



CANADA

Debates of the Senate

1st SESSION

• 39th PARLIAMENT

• VOLUME 143

• NUMBER 60

OFFICIAL REPORT
(HANSARD)

Tuesday, December 12, 2006



THE HONOURABLE NOËL A. KINSELLA
SPEAKER

CONTENTS

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

Debates and Publications: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: <http://www.parl.gc.ca>

THE SENATE

Tuesday, December 12, 2006

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

Prayers.

ROYAL ASSENT

NOTICE

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

December 12, 2006

Mr. Speaker,

I have the honour to inform you that the Right Honourable Michaëlle Jean, Governor General of Canada, will proceed to the Senate Chamber today, the 12th day of December, 2006, at 5:15 p.m., for the purpose of giving Royal Assent to certain bills of law.

Yours sincerely,

Sheila-Marie Cook
*Secretary to the Governor General
and Herald Chancellor*

The Honourable
The Speaker of the Senate
Ottawa

SENATORS' STATEMENTS

PRESIDENT OF IRAN

HOLOCAUST DENIAL CONFERENCE

Hon. Jeremiah S. Grafstein: Honourable senators know that those who ignore history are doomed to repeat it. What would historians say to one national leader who would intentionally seek to revise and rewrite history that we ourselves have witnessed?

Ancient Persia should serve as modern Iran's own history lesson. Ancient Persia was led by autocrats whose evil programs and proclamations have left nothing, not even lines in the sands of time.

This week in Tehran, the President of Iran sponsored an international conference, the sole purpose of which was to deny the Holocaust and revise the miserable history of the 20th century to which all in this chamber were personal witnesses. No doubt history will treat him to the same fate as that of his ancient predecessors.

In 1839, in the small East European village of Zhetel, a prolific interpreter of the ancient texts of the Torah was born. He was called the Chafetz Chaim after the title of his most famous book. That book's subject was the use of civil discourse in civilized society. The title of that book was derived from Psalms 34:13-14:

13 Who is the man that desires life and loves days, that he may see good.

14 Guard your tongue from evil, and your lips from speaking deceit.

• (1410)

The Chafetz Chaim taught that each word counts. Words can kill. I admonish the President of Iran and repeat those ancient words from the Bible: "Guard your tongue from evil, and your lips from speaking deceit."

LIBERAL PARTY OF CANADA CONVENTION

ANTI-SEMITIC COMMENTS

Hon. Yoine Goldstein: Honourable senators, Canada is a tolerant country. Canadians value diversity. Canadians welcome differences. It came, therefore, as a total shock that the Liberal convention of 10 days ago was marred by episodes of racism and vicious anti-Semitism.

Arlene Perly Rae, the wife of a leadership candidate, was approached by a candidate who admonished her not to vote for Mr. Rae because "he has a Jewish wife." When she pointed out that she was that Jewish wife, the delegate disappeared.

A flyer was circulated electronically among convention delegates, denouncing Mr. Rae for having delivered a speech to the Jewish National Fund, a charitable organization, some years ago. Discriminatory language was superimposed over a close-up of Mr. Rae's face on that flyer.

Mr. Khaled Mouammar, President of the Canadian Arab Federation, who has been invited to the Hill in the past, denied having had anything to do with the flyer, but in a news release last Thursday, the federation supported the content of the flyer and, indeed, reproduced some of it. Moreover, the Canadian Press has in hand an email from Mr. Mouammar in which he forwarded that disgusting flyer to others. His denial, therefore, is a brazen lie, just as his racism is brazenly anti-Canadian.

There were other examples of this regrettable attitude. A pro-Palestinian group urged, on its website, that its delegates not vote for Bob Rae because "we are not looking for another Zionist Prime Minister."

Honourable senators, the Canada we know and the Canada with which we identify is a tolerant, accepting, open, free society. We have the good fortune to live in a country that permits the free expression of all shades of opinion. That freedom, however, does not extend to the expression of racist filth. If the Canadian Arab

Federation wishes to be treated or perceived as a responsible organization, it ought to start by ridding itself of its racist, lying president.

Hon. Mobina S. B. Jaffer: Honourable senators, I would like to speak of anti-Semitism in our society. Many of us were greatly distressed by the treatment of Bob Rae and Arlene Perly Rae at the recent Liberal leadership convention in Montreal, where anti-Semitic remarks were made against two very outstanding Canadians.

Honourable senators, I believe that in our Canada these types of remarks are absolutely unacceptable. In our Canada, there is no place for such anti-Semitic statements. I know that all senators will join me in letting the very small minorities know by words and deeds that we do not accept such behaviour.

I am a great fan of the Raes. I have had the opportunity to work with Bob Rae on a number of occasions. He aided me when I was Canada's Envoy for Peace in Sudan. He went to Khartoum and held workshops on federalism. I can attest to the fact that to this day, Sudanese from all walks of life want Bob Rae to return and continue working with them.

I then saw Bob Rae's work on the Air India inquiry. He single-handedly empowered the victims of Canada's worst act of terrorism, victims from diverse backgrounds.

In the last 10 months, I have worked closely with Arlene Perly Rae and her commitment to our country has been truly tremendous.

Senator Grafstein has a motion before the Senate on anti-Semitism, and, when I speak, I will detail some of the challenges faced by my community in Vancouver.

Honourable senators, a time has come when all of us here and all Canadians must make it clear that in our Canada we are like needles that sew together the diversity of our country into one harmonious fabric. We do not accept those who act as scissors that destroy the fabric of our society.

We all remember the wise words of Reverend Martin Niemöller:

First they came for the communists, but I wasn't a communist — so I didn't speak out.

Then they came for Jews, but I wasn't Jewish — so I didn't speak out.

Then they came for Catholics, but I was a Protestant — so I didn't speak out.

Then they came for me, and there was nobody left to speak out.

• (1415)

Honourable senators, I know you will join with me in saying that, in our Canada, we do not accept anti-Semitism, we do not tolerate it and there is no place for it in our country. Honourable senators, we must all speak out against anti-Semitic behaviour.

Hon. Senators: Hear, hear!

MS. LAURA GAINEY

LOST AT SEA

Hon. Francis William Mahovlich: Honourable senators, I rise today to speak about Laura Gainey, daughter of the Montreal Canadiens' General Manager, Bob Gainey. She was one of the crew members of the *Picton Castle*, a square-rigged barque with three 10-storey masts, which she first joined as a trainee in Cape Town, South Africa, last April.

Laura was a passionate, hard-working sailor at heart. She was a well-loved and respected crew member. Tragically, she was swept overboard on Friday, December 8, by a rogue wave during a storm that saw 40-knot winds and seven-meter high swells. Laura's family, friends and both the Canadian and U.S. coast guards have been searching for her since that time. Sadly, as of last night, the Coast Guard has suspended its search, although a member of the crew has stated that the tall ship, the *Picton Castle*, would continue searching for Laura.

I would like to express my deep sadness and sympathy for the Gainey family. I want them to know they will be in our prayers as they wait and hope for news of this brave young girl.

[Translation]

GENOCIDE

Hon. Roméo Antonius Dallaire: Honourable senators, last Friday, 12 years after the genocide, I completed my testimony at the Arusha International Criminal Tribunal for Rwanda, and, in doing so, I completed my mission as commander. However, the tribunal still exists, which means that the genocide itself is ongoing. In Darfur, the genocide persists.

Recently, the United Nations Special Adviser on the Prevention of Genocide, Mr. Mendes, came to speak to us. Members of both Houses of Parliament participated in the session.

[English]

I would like to remind honourable senators at six o'clock in room 362, East Block, we will hold the first that, meeting of the All-Party Parliamentary Coalition for the Prevention of Genocide. This is to inform honourable senators, and to participate in passing on information in which we can, as a country and a leading middle power, go beyond our borders and think about more than our regionalism; to, in fact, consider that our values and what we believe in are also for other people in countries such as the Darfur region in Sudan, where they are being massacred regularly, and countries that are nascent democracies, which are trying the pull themselves out with our help, such as Afghanistan.

I would like to end today by mentioning that 60 years ago a number of war brides came from overseas with the results of the victory dance, of which I was one. My mom and I arrived here 60 years ago today at Pier 21. I would like to thank VIA Rail and the Minister of Transport for permitting us to commemorate the day when over 70,000 women and children came to this country as a positive result of that terrible war.

[Translation]

ROUTINE PROCEEDINGS

CANADIAN AIR TRANSPORT SECURITY AUTHORITY

REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the review of the Canadian Air Transport Security Authority Act.

COMMISSION OF INQUIRY INTO ACTIONS OF CANADIAN OFFICIALS IN RELATION TO MAHER ARAR

SECOND REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the second report of the Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar.

[English]

FIRST NATIONS JURISDICTION OVER EDUCATION IN BRITISH COLUMBIA BILL

REPORT OF COMMITTEE

Hon. Gerry St. Germain, Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Tuesday, December 12, 2006

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

FOURTH REPORT

Your Committee, to which was referred Bill C-34, An Act to provide for jurisdiction over education on First Nation lands in British Columbia, has, in obedience to the Order of Reference of Monday, December 11, 2006, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

GERRY ST. GERMAIN, P.C.
Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator St. Germain, with leave of the Senate and notwithstanding rule 58(1)(b), bill placed on the Orders of the Day for third reading later this day.

• (1420)

[Translation]

STUDY ON CONCERNS OF FIRST NATIONS RELATING TO SPECIFIC CLAIMS PROCESS

REPORT OF ABORIGINAL PEOPLES COMMITTEE TABLED

Hon. Gerry St. Germain: Honourable senators, I have the honour to table the fifth report of the Standing Senate Committee on Aboriginal Peoples entitled *Negotiation or Confrontation: It's Canada's Choice*, which makes recommendations for improving the effectiveness of the federal specific claims process.

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

[English]

STUDY ON ISSUES RELATING TO FISCAL BALANCES AMONG ORDERS OF GOVERNMENT

INTERIM REPORT OF NATIONAL FINANCE COMMITTEE TABLED

Hon. Joseph A. Day: Honourable senators, I have the honour to table, in both official languages, the interim report of the Standing Senate Committee on National Finance entitled: *The Horizontal Fiscal Balance: Towards a Principled Approach*.

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

NATIONAL FINANCE

BUDGET—STUDY ON ISSUES RELATING TO FISCAL BALANCES AMONG ORDERS OF GOVERNMENT—REPORT OF COMMITTEE PRESENTED

Hon. Joseph A. Day, Chair of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, December 12, 2006

The Standing Senate Committee on National Finance has the honour to present its

EIGHTH REPORT

Your Committee, which was authorized by the Senate on September 27, 2006, to examine and report on issues relating to the vertical and horizontal fiscal balances among the various orders of government in Canada, respectfully requests the approval of funds for fiscal year 2006-2007.

Pursuant to Chapter 3:06, section 2(1)(c), of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

JOSEPH A. DAY
Chair

(For text of budget, see today's Journals of the Senate, Appendix, p. 958.)

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

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

[Translation]

JUDGES ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Joseph A. Day, Chair of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, December 12, 2006

The Standing Senate Committee on National Finance has the honour to present its

NINTH REPORT

Your Committee, to which was referred Bill C-17, An Act to amend the Judges Act and certain other Acts in relation to courts, has, in obedience to the Order of Reference of Monday, December 11, 2006, examined the said Bill and now reports the same without amendment. Your Committee appends to this report certain observations relating to the Bill.

Respectfully submitted,

JOSEPH A. DAY
Chair

Observations to the Ninth Report of the Standing Senate Committee on National Finance

Your Committee is concerned about the practice by the Department of Justice of placing technical amendments in a bill that, in the Committee's opinion, should essentially be a response to the report of the Judicial Compensation and Benefits Commission and, as such, relate only to amendments to the *Judges Act*.

Your Committee heard from an official of the Department of Justice that there are difficulties in addressing technical amendments of the type found in Part 2 of Bill C-17 through the *Miscellaneous Statute Law Amendment Act* process. Your Committee therefore urges the Department of Justice to review its practices in an effort to find a separate process by which these issues can be dealt with. Your Committee looks forward to receiving follow-up from the Department of Justice on this matter.

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Nolin, with leave of the Senate and, notwithstanding rule 58(1)(b), bill placed on the Orders of the Day for third reading later this day.

• (1425)

INTERNATIONAL BRIDGES AND TUNNELS BILL

REPORT OF COMMITTEE

Hon. Lise Bacon, Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Tuesday, December 12, 2006

The Standing Senate Committee on Transport and Communications has the honour to present its

SIXTH REPORT

Your Committee, to which was referred Bill C-3, An Act respecting international bridges and tunnels and making a consequential amendment to another Act, has, in obedience to the Order of Reference of Tuesday, October 24, 2006, examined the said Bill and now reports the same with the following amendments:

1. *Clause 7, page 3:* Replace lines 9 to 11 with the following:

“of government that have jurisdiction over the place of the proposed construction or alteration and with any person who, in the”.

2. *Clause 15, page 7*: Replace, in the French version, lines 35 and 36 with the following:

“gouvernement provincial et la municipalité ayant compétence à l’égard de tout”.

3. *Clause 24, page 11*: Replace line 15 with the following:

“of government that have jurisdiction over the place”.

Your Committee has also made certain observations, which are appended to this report.

