUIREMENT OF TRUCKING INDUSTRY TO SUBMIT CARGO INFORMATION IN ADVANCE

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate.

Starting next week, Canada's truckers could face heavy penalties for breaking a new U.S. rule that requires them to provide cargo information to U.S. Customs electronically before they arrive at the border. The new border rule is intended to better target high-risk shipments.

The penalties range from \$5,000 for a first-time offence to \$10,000 for subsequent offences. Along with these fines, in January of next year, violators could also be denied entry into the U.S.

U.S. border officials have spent a great deal of time advertising this new program. The Canadian Trucking Alliance has tried to get this information out to truckers, but some firms may still not know about this. What is the government doing to ensure that all Canadian truckers are aware of the change in the rules?

Hon. Jack Austin (Leader of the Government): Honourable senators, since September 11, 2001, the trucking industry has seen their operating system change dramatically in terms of movement into the United States, and professional truckers and firms of truckers are online to be given notice of Canadian changes. I presume that the honourable senator is speaking about changes in Canadian rules and practices.

Senator St. Germain: I am referring to mainly American changes.

Senator Austin: With respect to American changes, truckers will have to obtain that information from their associations and by way of their own access to the American customs process. However, in my experience with respect to trucking, truckers are highly entrepreneurial people and they are very sensitive to the requirements that permit them to conduct their business.

Senator St. Germain: Honourable senators, I have a supplementary question. According to Ron Lennox of the Canadian Trucking Alliance, small and medium-sized trucking companies have had a hard time sorting through all the changes in the U.S. regulations. The *Windsor Star* quoted him as saying that it is very problematic for a lot of people trying to get used to these changes all at once. He said that these rules coming into effect rely on technology systems being in place, but the thing is that everybody is not on them.

We have trucks lined up right now. I live on 8th Avenue, and trucks are lined up all the way down 176th Street at the civic truck crossing, and backed right up to Highway 99. This is going to exacerbate the situation. The honourable senator tells us that the truckers have a responsibility to access the information from the Americans.

My question is: What is the Canadian Government doing to help them extract this information so that there is a certain level of proficiency in crossing the border?

Senator Austin: Honourable senators, I will enquire into what Canadian government activity is available to assist the trucking industry with American regulations. I think the honourable senator knows that quite a considerable investment has been made, and is being made, in providing additional facilities at 176th Street, and at other access points in British Columbia. There has been an amazing advance, particularly in the plazas and in the arrangements to move traffic across the border.

POSSIBLE DECRIMINALIZATION OF MARIJUANA—EFFECT ON TRUCKING INDUSTRY

Hon. Gerry St. Germain: Honourable senators, my other concern is in regard to the decriminalization of marijuana or the relaxation of marijuana laws. Many truckers that I know are concerned about this possibility. This could exacerbate the situation considerably if it were deemed by the American side

that they would have to take a stringent position as far as inspections are concerned. Is this being discussed, and is any consideration being given to the matter in view of the government's will and the Prime Minister's statement that we will pass our own laws regardless of what our neighbours may say?

Hon. Jack Austin (Leader of the Government): Honourable senators, I would say two things in answer to the senator's question. Yes, discussions are being conducted between Canada and the United States with respect to, particularly, the problem of marijuana grown in Canada and smuggled into the United States and its impact in a number of areas. With respect to the other point, obviously this Canadian Parliament will want to respect the will of Canadians regarding this issue, and defining that will is what all of us are endeavouring to do at this time.

The Hon. the Speaker pro tempore: Senator Cochrane, we have time for one short question.

HIGH COST OF AIR TRAVEL

Hon. Ethel Cochrane: Honourable senators, the high cost of air travel in Canada is of major concern to all of us. A new study proves what many of us have believed for some time now. Landing fees at Canadian airports are among the highest in the world.

Toronto's Pearson Airport is the most expensive place in North America to land a plane. Fees paid by carriers at Pearson have increased by an estimated average of 35 per cent annually for the past five years. Reports indicate that another double-digit increase is looming for next year.

Airport rents is another issue. This year, airport rents will bring in an estimated \$250 million to the federal coffers. This amount is expected to reach \$437 million by the end of the decade. Given that costs such as these are passed along to us, the passengers, it is not surprising that many have called these rents a hidden tax on airline passengers and the air travel sector.

My question is for the Leader of the Government in the Senate. What is the government doing to address the cost concerns of the Canadian air travel industry and its passengers?

Hon. Jack Austin (Leader of the Government): Succinctly put, honourable senators, a great deal. In the last two or three weeks, the Minister of Transport has announced that studies are under way with respect to the question of rent paid by airports to the Government of Canada and that there will be an expansion of the access to Canadian air space by foreign carriers.

With respect to the question of the specific situation in Toronto to which the honourable senator refers, that is a factor, as I understand it, of the cost of the construction of the new facilities and the requirement of that airport authority to pass those costs on to passengers. Whether a program should be created to in any

way provide a subsidy or support for the Toronto airport is a very interesting question. I would doubt that Canadians would support such a suggestion directly.

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to table a response to a question raised in the Senate on November 18, 2004, by Senator LeBreton regarding allegations of political interference by the Minister of Citizenship and Immigration.

CITIZENSHIP AND IMMIGRATION

ALLEGATIONS OF POLITICAL INTERFERENCE BY MINISTER—INVESTIGATION BY ETHICS COMMISSIONER

(*Response to question raised by Hon. Marjory LeBreton on November 18, 2004*)

The Prime Minister's office first heard of the allegations in late summer 2004, in August.

It was then that the Prime Minister's Office contacted Minister Sgro's office to determine whether improprieties took place. They sought assurances that nothing improper had taken place, as is their duty, and were assured by the Minister's office that nothing improper took place.

The Minister of Citizenship and Immigration made her decision on the basis of humanitarian and compassionate grounds, as permitted under section 25 of the Immigration Act.

Nonetheless, she has asked Ethics Commissioner Bernard Shapiro to look into this matter. She has also asked him to make his report public.

• (1450)

[*English*]

FOREIGN AFFAIRS

UKRAINE—BREAKDOWN IN ELECTORAL PROCESS— STATEMENT BY LEADER OF THE GOVERNMENT

Hon. Jack Austin (Leader of the Government): Honourable senators, I ask for leave to make a very short statement.

Honourable senators, the statement I want to make relates to the crisis that is developing in Ukraine following the elections that have just taken place there. What I have learned gives me substantial concern for the breakdown in Ukrainian democracy and the struggle over the direction in which that country may go in terms of its rapprochement with the West or its return to past political cultures.

I simply wanted to express the concern of the government with respect to those issues. Senator Grafstein, Senator Milne, Senator Cordy and Senator Smith were observers of the first tranche of the Ukraine electoral process, which seemed to have gone rather well in terms of democratic normalcy. However, now things seem to be going rather badly. I wish to advise honourable senators that the Canadian government is in the process of making strenuous representations to Ukrainian authorities with respect to that electoral process.

The Hon. the Speaker: I will recognize Senator Andreychuk on this same matter.

Hon. A. Raynell Andreychuk: Honourable senators, I agree with the Leader of the Government in the Senate that there exists an urgent and evolving situation in Ukraine. It has been known for several years that this election would present difficulties if certain preconditions were not in place, such as equal access to resources, media time, and such other usual procedures that come into play in an election. Many of these factors have been noted by the Ukrainian community in Canada for several years, and by other observers. At this moment there is still no president-elect, as I understand, in Ukraine, and the situation is being played out.

In the interests of the people of Ukraine, what steps can the Leader of the Government indicate that the Canadian government should take? In my opinion, the Canadian government should express deep concern and immediately contact the present president and insist that he not allow anyone to be designated president until international observers can assess the true extent of the fraud in the Ukraine election.

Senator Austin: Honourable senators, I very much appreciate the position Senator Andreychuk has just expressed and note that, as she will be very much aware, the Canadian Ambassador to Ukraine was quite forthright in commenting on the deficiencies in the democratic processes taking place, which will illustrate Canada's position as well.

Senator Andreychuk: The steps taken by the ambassador have been noted. In fact, on Canadian public television he indicated the irregularities and the difficulties in the election.

What will the Canadian government do today to ensure that the democratic process will be recognized in Ukraine? What particular steps is the Prime Minister taking in contacting the present president to ensure that there be some acknowledgment of these deficiencies before anyone is declared president?

Senator Austin: Honourable senators, this is not Question Period. I will not engage in anything more than saying, as I have said before, that we are making strenuous representations.

Hon. Jane Cordy: Honourable senators, mine is not a question but, rather, a comment.

I had the opportunity to chair the NATO observers who monitored the first round of the elections in Ukraine on October 31. Also from the Senate at that time were Senator Milne and Senator Grafstein, who were representing OSCE.

We observed on election day how much the grassroots — the average Ukrainian person — wanted democracy to work. They worked so hard. In our debriefing the day following the election, every person, whether from the European Union, the Council of Europe, NATO or OSCE, commented on how much the Ukrainian people wanted democracy to work and how hard they had worked on election day. The polls closed at eight o'clock and the people stayed until three o'clock in the morning counting the ballots. One could see on the faces of the people that they knew that this was the time that it might be possible to make a change, and for the most part the election polls the observers visited were run quite fairly.

Unfortunately, when the heads of the organizations that I mentioned had a press conference the next day, we had to express our disappointment not so much with what happened on election day, but with the tremendous media bias in favour of Mr. Yanukovich and against Mr. Yushchenko. We also had to express our utter disappointment at the interference by the Ukraine government during the election campaign, because Mr. Yanukovich, the current Prime Minister, is running for president.

We were lulled into a false sense of security because we saw that election day itself was not that bad; it was the run-up to election day where we saw and heard of all the irregularities. We were lulled into the sense that perhaps the second time it might work in the same way, but we have certainly seen that that has not been the case.

Unfortunately for the Ukrainian people, this is a dreadful situation. We have seen what is happening in Kiev, with the tremendous numbers of people gathering in the streets as a result of a total lack of democracy in the election that was held on Sunday.

Hon. Jeremiah S. Grafstein: Honourable senators, I apologize; I was out of the chamber.

I would like to read something from my BlackBerry. I hope this does not breach our rules, but it is in writing.

It is a message from a Ukrainian colleague of ours whom we met in Kiev several weeks ago. She is involved with the artists union and is an important cultural figure in that community. I have kept in touch with her regularly by email and hope that she is safe and sound.

She tells me that the major concern facing her, her friends and her family at this moment is an outbreak of violence. One of things the Government of Canada — which is highly respected in Ukraine and amongst the European community — can do is to urge those players outside Ukraine to cease and desist from interfering in the process there and allow the people of that particular country to exercise their democratic will.

We were there for the first round of the presidential election. Quite frankly, while there were serious irregularities during the course of the campaign — all of which we have noted and will be submitting in a report to the Senate that is now being translated into French — we did discover on the day of the election a deep desire on behalf of the people who were directly involved in the election to have their democratic choices exercised. It was an amazing thing to watch. Senator Milne and I observed the counting of ballots until three o'clock in the morning. Toward the end, the 26 or 28 observers all gathered around to do exactly the right thing: to get a fair and accurate count.

The problem, honourable senators, is in the irregularities and the failure of the count.

• (1500)

I would hope that some methodology would be developed to have an interim government while the count can take place, or a recount, or alternative to a recount, a fresh round as took place in Georgia. I was fortunate enough to be the deputy supervisor of the two rounds in Georgia, and there I witnessed a truly democratic exercise. The president decided to withdraw and the Speaker of the Parliament then became interim president and allowed for a further round that ultimately ended up with an excellent democratic result.

Honourable senators, I would hope that we would try to use moral suasion and the powers of the government to recount the election results or, failing that, to have an interim government that would then call a new election so that the democratic will of the people of that country could be exercised. We should be supporting democratic votes. That is what we are all about.

The Hon. the Speaker: Honourable senators, before I recognize more senators, I would like to indicate where we are at in our proceedings. Senator Austin asked for the floor to make a statement on an important matter, which he has done.

Honourable senators, do we agree we should proceed with this subject matter at this time?

Hon. Senators: Agreed.

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, I thank His Honour for his intervention.

The matter that we are now seized of, we should be seized of. It would be much better for us to be examining a particular resolution or a particular motion on which all honourable senators, with due notice, would have been able to do their research and to consult with colleagues who have participated in the election observer teams. Honourable senators may want to ask questions such as in what part of Ukraine were the Canadian observers making their observations, because it is a big country. There are many social, economic and political dynamics operating in that important country in Europe.