Respectfully submitted,

LISE BACON
Chair

Observations to the Sixth Report of the Standing Senate Committee on Transport and Communications

Recognizing that international bridges and tunnels are of national interest, members of your Standing Senate Committee on Transport and Communications support the intent of Bill C-3, the International Bridges and Tunnels Act, which is to reinforce the federal government’s constitutional jurisdiction and to ensure the smooth flow of people and goods over and through them. Furthermore, your Committee agrees that it is necessary to apply consistent rules and policies to these international crossings, large or small, regardless of who owns or operates them; especially those to ensure the safety and security of the structures. However, despite its decision to support the bill, your Committee would like to address some of the particularly resonant concerns of stakeholders regarding certain provisions of the bill and to state that it hopes that this bill will not impede international crossing projects for which agreements have already been concluded.

Your Committee heard that the provision in this bill that would allow the Minister of Transport to make regulations respecting the types of vehicles that may use an international bridge or tunnel may negatively affect the financial position of existing crossings. In response to questions about this concern, federal officials unequivocally stated that the Minister of Transport would divert traffic only to avoid congestion. To quote one official, “redirecting traffic would only be used where there is a need to allow free movement of goods and people.” Your Committee supports the Minister of Transport’s use of this provision to alleviate traffic problems if and when required, but not to interfere otherwise.

Your Committee also heard that the confidentiality of proprietary information that the Minister of Transport may request from international bridge and tunnel owners and operators may not be adequately protected under this bill. During their second appearance before your Committee, however, federal officials assured Senators that the existing federal legislative framework is adequate for protecting the confidentiality of bridge and tunnel owners’ information. To quote one official, “*the Privacy Act* contains provisions that very effectively protect the confidential information provided to the government.” The official also noted that

the purpose of section 51 of the *Canada Transportation Act*, which stakeholders gave as an example of the type of explicit protection sought, is actually to permit the Minister of Transport to *divulge* proprietary information, not to protect it. Furthermore, when departmental legal advisors contemplated the particular stakeholder needs under this bill and whether additional protection was needed, they concluded that existing provisions in other Acts were adequate. However, your Committee still questions why the reinforced protection used in the *Canada Transportation Act* was not included in this bill.

On the question of the federal government’s potential involvement in future international crossing projects, your Committee heard suggestions that the provisions in the bill that allow the Minister of Transport to recommend to the Governor in Council whether or not to approve a project would lead to a substantial conflict of interest for the Minister. On this point, officials noted that Transport Canada currently does not own or operate a single international bridge or tunnel. The existing federal structures belong to Crown corporations, which are autonomous even if the Minister of Transport is responsible for them. To quote an official, “the Minister has absolutely no authority over the day-to-day activities of these organizations, including those dealing with safety and security.” Therefore, given the autonomous ownership and implemented operational arrangements established for existing federal structures, your Committee is confident that the Minister of Transport will not be in a position of conflict of interest in the future. However, the Minister of Transport should be particularly sensitive to any situation where the federal government is in a situation where there is an appearance of conflict, especially when the interests of a private enterprise are at stake.

Finally, your Committee very seriously considered a stakeholder’s allegation that municipalities would not be guaranteed to be heard regarding international crossing projects affecting their community. When questioned on this point, officials explained to your Committee that municipal consultation is obligatory during the environmental assessment process, which would certainly be triggered by a proposal to build a new international crossing, under the *Canadian Environmental Assessment Act*. Therefore, to impose an additional obligation on the Minister of Transport to consult municipalities in this bill would frustrate the bill’s intent to streamline processes. While a comprehensive framework for municipal consultation exists in other legislation, it should be noted that the bill was also amended in the other place to make reference to municipal consultation. Your Committee agrees that more emphasis was needed on the importance of consulting with municipalities and addressing their concerns, given that bridge and tunnel projects can have a tremendous impact on the urban planning of local communities.

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

[*English*]

Senator Bacon: Honourable senators, with leave, later this day.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Anne C. Cools: Honourable senators, I am not denying consent, but this is the third time today that leave is being requested. Could someone perhaps tell us the reason why? Am I to understand from this that we are adjourning soon and we are trying to speed up the business? That is a perfectly just reason. Could someone answer? Does anyone know?

Hon. Gerald J. Comeau (Deputy Leader of the Government): I thank the honourable senator for the question. On all three bills, given that we are getting close to Christmas, and would like to proceed with some of this business later this day; and given that there is not much on the government orders, we would like to deal with them today if we could.

Senator Cools: To assist in moving things along so that we can spend Christmas with our families, I would be happy to give agreement.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

On motion of Senator Bacon, with leave of the Senate and notwithstanding rule 58(1)(b), report placed on the Orders of the Day for consideration later this day.

• (1430)

FISHERIES AND OCEANS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Bill Rompkey: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Fisheries and Oceans have power to sit today, Tuesday, December 12, at 7 p.m., even though the Senate may then be sitting, and that the application of rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

FOREIGN AFFAIRS AND INTERNATIONAL TRADE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Hugh Segal: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Foreign Affairs and International Trade have power to sit at 6:00 p.m. today, Tuesday, December 12, 2006, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF MATTERS RELATING TO AFRICA

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

That, notwithstanding the order of the Senate adopted on Thursday, September 28, 2006, the Standing Senate Committee on Foreign Affairs and International Trade, which was authorized to examine and report on issues dealing with the development and security challenges facing Africa; the response of the international community to enhance that continent's development and political stability; Canadian foreign policy as it relates to Africa; and other related matters, be empowered to extend the date of presenting its final report from December 22, 2006 to February 15, 2007; and

That the Committee retain until March 31, 2007 all powers necessary to publicize its findings.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Joyce Fairbairn: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit today, Tuesday, December 12, 2006, at 7:00 p.m., even though the Senate may then be sitting, and that the application of rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

• (1435)

[*Translation*]

YOUNG VOLUNTEERS

PRESENTATION OF PETITION

Hon. Jean Lapointe: Honourable senators, I have the honour of presenting a petition on behalf of residents from the four corners of Canada calling on Parliament to enact legislation or take measures that will allow all young Canadians who wish to do so to serve in communities as volunteers at the national or international levels.

A coalition of NGOs interested in having Canadian youth volunteer in Canada and abroad circulated a petition among their members and collected 60,000 signatures. This coalition includes Canada World Youth, Development and Peace, Oxfam Canada and Katimavik, among others. These organizations promote the interests of our youth and of youth throughout the world. That is why I am presenting today this petition that contains 3,000 signatures.

[English]

QUESTION PERIOD

FINANCE

BUDGETARY CUTBACKS

Hon. Daniel Hays (Leader of the Opposition): Honourable senators, I rise today to put to the Leader of the Government in the Senate a question that is in the same family of questions that we have been asking a great deal about in this chamber recently, namely, the \$1 billion in cuts, and, in particular, those cuts as they relate to literacy, the Status of Women offices, the environment and so on.

Earlier today, members of the official opposition held a press conference with respect to a letter received under the Access to Information Act which indicates that the government, in addition to this \$1 billion, has plans for cuts of another \$7.4 billion. The detail is not well known, at least to me at this particular point, but it is the intention of the government, according to this letter, to cut, for instance, \$584.5 million from environmental programs at Natural Resources Canada and, interestingly enough, in the document received, from the EnerGuide for Houses Retrofit Incentive Program, the EnerGuide for Low-Income Households, the Community and Institutional Buildings Program, and so on.

This, as honourable senators know, has not been well received by parliamentarians in opposition and, I think it is fair to say, by Canadians.

Is this, in fact, the plan of the government? When can we expect full details of the planned cuts, if this is, indeed, the plan of the government?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for his question. I have no idea what the opposition is talking about. I cannot comment on a press release or a statement that has been put out by them. We are currently working on consulting Canadians as the Minister of Finance prepares for the next budget. The honourable senator can well understand that I will not, and cannot, respond to something that I have heard absolutely nothing about, and I cannot rely on the views of the opposition as being fact.

Senator Hays: If the Leader of the Government in the Senate does not have information, then I understand. However, we on this side do have information, in terms of details set out in a letter of November 27. The Federal Liberal Agency of Canada is the requesting organization. It was Natural Resources Canada which

outlined the program cuts that I mentioned a moment ago, namely, \$584.5 million for NRCan-affected programs and \$6,852.5 billion for other government programs, for a grand total of approximately \$7.5 billion.

While inquiring into this matter, perhaps the Leader of the Government in the Senate could determine whether this is, in fact, the case and, if so, whether she could determine what the other \$6.8 billion represents in terms of cuts in other areas. The speculation is obviously that it will be in the same areas where we have already seen cuts, with the same kind of reaction that the government has already experienced.

• (1440)

In any event, that is my request for additional information, and I hope we could then return to it tomorrow.

Senator LeBreton: I thank Senator Hays for the question. The honourable senator talks about cuts. When we went through the expenditure review last summer, we found savings in many areas.

The government will be bringing in many programs that are not identical to the programs that the previous government proposed in various forms. I will have to look at the press releases because I do not know exactly what programs Senator Hays is talking about. However, in many cases we will support programs, one example being related to the status of women, which we feel suit the needs of Canadians where they live and work.

In the case of programs under the Minister of Natural Resources, Mr. Lunn, I am quite sure that if certain programs have been cancelled — and there were programs, as you know, that he has decided not to pursue — that does not mean we will not be replacing any of the programs that he has already decided are not good value for the taxpayers' dollars. He will be replacing those with better programs.

Therefore, it is quite incorrect for the opposition to put out a press release saying that these are cuts and there will be no benefit at the other end for Canadian consumers and taxpayers, when in actual fact this government, on a whole host of fronts, will have programs that we feel better reflect the needs of Canadians and are better value for the hard-earned tax dollars of Canadians.

Senator Hays: I should like to inform the minister that it is not the opposition that is announcing the cuts, but it is the opposition that is making public information that indicates the government plans these cuts.

Just to stay with the ones we know most about, the NRCan-affected programs, they are measures from the economic and fiscal update in Bill C-66, cumulative cost 2005-06 to 2010-11. In any event, the government has cut programs that I mentioned a moment ago, like EnerGuide for houses, communities and institutional buildings; home heating system cost relief; and the renewable power production incentive, all of which touch directly on achieving our environmental objectives through increased energy efficiency and creating fewer carbon emissions as well as volatile organic compounds, which are the other clean air bill objectives in terms of ozone precursors or smog.

There is a fair amount of detail here and I would like to leave it with the honourable leader. I appreciate, if she has not seen this document, that I will not be able to fairly ask much more than

[Senator Lapointe]

I have. The main question, again, is: What are the other programs? I ask that question because it would account for most of the money that apparently is intended to be cut.

Senator LeBreton: I am glad the honourable senator acknowledges at least that these are not necessarily cuts and that there are other programs. I will be happy to look at the press release and attempt to answer without giving away potential future announcements by the government on the environmental front.

Senator Hays: As a final clarification, in my preamble to my question I had not indicated any new programs that I have seen in this material.

Senator LeBreton: I know the honourable senator did not indicate any new programs, but at the end, if I heard his question properly, he was asking, with these “cuts” as he calls them, what could he expect to be announced in their place. I took that as an acknowledgement that the senator did not necessarily see them as cuts but that he was expecting something in their place.

Senator Hays: We will see whether there are other things put in their place. However, my greatest interest is in the cuts.

• (1445)

Senator Rompkey: This was the unkindest cut of all.

Senator Tkachuk: You cut me up, Senator Rompkey.

THE ENVIRONMENT

CLIMATE CHANGE PROGRAMS— AUDITS AND ASSESSMENTS

Hon. Grant Mitchell: Honourable senators, speaking of cuts, the Minister of the Environment and the Leader of the Government in the Senate have repeatedly said their government cancelled the previous government’s climate change programs because they were inefficient.

Having made such a significant decision, in light of our Kyoto Protocol commitments one might think the government would have data, studies, or a way to assess whether these programs were inefficient. That is simply not the case.

On May 31, I submitted a written question asking for that data, and I have not received a reply. I can only conclude, therefore, that none probably exist. When the Minister of the Environment appeared before the Standing Senate Committee on Energy, the Environment and Natural Resources last week, she had an amazing revelation. She stated:

You should also know there has never been a comprehensive audit or review done of the climate change programs across government, ever.

I ask the Leader of the Government in the Senate: If the Minister of the Environment has never done a review or audit of these climate change programs, how would she and the government know these programs were inefficient enough to cancel?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, the record speaks for itself regarding the success of the previous government on climate change. The numbers went up instead of down. One report attributed to the new Liberal leader, the Honourable Stéphane Dion, states that the reason the former Prime Minister signed on to the Kyoto Protocol was to outdo the United States. Incidentally, the United States outperformed us on the achievements.

Honourable senators, the government is committed to achieving meaningful progress in reducing greenhouse gas emissions over the longer term. We will not use taxpayers’ dollars, as proposed by the previous government, to purchase international credits.

I saw a portion of the minister’s appearance before the Standing Senate Committee on Energy, the Environment and Natural Resources. I thought that the Minister of the Environment, the Honourable Rona Ambrose, answered the questions extremely well. She is knowledgeable about the file. She was a credit to herself and to the government.

Senator Mitchell: Honourable senators, contrary to the assertions of Minister Ambrose and the Leader of the Government in the Senate that these programs are inefficient and need to be cancelled, I have an NRCan briefing to the minister. I received that briefing under Access to Information, and it makes quite another conclusion. It states:

The review led by the Treasury Board Secretariat assessed programs against criteria that were heavily weighted on effectiveness and cost-effectiveness. All NRCan programs were assessed to be on track to meet or surpass their objectives. The energy conservation and renewable programs were found to be effective in stimulating emission reductions. They will contribute over 20 megatons in reductions by 2010 mainly at a cost of less than \$10 a tonne, which is extremely cost-effective.