I think that our colleague Senator Austin might want to consider not only making the announcement that he has made but also proposing a resolution that the Government of Canada might be called upon to take a certain action. If it came from the

minister as a reasonable resolution calling upon the government to do something, it would touch on issues such as our concern for the democratic rights of the people of Ukraine. We all understand the values of civil and political rights that are involved here, that is, the right to vote, which is so central to the democratic. I would hope that would be an element of any resolution that the government may advance in this chamber for debate.

The safety of the citizens of Ukraine could be another element of a government-developed resolution to be tabled before us. I would think there is certain urgency to it.

It appears that honourable senators on both sides of this house are ready to enter into this debate, and so perhaps we could conclude at this juncture. The government may want to act a little bit more respectfully and bring forward a resolution that we could debate. On the basis of the exchange we have had thus far, the resolution should speak to the data we have available, some of which comes from our observers. First, we must be mindful that our observers were in one part of Ukraine. Second, we must urge non-violence under the circumstances of transition. If there have been creative suggestions in this exchange, they could be incorporated into a resolution.

On behalf of the opposition, far from not being anxious to engage in a fulsome debate on a resolution that may be helpful, we are very supportive of such proposal.

Senator Austin: Honourable senators, I want to thank the Leader of the Opposition for his courtesy and the courtesy of his side in allowing this issue to be discussed in this chamber. It required leave and I appreciate such recognition.

I very much take on the suggestions that the honourable senator has made. I think we will want to see the developments over a day or two, but I am most prepared, if the developments turn increasingly more negative, to bring a resolution to this chamber. I would be very happy to discuss it with the honourable leader opposite before we do so.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Plamondon, seconded by the Honourable Senator Ringuette, for the second reading of Bill S-19, to amend the Criminal Code (criminal interest rate).—(*Honourable Senator Rompkey, P.C.*)

Hon. Sharon Carstairs: Honourable senators, although this item stands in the name of Senator Rompkey, he has deferred to me in this particular circumstance.

Honourable senators, it is with a great deal of pleasure that I rise to support Bill S-19, so ably presented by my colleague Senator Plamondon. She discussed this matter with me some time ago. I must admit to at first being somewhat incredulous that Canadians could be charged up to 60 per cent on purchased goods. However, as she explained to me, the bill in 1981 was a reflection of the Bank of Canada rate of 21.03 per cent at the time the bill was passed. It replaced legislation passed in 1939, the Small Loans Act.

Honourable senators, today we have a much lower Bank of Canada rate, at 2.5 per cent. Therefore, a 60 per cent interest rate looks to be, in my view, nothing short of usurious. It is important to have the right balance. Many Canadians, regrettably, cannot borrow money from our major banks at preferred rates. They need to look at other financial institutions and businesses that are prepared to take higher risks and are therefore allowed to charge higher interest rates because of the risks they take. However, 60 per cent certainly appears to be both unreasonable and unjust.

It is my hope that the Standing Senate Committee on Banking, Trade and Commerce, to whom I assume this bill will be referred in due course, will carefully examine the necessary essential balance. Clearly, interest rates must be sufficiently high to allow Canadians to borrow money while at the same time allowing industry to make profit; otherwise, Canadians will not be able to borrow the very money that they require. However, I think that a reasonable profit would be the order of the day.

I am also hopeful that the Banking Committee will examine the second part of the act. I would like to read from that section of the Criminal Code, section 347, the definition portion of which states:

“interest” means the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes.

This provision seems very clear, and it means that interest is supposed to include an aggregate of expenses. Anecdotal evidence that I have seen recently would indicate that while the law says that up to 60 per cent interest can be charged, in many circumstances well above 60 per cent interest is being charged.

With this bill, Senator Plamondon is addressing the first part, which is an excellent first step, but we must also examine what is happening in Canadian society with respect to the other part. We have a number of financial businesses that appear not to be taking due advanced interest in this particular paragraph, which is the law of the land. They are simply not adhering to those principles.

[Senator Carstairs]

• (1510)

I believe Senator Plamondon has found absolutely the right balance. What has happened is that a law was passed in 1939 and then another one in 1981, both reflecting a higher bank rate. She has proposed in Bill S-19 that we should establish a differential between the bank rate and the maximum amount of interest that could be charged. She has said — and I believe she has it right — that a 35 per cent differential between the Bank of Canada rate and the maximum rate that can be charged would be a reasonable profit for those in this industry. It appears to be fair and equitable to both the consumer and the financial institutions. I commend this bill in principle to all honourable senators and hope we can give it speedy passage.

On motion of Senator Stratton, debate adjourned.

FIRST NATIONS GOVERNMENT RECOGNITION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Gerry St. Germain moved the second reading of Bill S-16, providing for the Crown's recognition of self-governing First Nations of Canada.

He said: Honourable senators, it is a privilege to be here and an honour to rise today to begin the debate at second reading of Bill S-16. I begin my remarks by quoting from *The Rights of Indians and Tribes* by Stephen L. Pevar, who wrote:

Hundreds of nations were prospering in what is now Canada when Europeans first arrived in North America. Each nation possessed its own government, culture and language, and the peoples of these nations shared a deep religious faith centered in the sanctity of nature.

Their societies were complex and specialized. There were political leaders, spiritual leaders, doctors, artisans, architects, food gatherers etcetera. Each nation lived off its land and waterways, being agricultural, fishery and hunting.

Some were nomadic, following the migration of fish and game, while others built communities. Commercial networks spanned the continent, and nations traded food, clothing and crafts.

When the Europeans arrived, most Indian tribes openly welcomed, assisted, and traded with them, allowing the foreigners to live in their territory.

Honourable senators, both the First Nations and the British Crown had decided by 1763 that the relationship between their peoples would be by treaties characterized by peace, friendship and sharing. By Royal Proclamation of that year, which is now a part of Canada's Constitution, the Crown set itself out as the sole party to receive Indian lands. To the degree that the Crown took over the resources and the lands necessary for the First Nations to maintain themselves, the Crown accepted the fiduciary responsibility for their well-being.

First Nations, however, are not interested in a state of dependency. They wish to make their full contribution to Canada and the world. This is difficult to do, however, when the Indian Act, devised in times of colonial control, places decision-making for their communities in Ottawa.

Canada enjoys seeing itself as a world leader in human rights and human development. However, it is embarrassed by unfinished business here at home. Although we have had near-total control of First Nations destiny, we have kept them from enjoying their fair share of Canada's prosperity, and I believe it is time to change that situation.