Could the Leader of the Government in the Senate give us documentation to counter that official departmental review, assessment and briefing to the minister that said the programs were efficient, not inefficient? Will we be left to believe the critical decision to cut those programs was based on blind, parochial, limited ideology, rather than on facts, assessment and analysis?

• (1450)

Senator LeBreton: I thank Senator Mitchell for his question, and I apologize that he has not received an answer to his question of May 31. I will check to see what has happened. Most would agree that the government has been efficient in responding to senators’ questions. I have to assume that a mix-up occurred, because that is an inordinate amount of time for the honourable senator to await a response to his question.

With regard to NRCan and the Access to Information request that the honourable senator has cited, I would need to see a copy of the report. Therefore, I will take Senator Mitchell’s question as notice, with the assurance that he will not have to wait six months for an answer.

AGRICULTURE AND AGRI-FOOD

CANADIAN WHEAT BOARD—PROPOSAL TO ELIMINATE SINGLE-DESK SELLING FUNCTION

Hon. Lorna Milne: Honourable senators, yesterday the Minister of Agriculture commented on the fact that he will hold a plebiscite on barley marketing among the members of the Canadian Wheat Board in January and February. He also committed to asking those farmer members a clear question about barley: Do they want more marketing choice for barley?

In the recent Canadian Wheat Board elections, pro single-desk selling won two thirds of the votes cast, and eight of the 10 elected farmer directors now support single-desk selling. The minister believes that the farmers should speak and has said that he will be listening.

My question to the Leader of the Government in the Senate is this: Is that all this government plans to do at this time — listen? It is becoming clear that this government is not listening, and that they are committed to “blowing up” the Canadian Wheat Board. I am sure many Western farmers would appreciate it if the government waited until it had heard from them before continuing on this disastrous exercise of dismantling the Canadian Wheat Board for misguided ideological reasons.

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for her question. The government never said that it would “blow up” the Canadian Wheat Board. The government campaigned during the last election on a marketing choice such that farmers would have the choice of selling their product directly to market or through the Canadian Wheat Board.

With regard to the election of new directors to the Canadian Wheat Board, this is a free and democratic society. Individuals were elected and the government will work extremely hard with those new directors to ensure that the Canadian Wheat Board is a viable organization for selling Canadian wheat. The government never said that it would dismantle the Canadian Wheat Board.

With regard to the honourable senator’s question on barley, the Minister of Agriculture has committed to a plebiscite on barley in early January 2007. There is nothing ideological about the plebiscite, and many barley producers have requested this opportunity. They will vote early in the new year and the results will tell us how the barley producers want the government to proceed on the issue.

Senator Milne is from Ontario and I appreciate her interest in the wheat and barley growers in Western Canada. However, I wish to point out to her that Ontario is a major producer of wheat, a fact little known to many. Years ago, Ontario was likely one of the biggest producers of wheat in Canada. Wheat grown in Ontario is divided into three markets for sale: domestic, the U.S. and off-shore. Ontario wheat producers have full marketing choice. For the life of me, I do not understand why Senator Milne would not want western grain producers to have the same rights.

Senator Milne: The honourable leader is quite right: Ontario used to be the largest producer of wheat until Red Fife wheat was developed in Ontario.

• (1455)

Unfortunately, actions speak louder than words, and the actions of this government are speaking loudly.

I understand that Manitoba Premier Gary Doer also raised the election results when he met with Prime Minister Stephen Harper yesterday. Apparently, Premier Doer told the Prime Minister that the results were overwhelmingly in favour of maintaining the board’s single-desk status, and he urged the Prime Minister to hold a plebiscite on wheat. In fact, the Province of Manitoba is holding its own non-binding plebiscite on wheat.

This raises two interesting questions. Is this government afraid of listening to Western farmers? What is the position of the Conservative Party of Canada on the timing of a future referendum on the Canadian Wheat Board?

Senator LeBreton: Honourable senators, we are not afraid at all. We campaigned and were elected on marketing choice. I will say again that we have never said we would, to use Senator Milne’s words, “blow up” the Wheat Board. I do not understand why the honourable senator would think we are not following a democratic process when we are going to have a plebiscite for barley producers early in the new year and we supported the right to have direct elections for directors of the Wheat Board. That is all very democratic.

With regard to the conversations reported on between the Prime Minister and the Premier of Manitoba, I was not privy to those private conversations, but Premier Doer has said that publicly. There has been significant criticism of Premier Doer for proceeding in this manner and putting the taxpayers of Manitoba to a totally unnecessary expense when the Minister of Agriculture is dealing with farmers and the other stakeholders in Western Canada. As I said, barley producers will be voting in a plebiscite early in the new year. We will await the results of that plebiscite. We consider the Wheat Board to be a valuable entity if farmers choose to use it to get their product to market.

Senator Milne: Senator LeBreton did not answer my question. What is the timing for a referendum on the marketing of wheat?

Senator LeBreton: I am sorry I missed that part of the question.

We are dealing with first things first. We will have the plebiscite on barley in early January. I will take as notice the question of Minister Strahl’s plans regarding a vote on wheat.

FOREIGN AFFAIRS

SOMALIA—INTERNAL STRIFE

Hon. Mobina S. B. Jaffer: Honourable senators, my question, directed to the Leader of the Government in the Senate, concerns the deteriorating situation in Somalia.

Somalia has suffered droughts, wars and lawlessness. Recent floods have left one million people homeless. Ever since the transitional federal government formed in 2004, the country has been drifting toward a new war. This trend has recently accelerated dramatically and peace talks have disintegrated. The standoff between the transitional federal government and

the Islamic courts, which now control Mogadishu, threatens to escalate into a wider conflict, which would consume much of the South and possibly involve terrorist attacks in neighbouring countries.

The Islamic court's success and the rise to prominence of hard-line jihad Islamists has sent shock waves throughout the international community. Many countries are determined not to allow Somalia to become an African version of the Taliban-ruled Afghanistan.

What is the government doing to help the people of Somalia?

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for that good question. Canada and other countries face incredible challenges in Somalia, Darfur and many other places in the world. There is no easy solution to this problem. The Minister of Foreign Affairs has been monitoring the situation and consulting with officials in his department.

• (1500)

Unfortunately, I cannot, today, give the honourable senator the definitive answer on what Canada will be asked to do or what Canada can offer to do in Somalia. However, I will certainly ensure that the Minister of Foreign Affairs, Mr. MacKay, is aware of not only the honourable senator's concern, but also the concern of a great many Canadians about the deteriorating situation in Somalia.

Senator Jaffer: I understand we are in Afghanistan to help get rid of the Taliban. In Somalia, there is increasing Taliban-like behaviour. Why are we not playing a leadership role in Somalia? Terrorist acts in other parts of Africa continue to begin in Somalia.

I ask the honourable leader if she would ask her government to play a leading role and lead the international community to stop terrorism and extremist acts in Somalia.

Senator LeBreton: I think we would all agree that our government and all Canadians support the leading role that is being taken in Afghanistan in routing out the Taliban and trying to create a more secure environment for the citizens of Afghanistan, as well as participating in many wonderful projects.

I was interested last night to see on the CBC news some of the troops from Edmonton who had just returned from Afghanistan talking about the wonderful successes. There is no question that a great deal of Canada's effort at the moment is toward the situation and the conflict in Afghanistan, along with our other NATO and UN partners.

With regard to the situation in Somalia, I do not know what the United Nations or NATO is recommending or suggesting or asking Canada to do, but I will, as I said in my earlier answer, bring the honourable senator's concerns to the attention of the minister.

Of course, we were in Somalia in the past, and it is a very difficult situation. Nonetheless, it requires attention, and I will be happy to respond after I have referred this matter to the Minister of Foreign Affairs.

[Translation]

ANSWERS TO ORDER PAPER QUESTIONS TABLED

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT— AUDITOR GENERAL'S REPORT 2003

Hon. Gerald J. Comeau (Deputy Leader of the Government) tabled the answer to Question No. 12 on the Order Paper—by Senator Segal.

VETERANS AFFAIRS—DEPLOYMENT OF STAFF

Hon. Gerald J. Comeau (Deputy Leader of the Government) tabled the answer to Question No. 16 on the Order Paper—by Senator Downe.

[English]

THE SENATE

IRAN—NOTICE OF MOTION TO CONDEMN HOLOCAUST DENIAL CONFERENCE

Leave having been given to revert to Notices of Motions:

Hon. Jeremiah S. Grafstein: Honourable senators, I give notice that, two days hence, I will move:

That the following resolution be adopted by the Senate:

RESOLUTION TO CONDEMN THE HOLOCAUST DENIAL CONFERENCE HELD DECEMBER 11-12, 2006 IN IRAN

Whereas Iranian President Mahmoud Ahmadinejad has sponsored an international Holocaust denial conference entitled "Study of Holocaust: A Global Perspective", on December 11 and 12, 2006, in Tehran;

Whereas the Iranian Government is openly supportive of Holocaust revisionists, who resolve that the systematic state sponsored murder of 6,000,000 Jews and other targeted groups by Nazi Germany and its collaborators during World War II was either fabricated or exaggerated;

Whereas in August 2006, Iran staged a reprehensible international contest of cartoons on the Holocaust, endorsing and promoting prevailing anti-Semitic and anti-Israeli stereotypes and Holocaust denial;

Whereas President Ahmadinejad wrote in a letter in July 2006 to German Chancellor Angela Merkel, "Is it not a reasonable possibility that some countries that had won the war (World War II) made up this excuse to constantly embarrass the defeated people ... to bar their progress.";

Whereas on October 26, 2005, in a conference entitled, "The World without Zionism", President Ahmadinejad stated in a speech that "Israel must be wiped off the map.";

Whereas thereafter, these anti-Semitic comments were broadly condemned by the United Nations and others, including resolutions of various Parliaments;

Whereas President Ahmadinejad's current sponsorship of an international Holocaust denial conference is only the latest abominable act he has taken in a series of threatening and anti-Semitic, Holocaust denial statements and actions since he rose to power;

Whereas to deny the Holocaust's occurrence is in itself an act of **anti-Semitism**;

Whereas one who denies the Holocaust, denies the greatest tragedy of the Jewish people and the most extreme act of anti-Semitism in history;

Whereas President Ahmadinejad's past and present declarations and actions — spewing outrageous anti-Semitic, anti-Israel rhetoric, remaining a primary source of funding, training, and support for terrorist groups seeking to destroy Israel, and openly threatening Israel and other democracies — prove President Ahmadinejad is on a national crusade of hatred and ultimate destruction against Israel and the Western civilized world;

Whereas the longstanding policy of the Iranian regime aimed at destroying the democratic State of Israel, highlighted by statements made by President Ahmadinejad, underscores the threat posed by a nuclear Iran:

Now, therefore, be it resolved, that the Senate of Canada—

- (1) Condemns in the strongest terms the international Holocaust denial conference held in Iran on December 11-12, 2006, and any and all vile anti-Semitic statements made by Iranian President Mahmoud Ahmadinejad and other Iranian leaders;
- (2) Calls on the United Nations to officially and publicly repudiate all of Iran's anti-Semitic statements made at such conference and hold accountable United Nations member states that encourage or echo such statements;
- (3) Calls on the United Nations Security Council to strengthen its commitment to taking measures necessary to prevent Iran from possessing nuclear power;
- (4) Calls on the Government of Canada to condemn the anti-Semitic Holocaust denial conference;
- (5) Reaffirms the Canada's longstanding friendship and support for the State of Israel; and vows to never forget the horrendous murder of millions in the Holocaust and affirms that such genocide should never happen again.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, pursuant to rule 27(1), I wish to inform the Senate that, when we proceed with Government Business, the Senate shall consider the business in the following sequence: third reading of Bill C-34, third reading of Bill C-17, second reading of Bill C-24, and consideration of the sixth report of the Standing Committee on Transport and Communications on Bill C-3.

[*English*]

FIRST NATIONS JURISDICTION OVER EDUCATION IN BRITISH COLUMBIA BILL

THIRD READING

Hon. Hugh Segal moved third reading of Bill C-34, to provide for jurisdiction over education on First Nation lands in British Columbia.

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

Motion agreed to and bill read third time and passed.

[*Translation*]

JUDGES ACT

BILL TO AMEND—THIRD READING— DEBATE ADJOURNED

Hon. Pierre Claude Nolin moved the third reading of Bill C-17, to amend the Judges Act and certain other Acts in relation to courts.

He said: Honourable senators, I am pleased to speak today to acknowledge the importance of Bill C-17, to amend the Judges Act and certain other Acts in relation to courts.

This bill implements the federal government's response to the 2003 report of the Judicial Compensation and Benefits Commission. It also proposes to make some technical amendments to other acts in relation to courts.

Respect for the integrity of the commission process is key to ensuring public confidence in the independence and impartiality of our judiciary. That is why the government felt it was necessary to quickly approve the recommendations of the commission as proposed in Bill C-51, with the exception of the salary proposal.

The House of Commons has examined in detail, debated and passed this bill as introduced by the government, with the exception of a few minor technical amendments. It is now up to the Senate to study this bill, in its constitutional role in the parliamentary process under section 100 of the Constitution Act, 1867.

Honourable senators will recall that the previous government introduced Bill C-51, which would have implemented all but one of the commission's recommendations, including a 10.8 per cent salary increase for judges. Our government is planning a 7.25 per cent salary increase. This difference is the result of a serious and responsible analysis. It represents the quest for balance between important constitutional principles with respect both to the independence of the judiciary and to the fiscal responsibility of the Government of Canada.