First Nations people, like other Canadians, are entitled to enjoy democratic control over their own affairs within a legislative context that ensures certainty, stability, respect for rule of the law and that balances collective and individual responsibility. First Nations communities must have the flexibility to determine for themselves whether and how free market principles, such as individual property ownership, should apply to reserve lands. First Nations people are entitled to transparency and accountability in the administration of their own and public funds.

Today, legislation is the primary means by which Parliament can satisfy the spirit and intent of Canada's treaty commitments in ensuring that First Nations communities can enjoy fundamental democracy.

Honourable senators, parliamentarians have been approached by First Nations leaders to discuss the subject of First Nations governance. We have been told that:

The issue of First Nations governance is an issue of importance to everyone regardless of the political party they belong to. It's an issue of importance to all representatives of the (Parliament) of Canada.

That quote comes from a letter written by Herb George on November 4.

Bill S-16 was built from the original basic idea, first introduced to the Senate by the late Senator Walter Twinn, that there needed to be a way for all First Nations with a land base, recognized by the Crown, to be recognized by the Crown as self-governing, to be recognized by the federal Crown and Canada as already having this power — that this governing right pre-existed the arrival of explorers and settlers to North America. The recognition of this unceded right — this reality — is the foundation stone of Bill S-16.

Since the original bill introduced by Senator Twinn, there has been significant input by First Nations people, and we have a vastly improved bill to lay before the Senate today.

The Crown firmly and clearly set the stage for the harmonious co-existence of indigenous peoples and newcomers to the continent. Colonial governments, right through to present-day governments of Canada, have been mandated with a responsibility to the indigenous peoples — these organized,

Aboriginal, self-governing nation states. It is because of this mandate that the British Crown instituted the Department for Indian Affairs — to manage the existing treaties and agreements and to establish new ones.

Honourable senators know that the consequences of Canada's Indian Act have been harmful to the culture and way of life for all First Nations groups in Canada. In the past, Canadian policy and lawmaking was directed to effectively assimilate First Nations people, but thankfully the original inhabitants of this land fought for their rights and continue to do so. First Nations have been fighting for their self-governing rights. We have never seen this so clearly as we have since the BNA Act of 1867 that was patriated into the Constitution in 1982, wherein First Nations peoples and their pre-existing rights were recognized and affirmed in section 35.

Since 1982, there has been a flood of claims mostly arising from Aboriginal people who had not entered into treaty, or from the maladministration of affairs or for the failure to fulfil fiduciary responsibilities or failure to recognize rights. Even beyond claims relating to the past, there have been clear, strong calls to establish a productive relationship that recognizes self-government as a fundamental ingredient.

First Nations people no longer want to be governed by the Indian Act. We have seen the Cree-Naskapi, the Sechelt, the Nisga'a, the Yukon, the Nunavut, the Westbank and several other legislated arrangements, along with the Tlicho legislation that the other place is examining now. Many more will follow.

Honourable senators, as Prime Minister Trudeau might have stated, and indeed the Supreme Court has confirmed since the famous *Calder* case of 1973, it is "just" that self-government is being recognized for some First Nations through negotiated agreements. However, First Nations people do not want the Indian Act's version of self-government or to have imposed colonial arrangements that continue to thrive despite the guarantee of section 35 of the Constitution. The conclusions of the Royal Commission on Aboriginal Peoples are no surprise. It is not "just" that First Nations must wait for their turn to negotiate a deal with government negotiators who too often arrive at the table with unacceptable pre-conditions. If you look at the past 25 years of negotiations you will find that, on average, it takes 15 years to get a deal laid before Parliament, and then for only one or two First Nations.

- (1520)

There are some 630 First Nation communities, each entitled to put in place its version of a government consistent with its culture and its values to govern in its areas of jurisdiction. However, Canada's federal government has only been able to conclude a finite number of deals each year. Honourable senators, Parliament must do better.

In each Speech from the Throne that the government has delivered since 1994, the Government of Canada's commitment was to work with all the First Nation peoples in Canada to improve their standard of living and to assist their governing structures in addressing the issues that have chronically confronted them. If you read between the lines, there was a

promise to right the wrongs and to accelerate the claims and agreements. The fact remains that while conditions have improved somewhat on First Nation lands since 1982, they lag dramatically behind the conditions in the rest of Canada.

The fact is that not many communities have a body or form of government with which the majority of its members are happy. This was confirmed by the department's own polling done as a prelude to the quashed First Nations governance act, which was seen as nothing other than a rewrite of the Indian Act.

Currently, First Nation communities have no way out from under the rock of the Indian Act. What recourse do First Nations have to be recognized as self-governing in a reasonable time frame and in a manner that is financially affordable? Honourable senators, I truly believe that Bill S-16 is that recourse. Bill S-16 is all about the enabling aspect, the affordability, the 'doability' and the time it takes to effect this change.

Prime Minister Martin has indicated to the media that he will implement his key 2004 election promises to improve the quality of life for First Nation people, thereby creating a new deal for the First Nation people of Canada.

The Auditor General of Canada has again advised Parliament that their audits continue to show that major improvements in program delivery must be undertaken and that too many issues remain a concern. Unacceptable housing, social dependency and poor education achievement have negative effects on the socio-economic strength of First Nation communities and limit the ability of individuals to participate in all aspects of the broader Canadian society.

The Auditor General's 2000 audit on elementary and secondary education found that it would take 20 years for First Nation people to achieve parity in academic achievement with other Canadians. Just yesterday, the Auditor General reported to Parliament that the Department of Indian Affairs and Northern Development had made only limited progress in addressing most of the issues and recommendations that were made four years ago. As a result, it will now take 28 years for First Nations to achieve parity.

This is the kind of unacceptable decision-making by Indian Affairs that has made it essential that First Nations have for themselves the right that Canadians take for granted — to govern their own affairs and to make their own future. The Auditor General's 2000 report went on to say that the lack of timely action has serious implications for the delivery of health services to First Nations. Demands for services on reserves are expected to climb dramatically because of the young average age of community members and the high on-reserve birth rate, and that the gap in living conditions between First Nation and non-First Nation communities has the potential to widen.

The 2001 report stated that failure to settle comprehensive land claims or modern-day treaties results in increased legal costs to settle issues in court as well as the cost of lost opportunities. These include loss of the sustainable development of land, resources and

capacity of potential investors and of meaningful socio-economic partnerships between First Nations and Crown governments, the private sector and other citizens of Canada.