Since judges' salaries come from the public purse, we must consider judicial compensation in relation to other legitimate requests for public resources and other economic and social priorities of the government. We are all aware that there are a number of constitutional principles that guide governments in establishing judicial compensation, both in the jurisprudence of the Supreme Court of Canada and in our Constitution.

Under section 100 of the Constitution Act of 1867, Parliament is responsible for fixing the salaries, allowances and pensions of superior court judges. It is therefore up to Parliament to decide whether the commission's recommendation, the government's proposal or any other salary increase should be implemented.

Honourable senators know full well that, in addition to the protections under section 100, the Supreme Court of Canada has established a constitutional requirement for an "independent, objective and effective" commission whose purpose is to make non-binding recommendations to the government.

The Judges Act was amended in 1998 to strengthen the commission process in accordance with the constitutional requirements defined by the Supreme Court of Canada. The commission convenes every four years to inquire into the adequacy of judges' compensation and benefits. It is required to deliver a report with its recommendations. The government must respond publicly within a reasonable period of time following the commission's report.

The Supreme Court provided balanced guidance for these constitutional requirements in two key decisions: the *P.E.I. Judges Reference* and the *Bodner* decision.

• (1510)

In both of those decisions, the court acknowledged that allocation of public resources belongs to the legislatures and to governments. Careful reading of the decisions in these two cases clearly shows that governments are fully entitled to reject or amend a commission's recommendation, provided that a rational public justification is given, one that respects the commission process.

The government must demonstrate that it complied with the standard of rationality established and clarified by the Supreme Court. That is what the Government of Canada did in its response to the commission's 2003 report.

The government's response addressed the commission's recommendations fairly and objectively. It aimed to reinforce the effectiveness of the commission process, depoliticize setting judges' salaries and preserve judicial independence. But the commission's effectiveness is not measured by whether all of its

recommendations are implemented unchanged. Rather, it is measured by whether the commission process, its information gathering and analysis and its report and recommendations play a role in informing the ultimate determination of judicial compensation.

The commission's work and analysis have been critical in the government's deliberations. The response respectfully acknowledges the commission's efforts and explains the government's position in relation to two modifications to the commission's proposals.

Honourable senators, Bill C-17 proposes to implement virtually all of the commission's recommendations. The exceptions are the commission's recommendation of the 10.8 per cent salary increase and the representational costs proposal.

Instead, the government is prepared to support a salary increase of 7.25 per cent and to increase reimbursement of representational costs to 66 per cent from the current level of 50 per cent.

As the response elaborates, the government believes that the commission's salary recommendation of 10.8 per cent overshoots the mark when defining the salary increase necessary to ensure outstanding candidates for the judiciary.

The other proposed amendment pertains to the commission's recommendation that judges are entitled to a higher rate of reimbursement for their expenses in respect of their participation in the work of the commission. It recommended increases of between 50 per cent and 66 per cent for legal expenses and between 50 per cent and 100 per cent for costs.

The government's response explains that the reimbursement of 100 per cent of costs provides little or no financial incentive for judges to incur reasonable expenses, in particular, the cost of large contracts for consultants with expertise in compensation and other matters.

Consequently, Bill C-17 would increase the current level of reimbursement by 50 per cent to 66 per cent.

Honourable senators, I would like to point out one last amendment proposed by Bill C-17. This bill includes a long overdue proposal aimed at levelling the playing field for partners of judges in the difficult circumstances of a relationship breakdown by facilitating the equitable sharing of the judicial annuity. The judicial annuity is currently the only federal pension not subject to such a division, despite the fact that the judicial annuity represents a very significant family asset. These provisions are also consistent with both the objectives of probative retirement planning and the constitutional requirement of financial security as a part of the guarantees of judicial independence. While this policy may seem extremely complicated, its objective is very simple: to address a long outstanding equity issue in support of families undergoing breakdown of the spousal relationship.

In conclusion, honourable senators, I am certain that you concur that the last step in the 2003 four-year review, the adoption of Bill C-17, is of great importance. The credibility, in fact the legitimacy of this constitutional process requires it,

particularly in view of the length of time that has elapsed since the commission report and the fact that the next four-year commission will begin its work in less than a year, specifically next September.

I am sure you will agree that it is of vital importance that we deal with this bill with all due dispatch. In so doing, we will help ensure that Canada continues to have a judiciary whose independence, impartiality, commitment and overall excellence not only inspire the confidence of the Canadian public but are envied around the world.

[English]

Hon. Jeremiah S. Grafstein: I only have one question. I think the honourable senator and members of the committee heard my comments with respect to the delicacy of dealing with the compensation as it relates to not only the process, but also the quantum.

I want to talk about the process for a moment. Is the government considering reviewing and revamping the commission itself before the next quadrennial review?

Senator Nolin: I am probably not the right person to answer that question. I think the minister of the Crown would be the more appropriate person to ask.

I must inform the honourable senator that this morning we put that question not to the minister — maybe we should have asked him — but to the commissioner, who was in front of us.

As the honourable senator may know, one of the commissioners is the nominee of the judges. An honourable senator asked the question about his attitude toward those who have nominated him. In his view, he was not the representative of the judges. He was the nominee of the judges, period; that is it. He was not there to defend their position. He was there, as were the other two commissioners, to reflect, investigate and report on the appropriateness of the salaries, wages and pensions of the judges.

However, in the making of the future commission, I think it will be up to the government. Statutorily, the government must appoint the new commission before next September. It will be up to the government to decide if they want to reappoint the same commission or to appoint a new one.

Senator Grafstein: I do not question the honesty or integrity of any of the commissioners. I just raise the question, as I did in my earlier comments, about whether or not it is appropriate. Senator Nolin repeated my concern that the Constitution, in sections 99 and 100, is very clear that compensation for the judiciary is the subject matter of the jurisdiction of the two Houses of Parliament. There is no question about that.

However, the collateral question is in regard to the nature of the advice it seeks. We have already talked about the two cases of the Supreme Court. I think one was seriously flawed; we can question Supreme Court of Canada cases in this chamber. I think it was flawed; and I think that the second Supreme Court case mentioned by my honourable friend, the more recent one, tried to change that precedent, which I think is a more healthy way to go.

[Senator Nolin]

Having said all that, I hope the government gives serious consideration to taking a look at the commission to ensure that it is pristine and that nominees who represent the judges are not made to that commission.

• (1520)

I do not quarrel with Mr. Cherniak, and I do not question his integrity. I just question that he says to the committee, as I understand it, that “Once I am nominated, I am there, independent of the people who appointed me.” It begs the question that, surely, if he is independent of the people and the judiciary who nominate him, why is it necessary for the judiciary at all to have that appointee?

I raise that for the honourable senator. I know others on this side share my concern. I hope that the government will give this matter serious consideration when it comes to re-examining the structure of that commission.

Senator Nolin: I am sure that the government is listening to the honourable senator’s suggestion, and in due course they will consider it. At the end of the day, what any government would want is to ensure that our constitutional responsibility is properly met and that Parliament has all of the information necessary to establish the right and appropriate salary, wages and pension for our judiciary.

Hon. Anne C. Cools: I wonder if Senator Nolin would take a question?

Senator Nolin: Of course.

Senator Cools: I was a little bit surprised that a bill of this magnitude would literally fly through this committee and through the chamber with such haste.

Many of the questions that Senator Grafstein has just raised have been raised before in the Senate, including, I think, by the Honourable Senator Nolin. We have raised questions in previous go-arounds on previous judges’ bills. The record is quite prolific and extensive on the subject matter. I know I gave one speech quite exhaustively on this subject.

We are in an era where we are begging the question as to whether or not this house and the House of Commons, in joint action in respect of legislation, are in actual fact fulfilling the constitutional requirements of the BNA Act, which are extremely clear that Parliament should fix and provide the judges’ salaries. We have raised many questions about that subject.

As a matter of fact, I contended that the setting up of this commission created an additional step, a distance between Parliament and its ability to execute its constitutional duties. In other words, I believe the very creation of the commission is questionable. That is why I have some support for the notion that a body, whether or not it is a commission — these seem to be the buzz words these days, “commissions” and “commissioners” — should be created to assist us in the setting of the quantum of salaries of these, what I would call, high offices.

My question to the honourable senator is more direct. If he were to look to the BNA Act — maybe he does not have a copy. In respect to section 99(1) and (2) and section 100, the

two sections that are very relevant here, if he were to look to the bottom of the page, footnote 54 states that that constitutional requirement of section 100 is provided for in the Judges Act.

I wonder if the honourable senator — and I know he was not the person who sponsored the bill — could tell us offhand what the relevant sections are in the Judges Act that fulfill these constitutional requirements? If the honourable senator does not know, I will appreciate that.

Senator Nolin: The honourable senator raises a very interesting point. I do not have the answer right now, but I will gladly provide it later.

Returning to the question of Parliament being in charge, as stipulated by section 100 de la Loi constitutionnelle de 1867, the minister said this morning that the government is proposing to Parliament, and that Parliament will decide. We are proposing 7.25 per cent; if honourable senators wish to go to 10.8 per cent, as proposed by the previous government, that is fine with me. It will be their decision. If they wish to appropriate 9.5 per cent, that is also fine with me.

However, I think we must follow the decision of the Supreme Court because they are, according to the Charter, our guide. I know Senator Cools has a problem with that, but that is my opinion. In fact, we have a constant dialogue between the court and the Parliament. In that area, we have a vibrant dialogue. Sometimes we do not argue with them but answer to them with our legislation. If they do not agree with us, they answer to us with their decisions. That is the dialogue.

Last year in a case, they told us how they wanted that role of Parliament to be implemented. Therefore, when we are in total authority to fix those salaries, we must explain why we are doing that. That is what we have done in Bill C-17. We are proposing to accept the arguments and the rationale behind the figure of 7.25 per cent.

Senator Cools: I appreciate the honourable senator's answer, but he has put into his answer a lot of premises that are debatable, not absolutes, and premises that have not been widely agreed to by the members of this house.

If I can return to the question in another way, I made it my business to trace those clauses in the Judges Act. One hundred years ago, when the notion was created, the salaries were fixed individually. At one time, someone said, "Let us do them in bulk." Around 1905 or 1906, they created a Judges Act, but the sole intention of the Judges Act was only ever to fulfil the constitutional requirements under section 100. What has happened over time is that the Judges Act has been burdened with a thousand other things that have nothing to do with the salaries of the judges.

I would also like to say today, for the record, that the creation of a private, custom-made commission for the judges, giving the judges the ability to adjudicate the meaning of the term "judicial independence" — in other words, creating a commission wherein the judges have their own representative, delegate or nominee — is something that could or should be discussed. None of these three items are contemplated or intended by the BNA Act of

1867, which is still the framework within which we are dealing. However, it seems that, for the last 10 years, although many senators in this house, time and time again, in these debates in respect of the judges' salaries, have attempted to bring this knowledge and this information before the government, the government dismisses us every single time.

Senator Nolin says that the government only accepts and recommends to us. To say that is to be blatantly naive. Any individual in today's houses, any individual senator who dares to vote against what the government wants, does so at their own peril.

• (1530)

Let us understand this: What my honourable friend is talking about is highly whipped votes. The whole notion of charging salaries against the Consolidated Revenue Fund as opposed to having them charged in the business of the yearly annual estimates was especially to avoid the partisanship that comes with whipped votes. The entire situation has been raised on its head.

I am sorry, honourable senators, that I was not able to give a more detailed speech on this issue. However, I have done so several times in this house and they have not listened.

Honourable senators, there is something very wrong in how we are dealing with our judges. It is unhealthy both for them and for this institution. The problem is that as soon as the constitutionality of the issues is questioned, immediately someone puts it into the context that either one likes judges or one does not, or one is against them being paid well or is not. Everyone wants to see every public servant properly remunerated. At the same time, it is incumbent upon us to do it within the law. It is very unhealthy that we are managing the business of remuneration of the judges by stepping outside of the constitutional system. All I am saying is that we owe it to them to do it better.

This so-called "new government" has a glorious opportunity to come up with a brand new approach, not the same old tired rubbish and tired nonsense about how important it is to attract the highest-paid lawyers and the country. That is a terrible basis upon which to justify this, especially in a day like today. Senator Nolin knows better than I that the practice of law has approached the status of being commerce and an industry rather than a profession.

A few weeks ago, I had a dear judge friend of mine tell me that he did not want to do judging anymore. His words were exactly that: This is commerce. Certainly the reasons for lawyers to accept appointment and for us to grant the appointment should be higher and better than just the dollar sign. There is something wrong in all of this. What is most wrong is that the government of today and those of the last many years do not take members of Parliament seriously. There is ample evidence on the record. Senator Grafstein made some recommendations about the Judicial Council some years ago. I do not think he was ever dignified with a response from any minister.

Honourable senators, the real truth of the matter is that we are now in a period of time where there is no constitutional check on the powers of any government. The governments have simply

taken the two Houses into their own hands and one agrees or disagrees at one's own peril. They have reversed the principles.

No one cares more than I that we follow the law on these issues. I have been blessed in my lifetime to have as very close friends some of the great luminaries of the law and some of the great judges in this country. I will name one of them: Mr. Justice John Wesley McClung, one of the last great luminaries and a great human being. We are not doing the judges any service.

My question is this: Is it the honourable senator's intention to bring forth a motion — or perhaps the government could do it because it would be nice if it was supported by the government — so that a Senate committee or the Senate as a whole could study the questions of judicial independence and appropriate and necessary judicial remuneration? These are very important issues.

Honourable senators, it is time that we took ourselves seriously and brought the issues of the day to this place for debate. I know that Senator Nolin agrees with much of what I have said.

[*Translation*]

Senator Nolin: Honourable senators, I will answer in the language of Molière, which is the language I know best. First, I do not question the soundness of Senator Cools' arguments nor her good faith. I think it is a fundamental question. Rarely does Parliament play such a key role in establishing this precarious but beneficial balance that must exist between the exercise of judicial authority and legislative authority. But there must be a place where this balance is considered and, with much diplomacy but also firmness, it must be constantly examined and strengthened. This must be done in Parliament.

The honourable senator raises the issue of the involvement or the role of a government in our British parliamentary system. Honourable senators, the entire process currently in place is a legislative process. It is a statutory process. Whether the government or Parliament is involved, compliance with section 100 of the Constitution Act, 1867 takes precedence; then, insofar as possible, there is observance of the decisions of the Supreme Court that provide guidance as to how to maintain this precarious yet important balance between the legislative authority and the authority of the courts.

It was Parliament that established this statutory process. The criteria that the commission uses in establishing or reviewing judicial compensation must specifically include the ability to attract the best candidates to the judiciary.

I have no problem re-examining the statutory provisions that must guide the commission. I have no problem re-examining the process. What matters to me is that, in the end, Canada and Canadians can say they have a judicial system that is independent, impartial and effective. That is the only thing that matters to me. That, I humbly submit, is what we have before us.

Honourable senators, in its 2003 report, the commission made 16 recommendations and the government accepted all but one of them. At this point, we disagree on only one minor point: yes, salaries will be increased, but by how much?

The courts have enlightened us about how, or how rigorously, to determine salary increases. The Minister of Justice has

proposed a 7.25 per cent increase and told us how he arrived at that figure. The minister also told us that we can set whatever increase we want, but his response implies that we follow the rules that the courts have set as benchmarks for determining salary increases if we deem that there should be an increase.

I encourage Senator Cools to put forward her proposals. Certainly, today, we have before us a very specific bill, Bill C-17, which seeks to implement recommendations dating from 2003. But I will be the first to support you in a process where we examine together how to better attain the three objectives I mentioned earlier: independence, impartiality and effectiveness.

[*English*]

Senator Cools: Thank you, Senator Nolin, for your response. We have gone through this on a few bills.

• (1540)

Back in 1996, when we had one particular judges' bill before us, we talked about the need for a debate on these critical matters. I believe the honourable senator actually said that to the minister at the time, who I believe was Anne McLellan. I take very little interest in the actual sums of money or the quantum. What has led us all astray is the meaning of the words "judicial independence." The reason that these clauses and article sections were placed in the BNA Act was to bring judges from under the influence of the Crown, the executive and the cabinet, and to put them under the superintendence of the two Houses of Parliament.

If you will remember, these two sections, 99 and 100, are the result of a great period of turmoil in Britain during the rebellions and the revolutions in which some of the judges played a most notorious role. If honourable senators were to look to the introductory sections of the Bill of Rights of 1689 — and I do not presently have it in front of me — they would see that it begins by talking about the King and his "divers evil counsellors," including the judges, or something like that, because the community — to be quite frank, had gone astray; had become lost. Between the King and the struggle of the Houses, one could truly say that it was a colossal situation of man's inhumanity to man where they all got lost, and particularly Mr. Oliver Cromwell, who intended to replace it all.

What we do not talk about at all is the fact that these sections were created to sever the judges from the King's control, and that is what judicial independence is. There is no danger in today's community that any MP would phone up a judge to say, "My son is before you in a criminal trial; acquit him." The danger of judicial independence must always come from the holders of largesse, from the holders of favours; in other words, royal pleasure. That is what judicial independence is about, not the influence of just any lowly MP.

In Canada this is extremely important, because, when Canada was created on its British basis, for some reason they adopted many things and they did adopt the British notion of judicial independence. We have situations involving judges. The name of one of the first judges was Chief Justice Peter Livius, and I think it was Governor Sir Guy Carleton who just dismissed him summarily. That was around 1778, or just after the American

[Senator Cools]

revolution. It was after the social ferment, especially in Upper Canada, where they insisted that judges in Canada be appointed on the same basis as they were in Britain, where, with the establishment of the Consolidated Revenue Fund, there was a great movement to charge the salaries of the judges to the Consolidated Revenue Fund. This is what these provisions that Senator Grafstein has so ably raised are all about.

One would also need to go a lot farther. One must know that the development of the notion of judicial independence was intimately tied to the development of responsible government. The whole phenomenon of proceeding in these ways, as outlined in these sections 99 and 100 of the BNA Act, were exactly to avoid votes of confidence on the question of judicial salaries, because that was thought to be a bad thing.

We must understand that we are now in an era where cabinet ministers are bringing forward legislation to us, insisting, persisting, unrelentingly demanding that we pass it unquestioned and unamended. Quite often, the ministers themselves have no knowledge, or only a scant knowledge, of the constitutional principles that undergird and reinforce the entire system, and that, more than anything else, is one of the greatest problems that we are facing today. This is why one government can go down the road of tying members' and the Prime Minister's salary to those of the Chief Justice and the judges, and then barely a year later they change their minds because the recommendations from the so-called "commission" were a little too rich, not for the judges' blood but for the members' blood, they thought. They did not mind paying the judges those salaries, but they did not want to pay MPs those salaries, so the government changed its mind.

In both instances, when the government has changed its mind, it whipped its members into subjection, brow-beating them. If honourable senators want to know, I, too, was brow-beaten, both times, on both counts, so the opposite proposition —

Senator Murray: By both parties.

Senator Cools: Yes, by both parties. Thank you for that; by both parties. This is what they do. They brow-beat you into subjection. They want a mental indolence, but I do not give it.

Coming back to the essential point, I know where the honourable senator stands. Senator Nolin is also distinguished, because his father was a judge, now retired. In any event, Senator Nolin was critical in this chamber in bringing about an amendment to one particular Judges Act that sailed through the House of Commons and no one noticed what was wrong.

In any event, I am prepared to accept the challenge one day of bringing a motion before this house indicating that we want a reasoned study. We want a study that would do a review of the scholarship and of the literature, and also a review, quite frankly, of the constitutional principles.

In any event, I was not planning to say anything today. If I sound a little strained, it is because I am in considerable back pain, but I could not resist the fact that Senator Nolin touched on some of these issues, as did Senator Grafstein. It is a large topic and, like many of these topics and questions that govern our

constitutional existence, they are no longer studied. One could say they are slipping into becoming arcane.

Honourable senators, I thank you for your attention. Having said that, I would like to make it clear that I wish everyone in the entire community could have the best salary that they deserve. I wish that every Senate position could be filled by the most qualified candidate. I wish that the Senate vacancies would be filled right now by anyone.

What I object to is the articulation of all this, in the way that governments have done for the last many years. We would always do much better if we articulated issues in respect of the principles. Honourable senators, I am sure, know the old expression: A little bit of virtue is good for the soul. In any event, I thank honourable senators very much for listening. It is a huge issue.

Hon. Yoine Goldstein: Honourable senators, I have spoken before in this chamber, in Question Period. I have also made a variety of statements, including one today, but I have never had the opportunity to thank each and every one of you for the warm, accepting and lovely welcome that I was given by all of you, senators and staff alike, when I came to this place last year. Your unconditional helpfulness and openness were and are to me an absolute treasure.

I must say that I found my initiation to this chamber rather confusing. Named as a Liberal, I found myself seated on the Conservative side of the chamber. Although I have many friends on what was then the opposition side of the chamber, I said nothing at all about it and bided my time while waiting for the election, which was then imminent. I found myself again confused after the election because I was again seated on the wrong side of the chamber, opposite my Liberal colleagues. However, I am assuaged by the fact that now I am sitting on what has become the government side. I hope, however, that this party will be on this side briefly.

• (1550)

It had never occurred to me, honourable senators, that I would be standing in this chamber speaking to those who have been entrusted with the noble task of providing a sober second look at Canadian legislation. I never dreamed that a person of my background could achieve this, but this is Canada, and here I am.

Each of us brings to this chamber and to our work here our own traditions, background and roots. I was born in the tenements of East Montreal, the last child of immigrant parents of very modest means and, fortunately, very simple needs. Yet, those parents managed to provide me and all my siblings with a university education, as well as postgraduate studies because, honourable senators, this is Canada.

This is a country, a land and a people which are so easy to love. Education is available to virtually all who wish to take advantage of it. Health care is universally accessible to all, even with the delays, blemishes and warts that we are all trying to fix. This is a land where the safety net is spread wide to protect the most vulnerable in our society. This is a land blessed, and I use the word advisedly, with a Charter of Rights and Freedoms that is the envy of the family of nations, a country which respects, admires and applies the rule of law. This is my land; my country; my home. I am proud and honoured to be here.

We all come to this place, as I said earlier, with different baggage, backgrounds and aspirations. In my Jewish tradition, there is the story of God's having consulted Abraham when He wanted to create the world and telling Abraham that He wanted to create a perfectly just world. Abraham told Him that even He, God, could not succeed with such an ambitious project and advised him to abandon it. The compromise that was reached between the two of them was that God would create the world as best He could and leave to humans the task of perfecting it. That is the concept of Tikkun Olam, the repairing of the world. Whether in my tradition or in the tradition of each and every one of you, we are all called upon to do our part as best we can in making the world better, in repairing that which requires repair. It is a mammoth and daunting task. Again, in my Jewish tradition, the work of repairing the world, of making it more just, is best expressed as a conundrum. My tradition tells me that I am not obliged to finish the work because one cannot succeed in finishing the work, but one cannot divest oneself of it, nor can one shirk it.

To me, this describes the honourable work that we all do because the job of governing is one that we individually and collectively can never finish, but we are exhorted to do everything we can to try to make this country of ours as perfect as we can collectively make it. Our role is to undertake the journey without any realistic hope of reaching the destination but with the hope of continuing to move towards that destination, steadily and with meaning.

[Translation]

Honourable senators, my immediate predecessor was the famed Senator Gérald Beaudoin, who represented this division for 18 years. I succeeded him, but I did not replace him, because Gérald Beaudoin is irreplaceable. To quote the Honourable Lowell Murray, he was:

[English]

... an intellectual, a constitutionalist, an author and a gentleman.

[Translation]

A professor of constitutional law, he was the constitutional giant of our generation. He was Dean of the Faculty of Law at the University of Ottawa, an author, and a man of integrity and dignity who was utterly devoted to his profession as a parliamentarian.

[English]

I am humbled to follow such a great parliamentarian. Being summoned to this chamber carries with it the possibility that one's voice can be heard if raised in the pursuit of good causes, and that possibility creates, in its turn, social responsibilities that we are each called upon to fulfill.

Honourable senators, I have had the occasion to speak of tolerance in a number of Senators' Statements in the past, including one I made earlier today. It is my intention not only to continue to speak of tolerance, one of the great components of our Canadian fabric, but also to continue to pursue and support the cause of tolerance in any way and by whatever means available to me.

[Senator Goldstein]

It was Sir John A. Macdonald who said that Confederation is not yet finished. That statement, true then, is equally true now. I am proud, honoured and humbled to join with all of you in the work of helping, to the best of my ability, to make Confederation and this exceptional country of ours the best it can be.

That brings me to comment specifically on Bill C-17, An Act to amend the Judges Act.

As we now know from the excellent speech by my colleague and friend Senator Nolin, the Judges Act deals with an increase of salary, retroactive to April 1, 2004, of federally appointed judges and with the division of judges' annuity benefits in the event of a conjugal breakdown — matters the reading of which could likely cure insomnia. On its face, therefore, it is an innocuous bill, a housekeeping matter, ignoring for a moment the constitutional overtones about which we heard a great deal a few moments ago. It does not raise judges' salaries sufficiently, in my judgment, but that is for another day.

However, the bill does not mention the most fundamental change made by the Minister of Justice, Vic Toews, and some background is necessary in this connection.

For decades, the appointment of judges was a disciplined, objective process, intended to assure the appointment of qualified judges and meant to assure their independence, once appointed.

Committees were created to advise the minister. These committees rated candidates as "highly qualified," "qualified" or "not qualified." The composition of the committees was itself meant to assure objectivity. Typically, a committee would be composed of five senior members: one nominated by the federal government; one nominated by the Chief Justice of the relevant province; a nominee of the bar of that province; a representative of the relevant provincial government; and, a lay member. In brief, it is a procedure intended to ensure no political interference, maximum objectivity and a virtual guarantee of obtaining the most highly qualified candidate — surely a system intended to serve Canadians well.

It did serve us well. In a previous life, I had the advantage of appearing hundreds of times before judges of all levels, from simple municipal courts to the Supreme Court of Canada. I did not always like the result, although usually I did. The competence, skill, knowledge and objectivity of our federally appointed judges was and is the envy of the entire world, so much so that judges from China, Africa, Eastern Europe and from various other parts of Asia are sent here consistently to be trained by the Canadian federal judiciary to administer objective and independent justice in their respective countries. Our reputation is enviable indeed, and one of which we can and should be justly proud. There is, and was, no disagreement about this anywhere: Our judicial appointment system is admired and respected throughout the world. One would think, of course, that there is no reason for change.

Enter the Minister of Justice, Vic Toews. He declares his intention to fix a system which is not broken by naming a law enforcement officer — a policeman — to the consultative committees. Honourable senators, with all due respect to our police force, what on earth can a policeman know about judicial qualifications, judicial competence and judicial

independence? What can a policeman add to the process, except by introducing a dangerous and un-Canadian, rigid law-and-order mentality to the selection process?