The 2003 audit found problems with the department's management of federal responsibilities to achieve results and with the mechanisms used to resolve disputes. Without a concerted effort, Canada risks missing opportunities for economic development, such as large-scale oil and gas development. This compromises the ability of First Nations to control their destinies and develop the potential for the benefit of all Canadians.

Honourable senators, the Dean of the Commons, Stanley Knowles, had a favourite quotation: "Courage my friends, 'tis not too late to make a better world." Are honourable senators, through Bill S-16, willing to commit to working together in a non-partisan way on First Nations policy? The federal Crown and Parliament must be dedicated to establishing a new relationship with First Nations — a relationship that the royal commission on First Nations people called a "necessary transformation in consciousness." The Royal Commission on Aboriginal Peoples stated that this new relationship must be based on four principles: mutual recognition of First Nations to co-existence as self-governing peoples in Canada; mutual respect; mutually beneficial economic interdependence, sharing of benefits from resources, management of resources that respects First Nation values; and mutual responsibility derived from political autonomy, part of a distinct order of government, resulting in appropriate fiscal arrangements rather than "welfare."

Honourable senators, Canada must recognize First Nation governments in a way that respects their diversity and their inherent rights. Canada can no longer afford to maintain these people in a state of perpetual dependency. It is costly in money and in the toll it takes on the human spirit. By acting today and by delivering on the promises made, Canada can truly claim to be a champion of First Nation human rights.

For the near future, Canada must continue to fulfill its financial obligations to First Nations. All who are prepared to do so must be able to exercise their rights to self-government in their areas of jurisdiction. The federal and provincial governments must recognize that there are rights in the Royal Proclamation, the treaties, the Supreme Court jurisprudence and the Constitution. These rights exist. Therefore, First Nations should not have to ask the Crown to exercise their rights on their land with their people, which is presently the case.

Honourable senators, this matter has been studied to death and, yes, Canada has come a long way in understanding the issue because of reports such as the 1983 Penner report; the Mulroney government's first ministers conferences; Meech Lake; Charlottetown; the royal commission on First Nation peoples; and the excellent report of the Senate committee on First Nation peoples, which was chaired by Senator Watt, entitled *Forging a New Relationship*.

All these reports and conferences spoke to returning to the original treaty-based relationship between First Nations and the Crown. To facilitate First Nations efforts of nation-building so they can rebuild their societies and restore their cultures on their land, First Nations must be able to create or re-create their own institutions by exercising their pre-existing and now constitutionally entrenched rights.

Some of these institutions might include an auditor-general-type agency, a First Nations human rights commission and perhaps a regionally based First Nations ombudsman to handle administrative and government complaints. These are elements that First Nations can create and write into their Constitution, which would be recognized by Canada, given the enactment of Bill S-16.

First Nations are taking their rightful place in Canada. They are standing on their title, but the path to realizing their destiny will be very long in view of the existing mechanisms set up by government. There is an alternative that is faster, less costly and fair. It will lead to improving the day-to-day lives of First Nations peoples wherever they live — it is Bill S-16. Again, as Stanley Knowles once said so many years ago, “Let’s make it happen. It is Canada’s hour to make social justice for First Nations a permanent feature of Canadian life.”

Now, honourable senators, I will try to describe the elements of the bill as succinctly as possible.

• (1530)

The purpose of this bill is to implement a framework and mechanism so the federal government is provided by Parliament with statutory authority and a statutory mandate to recognize First Nations and the rights and powers of their governments, institutions and other bodies.

The bill begins with a preamble that sets the tone for the bill and may assist courts in the future to interpret sections of the bill which may appear ambiguous. The preamble notes that the Royal Proclamation of 1763 recognizes there were self-governing peoples here before Europeans arrived. They entered into treaties that allowed for co-existence. Although Parliament has created certain laws, the Constitution Act recognizes and affirms First Nations and treaty rights. Canada would be strengthened by a renewed relationship that reconciles Canadian sovereignty with indigenous self-determination and self-government.

Honourable senators, the preamble states that:

...Parliament wishes to recognize a permanent and safe place in Canada for self-governing First Nations...so that they may enjoy peaceful and good relations with those with whom they agree to share their traditional...territories.

...Parliament wishes to affirm the responsibility of Government to ensure that First Nations are free from...interference with or dispossession of their lands by any government or person.

The bill then continues with definitions of terms used in the bill. First Nation lands are defined as lands to which a First Nation has established a First Nation title, as well as lands reserved under section 91(24) of the Constitution Act, or land reserved exclusively for the First Nation under the Indian Act, or land owned by the First Nation and declared by the cabinet to be First Nation lands; lands restored by a claims settlement; lands held through treaty or Royal Proclamation; lands acquired because of expropriation or other taking; and lands acquired in exchange for other First Nation lands.

First Nation title is defined in the bill as a First Nation’s permanent interest in land that existed before the Crown asserted sovereignty over the territory, does not originate in a grant from the Crown or government, is perpetual and passes from generation to generation, and is held collectively by members of the First Nation.

“First Nation” means any body of indigenous people for whose use and benefit land has been reserved within the meaning of section 91(24) of the Constitution; any body of indigenous people who have First Nation lands and are recognized by any treaty or agreement recognized or affirmed by section 35 of the Constitution Act or by the Indian Act. If a Metis or Inuit group meets these requirements, “Metis settlement” or “Inuit settlement” would be substituted.

“First Nation corporation” means a corporation constituted by federal law, provincial law or under a law of a recognized First Nation, which has its head office on First Nation lands, and is owned by a recognized First Nation or First Nations or a member of a First Nation.

A member of a recognized First Nation is a member of the First Nation under its constitution.

A “recognized First Nation” is a First Nation recognized by the bill.

Two or more First Nations can amalgamate to become one First Nation. The bill applies only to those First Nations who seek recognition. Other First Nations continue as is under the status quo. That is very important. This is enabling legislation and applies only to those who seek recognition.

In regards to self-government, there is a proposal to electors. To become recognized by Canada as a recognized First Nation, a First Nation must first get the approval of its own people of a proposal for self-government. The proposal consists of a constitution which the First Nation develops for itself as well as certain information.

This is a similar process through which Canada recognizes a new nation in the world community. It determines that the government is recognized by its own people and that there is a form of government in place sufficiently stable to be recognized.

With respect to the referendum, consultation requires more than the giving of an ultimatum and more than just a discussion. It requires that the membership of the community be fully informed of all the facts and that sufficient time is given to consider the situation in the fashion most appropriate to the community and then accept the community's solution.