Some Hon. Senators: Hear, hear!

• (1600)

Senator Goldstein: It is a process which is intended to deal with competence, not attitude. In addition, the minister proposes to name three nominees to each such committee and to deprive the one judge who sits on that committee of the right to vote. In short, the committee will act solely as the minister from time to time — whether it is a Conservative government or a Liberal government — wants it to act. If that is the definition of “objectivity,” of “independence,” then we should not be sitting here. Indeed, the net result of this process is to stack the process in favour of pleasing the Minister of Justice of the day. Is that dangerous? Is that retrograde? You bet it is.

Senator Di Nino: No, it is not.

Senator Goldstein: In an unprecedented rebuke to the Minister of Justice, the Canadian Judicial Council deplored the hatching of a plan to arbitrarily change the way judges are chosen. The Canadian Judicial Council expressed dismay that Mr. Toews was planning to introduce “significant changes to the composition and functioning of the judiciary advisory committees.” No less a person than Chief Justice Beverley McLachlin of the Supreme Court of Canada urged the Minister of Justice to include the judiciary and key legal bodies in any discussion of changes to the committee vetting process.

The council, which is composed of the Chief Justice and Associate Chief Justice of every Superior Court in this country, says that it is “concerned that these changes, if made, will compromise the independence of the advisory committees.” It urged the minister to delay the implementation of any plans until “meaningful consultation” has taken place.

Professor Peter Russell of the University of Toronto, who is an expert in the judicial appointment process, remarked, “While reform is always good, it should not take place in a way that totally undermines the integrity of the whole process.”

Unshaken by these rebukes and the universal condemnation of the judiciary and bar associations across the country, the Minister of Justice has gone yet further. He proposes to abolish the recommendation system of “highly qualified,” “qualified” and “not qualified” by replacing it with a system merely of “qualified” or “unqualified.” This would have two deleterious effects. The first is that highly qualified candidates, those most usually chosen by successive governments, would not stand out as highly qualified. The second is that the pool of “merely qualified” would be larger, allowing political choices and partisan choices to run rampant.

Professor Russell, an expert in this field, pointed out that this system would just “screen out the utterly incompetent,” and he added, “If you are in Kingston Penitentiary or something like that, you don’t make the list, but that is about it.”

Frank Addario, Vice-President of the Criminal Lawyers’ Association, asserted that the proposed new system proves that the Minister of Justice wants to appoint judges who will arrive with an agenda.

The cynicism that the Minister of Justice exhibits in this respect is rather incredible to Canadians. Add to this the fact that the federal government appoints only 1,100 of the thousands of judges who sit in Canada and that all of the non-federally appointed judges are appointed by the provinces which do not have a single police officer sitting on their advisory bodies. The cynicism lies in the fact that it is provincially appointed judges, not federally appointed judges, who hear the overwhelming bulk of criminal cases in Canada.

Why, then, is the Minister of Justice interfering with the federal appointment system, adding a policeman to the committees, when the issue of a law-and-order agenda cannot even arise at that level but, rather, would be arising at the provincial judges appointment level?

What is the Minister of Justice doing? He is destroying the objective nomination process to achieve a symbolism of rigid law enforcement, but a symbolism only, because one may logically assume that the provinces, which appoint most of the criminal judges, will find the minister’s changes uninspiring and will not follow them.

Why, then, is the minister doing this, knowing full well that it is an attack on judicial independence, that it is universally condemned by all the stakeholders and that it puts the executive branch in control of some judicial appointments virtually without regard to the qualifications of the appointees? Clearly, the minister is attempting to put an agenda in place, a regressive agenda, a doctrinaire agenda, a dogmatic agenda, one which is consistent with so many other regressive and doctrinaire steps that this supposed “new government” has taken. It is consistent with the Conservative’s abolition of the Law Reform Commission over a month ago. It is consistent with the abolition of the Court Challenges Program. It is consistent with the Conservatives’ attack on literacy programs in this country. It is consistent with the attack on the Status of Women’s programs. These social programs are not the only ones being affected by this dogmatic, regressive approach to our society. Cultural institutions are equally targeted.

We noted last week that the National Portrait Gallery, which was to have been housed in the former American Embassy across the road, is being privatized in Alberta, when all logic dictates that it should be in the country’s capital.

We know from an announcement last week that government policy is to diminish government funding of museums across the country and to place increased reliance on the private financial support of ordinary citizens, a philosophy which has been rejected throughout the civilized world.

In the United Kingdom, the government increased funding to museums so as to permit museums to stop charging for admission, thereby increasing museum attendance by 224 per cent since the start of that program.

Senator Mercer: That is impressive.

Senator Goldstein: Honourable senators, we are witnessing the tearing, the ripping, and the shredding of the Canadian socio-cultural fabric. We are witnessing an attack in our country on the texture of the Canadian being. We are seeing the imposition of a doctrinaire socio-cultural policy, of ideology which is regressive, reactionary and harmful to the Canadian body politic. We are having imposed upon us a dogmatic approach to social and cultural programs, a rigid and regressive policy destined to return us to the 19th century.

We want a Canada characterized by progressive social policy, not by regressive doctrine. We want a Canada governed by people, not by agendas. We want a Canada inspired by ideas, not ideologues. We intend, honourable senators, to take back Canada.

Hon. Joseph A. Day: Honourable senators, as chair of the Standing Senate Committee on National Finance, I wish to say a few words about Bill C-17.

First, I would like to congratulate Senator Goldstein for his fine address. The transcript of his address will add to the body of knowledge and information on this wide range of judicial appointments and judicial compensation.

Honourable senators will know that this issue, in the form of Bill C-17, came before our committee this day. We had a very good turnout of honourable senators to hear from the minister and from Mr. Cherniak, one of the commissioners of the Judicial Compensation and Benefits Commission. A number of very interesting issues were raised; I do not intend to go into those issues, although I expect others will do so during the debate on this matter. They are issues such as: Did the commission do its job properly? Did the government, in not accepting the recommendation of the commission, follow the rules, some of which were established in the Judges Act by virtue of amendments brought about previously by this chamber in terms of the standards to be followed?

Those issues were raised and, during the committee meeting, we tried to deal with the tight issue that Senator Nolin referred to during his address to this chamber, namely, the question of judges' salaries and increased compensation. That is the crux of Bill C-17.

• (1610)

However, as we explored that issue and the question of the reduction in the percentage that was to be recommended by the government in this bill, from the 10.8 per cent increase that the commission recommended to the 7.25 per cent increase, we discovered other issues with this bill that resulted in us attaching observations to the bill that I will read into the record. They were attached to the bill when the committee's report was presented today, but senators may not have the observations in front of them at the present time. They read as follows:

Your Committee —

— that is, the National Finance Committee —

— is concerned about the practice by the Department of Justice of placing technical amendments in a bill that, in the Committee's opinion, should essentially be a response to

the report of the Judicial Compensation and Benefits Commission and, as such, relate only to amendments to the *Judges Act*.

Your Committee heard from an official of the Department of Justice that there are difficulties in addressing technical amendments of the type found in Part 2 of Bill C-17 through the *Miscellaneous Statute Law Amendment Act* process. Your Committee therefore urges the Department of Justice to review its practices in an effort to find a separate process by which these issues can be dealt with. Your Committee looks forward to receiving follow-up from the Department of the Justice in this matter.

Honourable senators will know the concern that has been expressed by me and by others. The Honourable Senator Andreychuk is well aware of my concerns with the definition of "technical amendments," as is Senator Oliver. Any amendment is an amendment that could potentially have serious, unexpected and unintended consequences. Describing it as a technical amendment does not mean that it is deserving of any less scrutiny.

If honourable senators look at the second page of Bill C-17, the table of provisions, amendments to the Judges Act are clauses 1 to 16. They deal with the issue that is essentially before us: the reaction by the government to the judicial compensation commission's recommendation. It would have been a nice, neat, tight package for us to deal with, but Part 2 of the bill deals with amendments to other acts as follows: the Canada Transportation Act, the Crown Liability and Proceedings Act, the Employment Insurance Act, the Federal Courts Act, the Pesticide Residue Compensation Act, the Railway Safety Act and the Tax Court of Canada Act.

Honourable senators, we did not provide the level of scrutiny on those other acts that would be expected of this body. We are all aware that the judges have been caught in this unfortunate situation of the report having come down from the compensation commission and then an election intervening and the need for or the decision to have another report from the quadrennial commission. It is unfair for our judiciary to be suffering from that unfortunate consequence. Therefore, I recommend that we support this particular bill as it appears, but I also ask honourable senators to keep in mind the observations of the committee. It is important that we not allow this type of practice to continue, namely that of unrelated and other items being tacked onto a bill and then the bill being presented as if it were solely the first part.

Senator Cools: I want to thank Senator Day for his remarks and also for picking up on that important point about the so-called "technical amendments" and the placement of them in this particular bill.

In addition, that point is attached to the particular question as to when a housekeeping amendment is a housekeeping amendment and when is it a technical amendment. Historically, many such "housekeeping" technical amendments have come through here within amendments to the Judges Act. They have quite often just sailed through until some sharp and observant senator picks up on them and questions them. It then turns out that the amendments are neither housekeeping nor technical, but the honourable senator's point is very well taken.

This bill was referred to the National Finance Committee. Honourable senators know that for years I urged that these bills be referred to the National Finance Committee because they really go to the question of Parliament's control of the public purse.

I ask the honourable senator if it was an oddity that this bill was referred to the National Finance Committee, or will this be the continuing practice of the Senate? I would like to see it become a practice of the Senate because the real questions behind the Judges Act, at the end of the day, are the proper constitutional expression of the control of the public purse in a unique and special way, as it was articulated as a way to protect the judges from the arms of a mean king who would chop their salaries at a moment's notice or give them no salaries.

Will the referring of these bills to the National Finance Committee be a practice? If it were Senator Day's idea, I would like to commend it.

Senator Day: I thank Senator Cools for her question.

First, the observations are the observations of our committee, and I felt it important for me to comment on them. Although I endorse and support these observations, I do not take full and exclusive ownership to them. It was the unanimous view of our committee that these observations should be attached to the report.

Second, as to the practice of sending a bill such as the judges' compensation legislation to the National Finance Committee, it seemed to me to be a logical place to deal with it, or a logical action by our leadership to take to send it to our committee. We deal with these kinds of matters. The honourable senator's question is better answered by the leadership on both sides.

However, on the Order Paper at the present time is the sixth report of the National Finance Committee, dealing with provisions to safeguard the independence of the judiciary and the determination of judicial compensation and benefits. The committee studied these issues this fall. The report is dated November of this year. The Honourable Senator Cools was one of the senators on our committee urging that we complete that study, and we have in fact completed it. It provided us with the groundwork and the background to deal expeditiously with Bill C-17.

Hon. Lorna Milne: Honourable senators, when I heard Senator Goldstein and Senator Day speak, frankly, I could not for the life of me imagine what pesticides have to do with judges' salaries. In the honourable senator's opinion, is the tacking on of all these unrelated matters a continuation of the present efforts to Americanize our parliamentary system?

Senator Day: I thank Senator Milne for the question. Some may say it is a bit of a reach to make that connection. Clause 25 of the bill deals with the Pesticide Residue Compensation Act and states that:

Subsection 14(1) of the *Pesticide Residue Compensation Act* is replaced by the following:

14. (1) The Governor in Council may, from among the judges of the Federal Court and the judges of the superior, district or county courts of the provinces,

appoint an Assessor and the number of Deputy Assessors that the Governor in Council considers necessary to hear and determine appeals from compensation awards made under this Act or under any other Act to which this Part is made applicable and, subject to this Act, may prescribe their jurisdiction.

• (1620)

We can see how it might be very —

Senator Oliver: Not much of a reach at all.

Senator Day: Broadly speaking, it may fit under the umbrella of compensation. I am sure honourable senators understand why we placed the observation when we reported it back. I thank the honourable senator for that question.

Hon. Lowell Murray: If I may follow up on Senator Milne's point, this morning, at the National Finance Committee, Senator Fox taxed the minister with this issue. The minister was mystified as to why these provisions were in this bill, and he asked for help from the senior officials beside him. The committee was then told that there is a reason why these other matters could not be contained in an amendment to the miscellaneous statutes bill. The official said that there were so few occasions when judicial matters are before Parliament that they liked to take advantage of the occasions that arise every three or four years to tidy up other matters.

In the polite way of civil servants, she reminded us that this practice has been going on for generations, government after government, Parliament after Parliament. However, that in no way diminishes the weight we should attach to observations made by the committee.

The purpose of my rising is to say this: From listening to the debate, it could be inferred that some honourable senators think that what we are doing is offensive to the Constitution, or to constitutional principles. Avid readers of Senate debates who take the same inference as me should read the testimony before the National Finance Committee this morning; in particular, the testimony of the Minister of Justice. As the minister, Senator Cools, and others have acknowledged, what we are doing is pursuant to our authority under the Constitution Act, 1867 to establish compensation for judges within the jurisdiction of Parliament.

Mr. Toews stated that the constitutional background does not stop with the Constitution Act, 1867. If I understood him correctly, he referred to the judgment of the Supreme Court of Canada, the Prince Edward Island reference, and a subsequent case which I cannot remember. He said that the judgments, the creation of the commission and its report form part of the constitutional context in which we are acting.

The judgment of the Supreme Court may be flawed, as Senator Grafstein is suggesting. I defer to him. However, it is still their judgment. The minister was explicit, clear and interesting, saying that we must take the constitutional context as a whole, not just section 100 of the Constitution Act, 1867. I do not think we can treat these other elements as irrelevant or offensive to our Constitution or to constitutional principles.

I thought his testimony was interesting, at least to this layman.

Senator Cools: I thank the honourable senator for his statement. I have studied this subject. I was excited that Senator Day and the National Finance Committee had received the bill for study. It put on the table the Consolidated Revenue Fund, the phenomenon of charges under the annual estimates, or by statute, and the critical element of the entry of these sections into the BNA Act.

It was around 1840, after Lord Durham visited Canada to look into the troubles in Canada, that the notion of judges' salaries being charged to the Consolidated Revenue Fund arose. I am not sure if Sir John A. Macdonald scripted those sections of the BNA Act himself. He scripted 44 of the original 72 motions. Section 100 says that the salaries of judges shall be fixed and provided by the Parliament of Canada. This closely followed the words "ascertained" and "established" from the act of settlement or bill of rights, 1689.

I have no doubt, honourable senators, that we must look at the constitutional context and development of case law and jurisprudence. The jurisprudence and judgments cannot amend the BNA Act. That is what the language is trying to say.

The dissenting opinion of Mr. Justice LaForest, to which Senators Murray and Grafstein refer, is the better-reasoned. Senator Grafstein has pointed out that the case law has taken a different turn and moved away somewhat.

I thank Senator Day for mentioning that I suggested bringing those witnesses before the committee. The financial interests and concerns respecting proper treatment of judges' remuneration is an important constitutional concept. It is critical and pivotal to the proper administration of justice. I am pleased that this house is looking at those issues for what they are rather than for what they may be pretending to be.

I attended that particular committee meeting. There was a sense that senators would like to learn more. It has been put before them as something so cryptic, arcane and legal that it was not for their eyes, ears or minds. It is to the extent that these constitutional sections of the British North America Act have their development in the power and strength of Parliament to represent the public, to authorize the collection of tax dollars, to oversee the expenditure of those dollars and to put the judges in a unique position — a place apart, beyond the hands of the king or the king's advisors in today's community.

• (1630)

To truly understand, master and put those concepts into debate would be performing a wonderful service for this house. We are in an era of great intellectual confusion, but this house is the honourable court of Parliament whose members have a duty to ensure that justice is well done. This place has a responsibility to oversee the spending of money and the administration of justice in this country. There is nothing more important than the business of the choice and remuneration of those individuals whom the public face as the arbiters of justice, namely judges. I am excited by this new development, although it might be small and only a mirage; I do not know. I thank the Honourable Senator Day for that.

Senator Murray: Honourable senators, I want to say that I am glad that I had not misunderstood my honourable friend's earlier intervention: far from it. She has reinforced my impression with that comment. It is all the more reason why people could read with profit the evidence of this morning's meeting of the Standing Senate Committee on National Finance. Among other things, Minister Toews, when speaking to the response by the government to the commission's report, attempted successfully, I believe, to place that response within the four corners of the Supreme Court judgment which stated that the government must have a rationale for changing recommendations of the commission. I thought he did that very well. Other honourable senators, such as Senator Mitchell, took the position that a government must have grave and serious reasons for changing such a recommendation. It was my view that it would be sufficient for the government to make a plausible case. However, should honourable senators read the minister's testimony, they would find it most interesting.

Hon. Serge Joyal: My question is for Senator Murray. Following the observations appended to the ninth report of the Finance Committee tabled in the house earlier today, did the committee consider the option of splitting the bill? There is such a precedent and the Department of Justice is well aware of it. The Senate split former Bill C-10, in respect of the gun registry and cruelty to animals, into Bill C-10A, which passed quickly, and Bill C-10B, which was referred to the Standing Senate Committee on Legal and Constitutional Affairs. Did the committee consider the option of reporting favourably on Bill C-17, to amend the Judges Act in respect of salary, and reserving the other part of the bill, which has nothing to do with the Judges Act, for a different bill?

Senator Murray: Honourable senators, there was no discussion of that in my presence. However, I must confess that I left the meeting a bit early.

The Hon. the Speaker: Honourable Senator Murray's time has expired. Is he asking for leave to continue?

Some Hon. Senators: Five minutes.

Senator Grafstein: I noticed that all senators were a little queasy about listening to discussion on this rather sloppy bill, having equity for the judges in mind. My question to Senator Murray or to Senator Day is this: Was there an undertaking by Minister Toews that he would follow up? The report states:

Your committee therefore urges the Department of Justice to review its practices in an effort to find a separate process by which these issues can be dealt with.

"These issues" are those that are extraneous to compensation for judges.

The report continues:

Your committee looks forward to receiving follow-up from the Department of Justice on this matter.

Is there an undertaking from the department to follow up and to provide a separate process to deal with these issues in the future? As Senator Murray said, this is a sloppy practice that has been going on for some time. We have raised it a number of times

but our objections have been shunted aside. Honourable senators are feeling queasy about considering a bill in respect of judges that has nothing to do with being fair and equitable to judges, when it should be just that. The rest of the process, dealing with the Ministry of Justice, presents the house with something that is very unpalatable.

Senator Murray: Senator Fox, who was the witness's chief tormentor on this issue, indicated his displeasure and told the minister that the matter should change. I would defer to Senator Day, Chairman of the National Finance Committee, as to whether an explicit undertaking was received from departmental officials or from the minister that the Department of Justice would get back to us on this matter.

Hon. Mobina S. B. Jaffer: I move adjournment of the debate.

The Hon. the Speaker *pro tempore*: It is moved by the Honourable Senator Jaffer, seconded by the Honourable Senator Hervieux-Payette, that further debate be adjourned to the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Senator Cools: It was my understanding earlier, honourable senators, that the house might adjourn soon. I do not know whether Senator Jaffer was aware of that. I was under the impression that everything was being sped up because we were trying to adjourn momentarily.

Some Hon. Senators: No.

Senator Cools: Is that not the case?

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

Hon. Senators: Agreed.

On motion of Senator Jaffer, debate adjourned.

SOFTWOOD LUMBER PRODUCTS EXPORT CHARGE BILL, 2006

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Tkachuk, seconded by the Honourable Senator Keon, for the second reading of Bill C-24, to impose a charge on the export of certain softwood lumber products to the United States and a charge on refunds of certain duty deposits paid to the United States, to authorize certain payments, to amend the Export and Import Permits Act and to amend other Acts as a consequence.

Hon. Grant Mitchell: Honourable senators, it is my pleasure to rise today to respond to my colleague on the government side with regard to the important matter of the proposed softwood lumber legislation, although I am far less enamoured with the bill than he is. This bill proposes to implement the softwood lumber

agreement, which will have far-reaching consequences for hundreds of communities across several regions of Canada. It will have an impact not only on the industry, its workers and their families, but also on future trade disputes and on the rules-based resolution mechanisms upon which we, as a trading nation, rely.

• (1640)

My honourable colleague on the other side made the case that the agreement signed by the current government will provide much needed stability to the lumber industry, and he suggests that the alternative would have been ongoing litigation. He referred to it as "a lasting solution." This remains to be seen.

I have some serious concerns about this bill, about the process used by the government and about the long-term implications of this negotiated agreement.

[*Translation*]

I have already addressed in this chamber the need for Canada to push for an international trade system governed by rules. Our country depends heavily on trade. Our industries can withstand competition from the best in the world as long as the rules of the game are fair.

[*English*]

Bill C-24 is based on an agreement that was reached outside the framework of NAFTA and, in some ways, in spite of it. While I would be first to argue that negotiated settlements are a legitimate way to resolve bilateral trade disputes, this cannot be used as a means for a stronger nation to circumvent the trade dispute mechanisms in order to force a capitulation from a trading partner. I must say, particularly a trading partner as important to them as Canada is to the United States. I would venture that this is exactly what has happened here.

Senator Mercer: Disgraceful.

Senator Mitchell: My colleague says "disgraceful" and I would agree.

Canada's position was consistently upheld in legal battles before international tribunals of the WTO and NAFTA, and in domestic courts. In fact, on the key question of whether Canadian softwood lumber is subsidized, on March 17 of this year a NAFTA panel ruled yet again in Canada's favour.

Senator Mercer: How many times is that?

Senator Mitchell: It is many times.

The United States had 40 days to challenge this ruling, and it is interesting to note that the basic terms of the softwood lumber agreement were reached on the deadline for this challenge — April 27. Yet, the United States has proceeded with the appeal and the Canadian government has actually assisted them by agreeing to an indefinite suspension of the expiry for the American challenge, even though the testimony of international trade lawyers suggests that Canada would have won on the merits of the legal argument, yet again.

In fact, on October 13, the day after the coming into force of this agreement, the U.S. Court of International Trade upheld the NAFTA panel decision that said Canada was entitled to a full refund of duty deposits. However, the Canadian government actually joined with the American government to nullify that decision and to cost Canada, Canadians and the Canadian industry \$1 billion.

Senator Mercer: Whose side are they on?

Senator Mitchell: It is the new government doing government in a new and different way. We do not need too much of that.

In his testimony during the prestudy of this bill by the Standing Senate Committee on Foreign Affairs and International Trade, Carl Grenier, Executive Vice-President of the Free Trade Lumber Council, had this to say about this process:

...rule of law was to be replaced by negotiation, cash was to be paid to resolve trade disputes, and illegal trade restrictions, such as quotas forbidden under the WTO rules, were to replace free trade. Both governments rode roughshod over the very concept of relying on the rule of law to resolve trade disputes between the two countries.

Even more disconcerting is the potential impact this will have on NAFTA, in particular, the credibility of the bi-national panel resolution dispute mechanisms contained in chapter 19. What incentive is there in the future for American companies to use this mechanism when it has been proven that they can achieve more through the political route? This has the potential to set a negative precedent for other industry sectors trading with the United States, which begs the question: Why would the Conservative government settle with the Americans just as they were winning the battle? It is an interesting question.

Senator Rompkey: Snatching defeat from the jaws of victory.

Senator Mitchell: I thank my colleague from Newfoundland and Labrador for that comment. They see the situation clearly there.

It is even more surprising when you consider that the Conservatives promised during the last election — and this is yet another betrayal of the Canadian people on another election promise:

A Conservative government will demand that the United States government play by the rules on softwood lumber.

I would sure hate to see what would have happened if they had not demanded. Their promise continues:

The U.S. must abide by the NAFTA ruling on softwood lumber, repeal the Byrd amendment and return the more than \$5 billion in illegal softwood lumber tariffs to Canadian producers.

None of that happened. Of course, this is not the only page out of that platform that has found its way to the garbage bin since the election.

Honourable senators, if it were not so late, I would spend a great deal of time listing the other very clearly stated promises that they have reneged on.

Perhaps, if the negotiated agreement were advantageous to Canada, the government reversal of its campaign platform would be understandable. However, on the key issue in the platform, the return of illegal duties levied on the Canadian industry, the government has capitulated and left \$1 billion on the table — and that is not a Canadian table, that is an American table. That is \$1 billion of Canadian money given to the Americans.

Senator Mercer: Disgraceful.

Senator Mitchell: Yes, disgraceful.

Under chapter 19, U.S. industry would have been required to refund 100 per cent of the duty deposits to the Canadian industry. However, under the softwood lumber agreement, \$500 million is left in the hands of the American government and another \$500 million will be left to the American lumber coalition, which they can use to continue to fund their political and legal attacks on the Canadian industry.

Senator Mercer: We are buying the bullets for our opponent's gun.

Senator Mitchell: And pulling the trigger.

The agreement also includes export taxes and quotas. In fact, at current prices, the export tax under Option A is higher than the current U.S. duties. The industry has seen only a shift from seeing its money go to American revenues to now going to Canadian governments. The result is that Canadian value-added industry is discouraged in favour of export of raw logs to be processed in U.S. mills. The value-added industry goes to the United States.

Some Canadian companies will be inclined to invest their duty refunds by purchasing American mills rather than have their money reinvested in the Canadian communities most affected. In fact, that is already occurring. Jobs are being exported to the United States as we speak because of this agreement.

Also of concern to me is the lack of flexibility in this agreement. The anti-surge protections which force companies to pay in the case that export volumes reach a certain trigger point, limit the ability of producers to deal with unexpected circumstances such as the pine beetle infestation which is now spreading into my province of Alberta. It is also very difficult for individual producers to predict and plan against these surges in a multi-player market. They do not know how much everyone else is producing.

This agreement is extremely complex and there are numerous sections open to interpretation. Given the history of American compliance with international tribunals, what assurance does Canada have under this agreement that, just because they have set up another tribunal, it will be honoured by the Americans?

The agreement does not refer disputes to chapter 19 of the NAFTA resolution mechanisms but, rather, to an arbitration tribunal in London. If the rationale for this agreement is that it will establish a period of peace and stability for the industry, how can we be certain that we are not simply moving legal challenges

from NAFTA to this new tribunal? In fact, if experience is any indicator, this is exactly what will happen. Similarly, the government has indicated that this agreement will put an end to the constant litigation and provide the stability necessary for new investment and for the sawmill workers. While it is the case that the term of agreement is seven years, with a possible extension to nine years, including a 12-month period after termination when no trade action can be taken, there is little guarantee that the agreement will last this long. The agreement allows for termination on six months' notice after as little as 18 months. That means that we may have given away \$1 billion and jeopardized NAFTA for an agreement that may last as little as two years. I hope that this is not the case, but it is a serious potential problem, and the government has not given us any comfort that it will not be realized.