The members who consider the First Nation's own proposal are all the persons on the First Nation's membership list, and it has control of its own membership list. If the registrar under the Indian Act is maintaining the list, members are those persons who are on that list and who are confirmed by the First Nation. If there are any differences between the two lists, the First Nation's list prevails unless otherwise ordered by a court.

In addition to its ratified constitution, the First Nation also provides information as to the name under which it wishes to be recognized, the description of its First Nation lands, existing treaties and agreements, a statement setting out resources and sources of revenue, and the name of the person who will act as an election officer to conduct the referendum.

The constitution submitted to the membership for ratification can either be a model constitution, which is attached to the bill, or a constitution developed by the First Nation people themselves. The model constitution is both a guide as well as a quick and inexpensive way of proceeding towards recognition.

If the First Nation devises its own constitution, there are a few minimum requirements. They are: How is membership to be determined in the future? What is the definition of an elector? What are the rules and procedures for the selection and terms of the office of the members of the governing body? What are the rules and procedures for enacting laws of the First Nation? What is the system of financial management and accountability? How are grievances to be addressed and disputes resolved? What annual meetings and general assemblies are required? How can the constitution be amended later? What decisions can be made by the government and which must be made by the people? What are the areas of jurisdiction about which the First Nations legislative body can make laws?

Before submitting the proposed constitution to the electors, it is submitted to the Auditor General of Canada, who examines it and provides an opinion as to whether the constitution has proper provisions for good governance. This report is part of the information submitted to the electors as part of the ratification process. The proponents may make the changes recommended by the Auditor General or explain to the electorate why it is not making them. If the electors decide to accept the constitution despite a negative report by the Auditor General, they will have the right to do so.

Recognition of a First Nation: The constitution is a fundamental document which requires significant support if it is to be the foundation of the First Nations government. In the ratification, at least two thirds of all electors must participate in the referendum, and at least two thirds of those voting must ratify the proposed constitution. The total number approving the constitution must be at least half of all electors.

With that ratification, the First Nation automatically becomes recognized by Canada as a recognized First Nation, a self-governing political entity operating under its own constitution. It has a legal personality and a perpetual succession. It has the capacity to exercise its inherent rights, powers and privileges and performs the functions described in its constitution. The ratification is publicized by the election officer by sending the report on the approval to the President of the Queen's Privy Council, who then ensures it is published in the *Canada Gazette*.

Transitional provisions: The officers and employees of the First Nation remain in place until such time as the new government makes new arrangements. Anything owing by the Crown to the First Nation and vice versa continues to be owing. Any rights of the Crown or persons that existed before the First Nation became recognized continue to be in effect and are not affected by recognition.

Legislation: A recognized First Nation has the power to make laws respecting the First Nation and its members, lands, language, identity, culture and other matters which are set out in its own constitution, subject to any limits provided for in the constitution and in the manner provided for in that constitution.

The subject matter of legislation over which a recognized First Nation can pass laws is delineated in Schedule 2 of the bill.

Territorial reach of legislation: A recognized First Nation's laws apply on the First Nation lands of the First Nation. For some matters, such as family law, the First Nation's laws may apply outside its First Nation lands.

Application of legislation: A recognized First Nation's legislation may be made to apply to all persons who are within its First Nation lands, whether or not they are members.

• (1540)

Administration of justice: Where a recognized First Nation establishes a court of criminal or civil jurisdiction, the constitution must provide for security of tenure and a system of remuneration enough to ensure independence from the governing body. There must be a procedure for removing judges for serious misconduct.

Existing rules of evidence apply. The recognized First Nation may prosecute charges or, if it fails to do so, the Attorney General of Canada may do so. Subject to the constitution if the recognized First Nation does not establish a court, provincial and federal courts may enforce the laws of the First Nation. A decision of the First Nation court can be appealed to either a federal or provincial appeals court.

Title and monies: Crown lands of the First Nation will be transferred to the recognized First Nation as "First Nation lands." Existing interests will be protected. First Nation lands cannot be alienated unless authorized by 80 per cent of the electors of the First Nation. First Nation lands cannot be expropriated. Additional lands can be made First Nation lands, except under certain circumstances. Lands cannot be mortgaged in a way which could cause the lands to become alienated.

Monies held by the Crown for a First Nation will be transferred to the First Nation. All First Nation monies are deemed always to be situated on the First Nation lands of the First Nation.

Section 87 of the Indian Act continues to be in force preventing seizure of First Nation property. This protection is also extended to First Nation corporations. This does not apply where the seller retains ownership of the property until it is paid for.

Organizational options: A recognized First Nation may authorize the division of the First Nation or its amalgamation with other First Nations. The approval of the electors is required. Recognized First Nations may also confederate in a way in which they retain their identity, but agree upon delegation of legislative and administrative powers. The provisions of the act apply to a confederation in the same way as they apply to a recognized First Nation.

Rights and liabilities: Nothing in the act derogates or abrogates any rights, powers or freedoms. Members continue to be "Indians" within the meaning of section 91(24) of the Canadian Constitution.

The act is binding on the federal and provincial Crowns. No individual member of a First Nation is personally liable for the actions of a recognized First Nation.

General provisions respecting laws: Generally, the provisions of the Indian Act do not apply to a recognized First Nation. However, during a time that a recognized First Nation has no provision in its laws or constitution, certain provisions of the Indian Act continue to apply.

A recognized First Nation may incorporate into its own laws the laws of any act of Parliament regarding Indians and is not within the legislative power of the First Nation.

If the government wishes to amend this act or otherwise affect the rights of a recognized First Nation, it must provide 180 days' notice, meet with a representative body of recognized First Nations at least 120 days before the legislation is introduced and shall provide a written reply to any comments made. Good faith negotiations will take place to resolve any differences.

Saving: A person who had a right to membership in a First Nation before it became a recognized First Nation will not be deprived of membership solely because of a situation which existed before the First Nation became recognized. However, this does not apply where its application would abrogate or derogate from any of the First Nation's rights.

Honourable senators, my office and research team has put considerable effort into drafting this bill, and it has become clear, in our conversations with First Nations and non-Aboriginals alike, that some matters may require additional comment. I will attempt to be brief.

In response to those who believe that with Canada's Parliament recognizing in law First Nation self-governing communities as being "a third order of government," I believe it was George Erasmus of the Dene Nation who said the following in the mid-1980s:

Their struggle is for the recognition of the First Nations by the governments and people of Canada and the people and governments of the world. With the arrival of the Europeans, First Nations have found themselves as part of a country, and that country is Canada. But the government is not the government of the First Nations. These governments are not the choice of the Aboriginal peoples. They were imposed on First Nations.

While First Nations have recognized the existence of Canada and its governments, the First Nation struggle is to find their place in the Canadian community where they can exercise their right to self-determination as a distinct people and as a nation. They seek independence and self-determination within the sovereign country of Canada. They seek a strong democratic process, having a clear system of checks and balances in place — clear processes that will deal with problems of housing, education, et cetera.

To this very day, Erasmus believes Canada can be a real leader in native issues and urges Canadians to make a difference — that native rights be fully recognized.

Erasmus stressed the importance of having a proud and sovereign native society where native peoples reassert their culture and regain self-rule, where they break the cycle of dependence on government handouts, which perpetuates a sense of inadequacy and worthlessness.

Let Bill S-16 serve as that catalyst, wherein Parliament will focus on becoming compliant with the terms of Canada's Constitution as it relates to First Nation peoples and their rightful place in the makeup of Canada. The future can begin now.

On the matter of the Charter of Rights and Freedoms and Canada's human rights laws, it is important to point out that First Nations are seeking balance between individual and collective rights, especially those which fall in the category of "First Nations rights" or "treaty rights."

Actually, section 25 of the Constitution Act, 1982 provides that the collective right trumps the individual right, similar to the notwithstanding clause of the Constitution which can be invoked when respecting the common good may be more important than honouring an individual right.

First Nations are not opposed to individual rights, but, understanding their very survival is at stake, they want to be sure that a First Nation's survival is protected from requirements that individual rights be honoured.

There is a similar rationale behind opposition — some very heavy criticism of the former Bill S-38, apparently seeing it as a move to deprive innocent women of their human rights — to having the Indian Act made subject to human rights legislation. Actually, the initial exemption was placed there by the government itself, given the racist nature of the Indian Act.

To impose on First Nation governments human rights requirements without providing resources to put them in place or to defend themselves from unfounded accusations would itself be a violation of rights. What First Nations are seeking is to have resources to enable them to put human rights regimes in place. In the long run, this would probably be less expensive than providing the Canadian Human Rights Commission with additional resources.

One particular aspect of human rights that the Senate has devoted some time to studying is the matrimonial property rights of First Nation women living on reserve. The protection and promotion of human rights is, I believe, a determining factor of what defines Canadian society.

The Indian Act is silent on the issue of on-reserve matrimonial property. Many of the legal rights and remedies found in Canadian laws which relate to the matrimonial home apply off reserve but are unavailable to people living on reserve. It seems to me that the recommendations of the Human Rights Committee ought to be considered during the examination of Bill S-16 while it is before, presumably, the Aboriginal Peoples Committee. It is important that, in exercising the right of self-government, the making of laws for the First Nation communities and its people be inclusive of and respectful of the rights of the individual and the communal society vis-à-vis custom, tribal law and Canadian and international law and conventions.

Undoubtedly, solutions would need to balance individual and community interests, but this matter is a recognized jurisdiction of the First Nation government and it is for them to determine what is best for their members and community. Their right to self-government compels a clear majority of the membership to take ownership in crafting their constitution and their government so that the rights and interests of the community and individual members are assured.

• (1550)

The question of who can vote in the First Nation election is a complex one: the so-called “taxation without representation” issue.

Like other governments, First Nation governments need to protect the integrity of the electorate. Canada does not allow non-citizens to vote. Provinces do not allow non-residents to vote. Status under the Indian Act and under First Nation membership codes is not race-based. It is wrong to analyze the issue as if it were race-based when in fact other factors are at play.

In response to those who may characterize Bill S-16 as template or boilerplate constitution-making, I must point out, as the Royal Commission on First Nations Peoples reported in volume 2, chapter 3, regarding models of First Nation government:

The exercise of self-determination and self-government will assume many forms according to First Nation people's differing aspirations, circumstances and capacity for change. In practice, therefore, we anticipate that many variations will emerge in the implementation of the broad approaches...

[Senator St. Germain]

Honourable senators, Bill S-16 will, I believe, empower Aboriginals to rehabilitate their economic condition and enable them to develop the initiative destroyed by over a century of repression and paternalism. It will rejuvenate tribal governments and protect their land base. They will assert their powers of self-government through their own constitutions.

Bill S-16 is enabling legislation and in no way can it be criticized as paternalistic. This approach was recommended by the Penner Committee in 1983 and is consistent with the approach recommended by the Royal Commission on Aboriginal Peoples. The bill is a long-delayed giant step in the right direction.

Honourable senators, this bill has been a real team effort. I can say with all modesty that it is probably the most innovative piece of legislation on First Nation matters that has been introduced, certainly since 1982. It has the potential to right injustice, to correct historic wrongs and, most significantly, to restore rights that have been suppressed and denied.

We will see this bill receive broad attention if hearings are held by the appropriate committee. We will see it receive thorough debate in the other place if it is passed by the Senate. Along the way, it will no doubt be strengthened and improved by amendment. It is a historic piece of legislation, and I invite my colleagues to give it careful attention and firm support.

In closing, I want to thank the expert adviser from the Mohawk Nation, Rarihokwats or Four Arrows; the drafter, Michael Clegg; my assistant, Stephen Stewart; and many others. Former Chief Justices of the Supreme Court were consulted on this particular piece of legislation. Many of our native elders were consulted on it. I thank all of them. Hopefully, this bill is a step in the right direction. At least, it is a major effort.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, I would like to congratulate Senator St. Germain on the tremendous effort he has put into drafting this bill. When it comes to First Nations, there is almost nothing that is not touched on. If we could put into practice one part of what he has said — which we have been asking for a long time — we could more rightly say that we have a wonderful country. This will no doubt come.

As a general rule, a nation is defined as a band of First Nations communities, and it is said that there are some 630 nations in the country. In my opinion, this definition of the entity is incorrect. It was first promulgated by the 1876 Indian Act and continued in later legislation.

In my opinion, defining the word “nation” as one Indian reserve or one band, is wrong. It frightens people to think that justice systems and all other kinds of systems would be set up in each community. On the other hand, if the real meaning of the word “nation” is given to a group of people, that is different. For example, I live in the Montagnais or Innu community of Lac Saint-Jean, Mashteuiatsh; it is a community. I am part of a nation that contains 11 other communities in northern Quebec, from the St. Lawrence River to Labrador. That is a nation. The native peoples define themselves as a nation.

Because the act has been in existence for many years, things have got a bit mixed up. A nation is defined as a band or community, and communities often define themselves as First Nations. In my opinion, a community is a part of a nation — an Innu, Cree, Algonquian, Iroquoian, Nisga'a or other nation.

Senator Losier-Cool: A nation.

Senator Gill: The Acadians do not define themselves this way. In your explanation, you recognize the community as a nation. I think that eventually this definition will have to be corrected. There are not 630 First Nations in this country; there are, perhaps, 50. May I have your comments?

[English]

Senator St. Germain: Honourable senators, as far as nations are concerned, I recognize that there are fewer nations — there are actually 630 native bands — and we clearly state in the legislation that if various bands want to work together and join together, they may do so. Provisions are made in this legislation that certain portions of nations that want to be recognized under this legislation can be recognized, or, for example, the entire Iroquois Nation. We have the Cree Nation in Western Canada. There are provisions in this bill that could recognize the entire nations communities as one, which is highly unlikely to occur. It may be applicable in some eastern cases, but the provision is there that certain groups can come together to form a nation to be governed under this legislation. It does not necessarily exclude small bands, but it does not necessarily stipulate that it must be a band. There is great flexibility in that area.

On motion of Senator Rompkey, debate adjourned.

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I would propose that we deal immediately with the two reports standing in the name of Senator Andreychuk, and that we then stand all other items on the Order Paper in their place until the next sitting of the Senate.

The Hon. the Speaker pro tempore: Is it agreed, honourable senators?

Hon. Senators: Agreed.

HUMAN RIGHTS

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—REPORT OF COMMITTEE ON STUDY OF INTERNATIONAL OBLIGATIONS REGARDING CHILDREN'S RIGHTS AND FREEDOMS ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Human Rights (budget—study on the rights and freedoms of children—power to hire staff) presented in the Senate on November 18, 2004. —(Honourable Senator Andreychuk)

Hon. A. Raynell Andreychuk: Honourable senators, I move the motion standing in my name.

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

• (1600)

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, could I ask Senator Andreychuk to elaborate a little more on the budget? Could she give us an amount? I think what is covered by the budget is, perhaps, covered in the item that we have before us. Could the honourable senator tell us particularly if travel is involved and some other details of how the budget will be spent?

Senator Andreychuk: The budget is rather self-explanatory. We have the usual small costs for meals and a \$7,500 cost for communications and reporting which has been one of the constant encouragements from Internal Economy.

To this point, as the result of an emergency intervention last week, we have the ability to hire consultants. This is a study on the Convention of the Rights of the Child and other international instruments that affect the rights and freedoms of children. It is a highly technical area, so we will be hiring a consultant for \$22,500. We have the ability to hire other researchers to a value of \$33,750 in total. All the professional and other services are \$67,750. Transportation and communications is \$104,306. Since the Convention on the Rights of the Child has an implementation strategy and there is a working committee, and Senator Pearson has gone through the process already with the Government of Canada and presented in one of the reports how we adhere and comply with the convention and has entered into dialogue as to whether we are in full compliance, the committee thought it was important to meet with that working committee, the Human Rights secretariat and other experts in Geneva. This is where the genesis of the convention is and this is where the consequence is monitored, and we need their perspective as to whether Canada is complying to find strategies to encourage further adherence.

This study was undertaken because we believe and it has been borne out by experts, certainly in the last consultation, that Canada is not fully integrating the International Convention on the Rights of the Child in governance aspects throughout the departments and various agencies. We hope to recommend better practices that will bring to bear more political will to ensure that we are fully compliant with the international covenant. Therefore, it is important that we meet with the people who are handling the convention.

Second, we want to meet with a best-practices country such as Sweden. We thought we could combine the trip to see how they comply with the international convention and do analysis and a comparison between the two countries. We are also contemplating — and this would not involve travel — a video conference with, perhaps, Australia, where they have a treaties process in place in Parliament to ensure that the conventions are fully complied with.

This is the essence of the travel at this point. It is not contemplated to travel through Canada, as we believe that this is a highly expert field. We will not study the rights —

The Hon. the Speaker *pro tempore*: Honourable senators, it being four o'clock, I should like to make sure we have agreement not to see the clock.

Hon. Senators: Agreed.

Senator Andreychuk: We want to be sure that we are in compliance with the act because we believe the only way that the children in Canada will receive all the benefits of the international instruments will be if there is further compliance. We will not travel across Canada because at this moment, and in this year, we believe it is a rather technical area. We have a lot of NGOs who have been tracking this matter and who will come to testify in Ottawa. The sum total of the budget is for the expertise in that area and for the consultation required.

I should say — and I want to put this on record — that, without disclosing ages, we are rushing against time to ensure that we get the expertise and the experience of Senator Pearson, who has a great background in this area and who has been the impetus for this report. Therefore, we are moving as quickly as we can and condensing as much as we can to ensure we get the product out by March 31.

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

Hon. Senators: Question!

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

Motion agreed to and report adopted.

BUDGET AND AUTHORIZATION TO ENGAGE
SERVICES—REPORT OF COMMITTEE ON STUDY
OF ISSUES RELATED TO NATIONAL AND
INTERNATIONAL OBLIGATIONS ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Human Rights (budget—study on human rights obligations—power to hire staff) presented in the Senate on November 18, 2004.—(*Honourable Senator Andreychuk*)

Hon. A. Raynell Andreychuk: Honourable senators, I move the motion standing in my name.

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

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I wish to ask Senator Andreychuk a brief question and for a brief answer as to the composition of the budget and to what items it will apply.

Senator Andreychuk: The total budget is \$74,000. Today, Internal Economy approved a little under \$20,000. This involves two areas of study that were started: The Organization of American States and whether we should join the Inter-American Court; and to what extent we ratified and/or signed outstanding international treaties. This is an update of those two areas of study. The two consultants will be updating the reports to today and we will be putting forward further recommendations.

Regarding the Inter-American Court, we advocated that there be ratification and Canada's adherence to the court. We will look to see how the government has moved on that matter.

On the other study, Professor Laviolette will review all the international human rights treaties to see which ones were ratified last time. I do not anticipate any further expenses for these two studies and we anticipate being on time in filing.

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

Hon. Senators: Question!

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

The Senate adjourned until Thursday, November 25, 2004 at 1:30 p.m.

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