• (1650)

It is interesting to note that the previous government rejected a deal that was quite a bit better than this one because it included a monetary reward to American industry with a quick exit clause similar to this one.

Not only has the current government proceeded with a flawed agreement, but also it has bullied Canadian industry into accepting it. The Conservative government showed once again its propensity to act with a heavy hand. Unions, small and medium-sized companies and other key stakeholders were either not consulted or given only cursory opportunities to be heard. The government imposed on those companies who did not accept the agreement, a punitive 19 per cent levy on all refunded deposits and they took away loan guarantees. The government did not consult with trade associations, which included most of the smaller companies, before negotiating the agreement and then they threatened to abandon the industry if they did not accept it.

I am only that much more thankful that I did not vote for the Conservatives. Compare that with the Liberal plan, which includes support to workers, employees and families, as well as the following: \$200 million over two years to enhance competitiveness of the industry and environmental performance; \$40 million over two years for a national forest innovation system; \$30 million over two years for competitiveness of the work force, including skills upgrading and assistance to older workers; \$100 million over two years for economic diversification and capacity building in effective communities; \$30 million over two years in new market development for wood products; and \$200 million to fight the pine beetle. All of that is gone.

In addition, Liberal members of the committee in the other place successfully supported vital amendments to this bill that allowed for an exception from the application of the export charge for Atlantic provinces and the Northern Territories as well as protection for lumber remanufacturers, which I know were of concern to some of my honourable colleagues.

I have serious concerns about the way in which the government proceeded. There are a number of significant and important issues that have not been handled properly in this agreement; \$1 billion has been left on an American table. That is our money. They took it and they are not giving it back. This initiative creates a dangerous precedent that could impact very unfavourably on NAFTA by encouraging stakeholders in the United States simply to circumvent NAFTA through political means over and over again.

Finally, among many other important issues, a third issue I want to emphasize is that this program will result in the export of value-added jobs to the United States; they will not stay in Canada. There are many groups who want to be heard. There is a strong argument to be made for this Senate taking the time to properly hear many of those groups. The United Steelworkers, who represent the biggest bulk of workers, are very concerned about its impact. The Canadian Lumber Remanufacturers Association wants to have a chance to state how significant the quotas can be and how damaging it is to their industry. They have a right to be heard.

This government, in fact, rushed this agreement through. It did not do it because it wanted a good agreement; it did it to give a facade that they have made some sort of significant decisive step. Honourable senators, it is far from a definitive step. It is, if we were to use another word beginning with "d," a dangerous step.

I question the political motivation of the Conservative Party to abandon litigation and rush through an agreement when we were having success, not only in international tribunals, but also for the first time in American domestic court. This, after the party campaigned on pursuing litigation and free trade.

The cost of this agreement is high. I expect that the cost of this agreement will be far too high.

Hon. Hugh Segal: Would Senator Mitchell take a question?

Senator Mitchell: Certainly.

Senator Segal: Senator Mitchell was good enough to make reference to various victorious litigations which have gone on and which were pending and which took place subsequent thereto. Is he of the view that an endless process of litigation, which had gone on for many years and had every prospect of going on for many more, would have been better than returning 80 per cent of the \$5 billion to the Canadian operators, companies and workers? Is he of the view that letting the situation stay in that context for many years to come would have been better public policy?

Senator Mitchell: Yes, far better than capitulation.

Hon. Terry M. Mercer: Honourable senators, this would be funny if it were not so serious. The honourable senator tells us there is \$1 billion left on the table in Washington. The money can be spent to hire more lawyers for more challenges in the courts. He talked about the value-added jobs going south. I am told by my friends in British Columbia that you can see truckload after truckload of logs heading south. Those are jobs that are heading south; those are not just logs.

In your research, Senator Mitchell, were you able to determine how many jobs have been lost in Canada already because of this agreement? Do you have a number we can wrap our hands around?

Senator Mitchell: I do not have a precise number, honourable senator, but thank you for the question. One would expect that the government who made this decision would have done some analysis to determine how many jobs or what the effect on the jobs would be. One would expect that, but when you see the kind

of analysis they did on the Kyoto Protocol programs that we had — none — before they cancelled them, I would not hold my breath to get that kind of analysis.

Senator Mercer: Let me get this straight. Logging companies are closing all across the country, from Quebec westward, and a fair amount of that is a spin-off of this so-called deal. It is amazing that this government would actually put this before us and try to convince the Canadian people that this is a good deal. My contention is if there is one Canadian dollar left on the table and one Canadian job lost, this is not a good deal and the government should be going back to the table and telling their friends in Washington that this is not going to wash up here.

Senator Segal: All or not.

Senator Campbell: That is how you play. You win or you lose.

Senator Stratton: I thought your premier was in favour of this.

Hon. Pierrette Ringuette: Most of my colleagues know how I feel about this deal. Most of my colleagues also know that last week in this house we adopted a motion that this chamber would be requesting from the government, on any government bill, a study in regards to regional impact. My question to you is: When the government tabled this bill in this chamber, was it accompanied by a regional, economic impact study?

Senator Mitchell: No, it was not. It was accompanied, to the best of my knowledge, with absolutely no analysis of the economic impact of this particular agreement. It needs to be done.

Senator Ringuette: As critic of the bill, if it ever goes to committee, will you be requesting a regional impact study regarding this bill?

Senator Mitchell: That is an excellent idea and would be something that I would discuss with the committee. We could bring in witnesses who would bring in expertise and background and they could be part of the committee's study. That is an excellent idea.

Senator Ringuette: Another issue that was not part of your speech, but I think is very important, is the question of Canadian sovereignty. This concerns the fact that this deal requests that provincial governments will have to put forth to Washington for any approval, Washington's approval, on their forestry practice. Will the U.S. critic be looking into that sovereignty issue?

Senator Mitchell: Thank you for raising that issue, and we will be looking at it.

• (1700)

Senator Ringuette: Honourable senators, I have one last question. I am sure I will have more eventually, but I want to give my colleagues the opportunity to put forth their questions.

Of the \$1 billion of Canadian money that will be left in Washington with this bill, half of that money will be going to American forestry producers to seek new markets for their products. This is also a very important question if we want to at

least try to keep a certain competitiveness: How much will the Canadian government supply to the Canadian producer to seek new markets in other countries that are certainly in need of our good Canadian products?

Senator Mitchell: I think you will find that the Canadian government will not be able to assist our industry in any way. It would be interesting to hear the government side clarify this point, but I expect that the reason the loan guarantees and the support programs that the Liberals initiated have been cancelled is that there are some restrictions under this agreement about such Canadian government initiatives being seen by the Americans to be unfair competitive support for the Canadian industry.

While we have handed them \$500 million to help their industry, and they can freely use it to support their markets and promote their business, at the same time we cannot utilize programs — probably, I am speculating; we would have to ask about that — that would assist our industry in exactly the same way.

It is almost incomprehensible that a government would have negotiated — and I use the word “negotiated” relatively loosely — a program with these kinds of holes running through it.

Debate suspended.

[*Translation*]

The Hon. the Speaker: Honourable senators, it being 5:05 p.m., is it your pleasure that the Senate do now adjourn during pleasure to await the arrival of Her Excellency the Governor General?

Hon. Senators: Agreed.

The Senate adjourned during pleasure.

• (1720)

ROYAL ASSENT

Her Excellency the Governor General of Canada having come and being seated on the Throne, and the House of Commons having been summoned, and being come with their Speaker, Her Excellency the Governor General was pleased to give the Royal Assent to the following bills:

An Act respecting the establishment of the Public Health Agency of Canada and amending certain Acts (Bill C-5, *Chapter 5, 2006*)

An Act to implement conventions and protocols concluded between Canada and Finland, Mexico and Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (Bill S-5, *Chapter 8, 2006*)

An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability (Bill C-2, *Chapter 9, 2006*)

An Act to provide for jurisdiction over education on First Nation lands in British Columbia (Bill C-34, *Chapter 10, 2006*)

[Senator Mitchell]

The Honourable Peter Milliken, Speaker of the House of Commons, then addressed Her Excellency the Governor General as follows:

May it please Your Excellency.

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Excellency the following bills:

An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2007 (Bill C-38, *Chapter 6, 2006*)

An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2007 (Bill C-39, *Chapter 7, 2006*)

To which bills I humbly request Your Excellency's assent.

Her Excellency the Governor General was pleased to give the Royal Assent to the said bills.

The House of Commons withdrew.

Her Excellency the Governor General was pleased to retire.

• (1730)

The sitting was resumed.

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, given the time, and given the fact that Her Excellency the Governor General is waiting for us at the other place, I move that we see the clock as being 6 p.m. and, accordingly, suspend the sitting until 8 p.m.

[*English*]

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

Hon. Senators: Agreed.

The Hon. the Speaker: We stand adjourned until 8 p.m.

The Senate adjourned during pleasure.

• (2000)

INFORMATION COMMISSIONER

APPOINTMENT OF ROBERT MARLEAU— CONSIDERATION IN COMMITTEE OF THE WHOLE

On the Order:

The Senate in Committee of the Whole in order to receive Mr. Robert Marleau respecting his appointment as Information Commissioner.

The Senate was accordingly adjourned during pleasure and put into Committee of the Whole in order to receive Mr. Robert Marleau on the matter of his appointment as Information Commissioner, the Honourable Rose-Marie Losier-Cool in the chair.

[*Translation*]

The Chairman: Before we begin, I bring your attention to rule 83 of the *Rules of the Senate*, which states:

83. When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

Is it your pleasure, honourable senators, that rule 83 be waived?

Hon. Senators: Agreed.

Senator Comeau: Honourable senators, I move, seconded by the Honourable Senator Di Nino, that Mr. Robert Marleau be invited to take a seat in the Senate Chamber.

The Chairman: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

The Chairman: Mr. Marleau, on behalf of all the honourable senators, I welcome you to the Senate. You have been invited here to answer questions regarding your appointment as Information Commissioner.

We will begin with your opening statement. After that, I will open the floor for questions from senators.

[*English*]

Mr. Marleau, you may begin with a brief statement.

Mr. Robert Marleau: Honourable senators, the last time I had the privilege of being on the floor of the Senate chamber was in November of 2003, as the outgoing interim Privacy Commissioner. You had done me the honour of having me appear before you during the confirmation hearing for my successor, Jennifer Stoddart, who is the current Privacy Commissioner. I certainly did not anticipate then that I would be here before you again today in a much different capacity. It is yet again very much an honour and a privilege to be here to answer your questions on my nomination as Information Commissioner.

[*Translation*]

I have prepared a brief opening statement. I will spare you my biography and career development path, as I understand that honourable senators have received copies of my CV in both official languages.

I would like to begin by listing the reasons why I agreed to be considered for the position of Information Commissioner of Canada.

I will not hide the fact that I am not an access to information expert. This very important position is inextricably linked to the foundations of modern Canadian democracy. The Information Commissioner is first and foremost an agent of Parliament, and there lies my interest in the position.

[*English*]

Agents of Parliament are an extension of Parliament itself. They are given a special trust to oversee government and to report back to Parliament with findings and recommendations. As a former officer of Parliament, I was frequently in contact and interacted with many of the agents of Parliament. As a young committee clerk, I watched the former Commissioner of Official Languages, Keith Spicer, defend his estimates before my committee. Keith Spicer set the bar so high on quality reports to Parliament that I do not believe it has been reached again by any agent of Parliament since his tenure.

In the 1973 minority Parliament, as clerk of the special committees on electoral expenses, I worked side by side with former Chief Electoral Officer Jean-Marc Hamel on ground-breaking legislation. Mr. Hamel, in my view, set the standard of ethical conduct for parliamentary agents and had a profound influence on my own comportment and career.

Later, as Clerk of the House, I served on the executive of the Association of Heads of Small Agencies and, with John Grace, a former Information Commissioner, I worked to advance the understanding of the principles of independence and autonomy of agents of Parliament, in particular within the central agencies of government.

[*Translation*]

In 2003, I interrupted my retirement briefly in order to serve as interim Privacy Commissioner of Canada, following the resignation of George Radwanski. In cooperation with the Auditor General, the Public Service Commission and the House of Commons Standing Committee on Government Operations, I worked very hard to restore the trust of Canadians and of Parliament in the Office of the Privacy Commissioner. During my short time with that agency, I believe I not only achieved what I had set out to do in terms of the renewal of that office, but also worked on some of the major privacy issues, such as the national ID card initiative and surveillance cameras in public places.

[*English*]

More recently, on behalf of the Treasury Board, I was the architect of a pilot project for an alternative process of financing of the big five agents of Parliament. I negotiated a framework

agreement with the Treasury Board Secretariat, the Chief Electoral Officer, the Auditor General, the Information Commissioner, the Language Commissioner and the Privacy Commissioner. That pilot project is now in its second year cycle and, it is hoped, will lead to a more permanent process that will have parliamentarians continue to play an active role in the analysis of the financing of these agents of Parliament.

In retirement, I have served on the panel of external advisers to the Auditor General and on the external audit committee of the president of the Public Service Commission. On the international side, I am the volunteer chair of the board of directors of the Parliamentary Centre of Canada, an NGO that fosters democratic and parliamentary development in failed states and developing countries.

In a recent speech I gave to the Public Service Commission Annual Employee Forum, I addressed the role of parliamentary agents in the accountability loop of our style of parliamentary government. I reminded them that, in order to preserve and maintain their statutory independence, their first allegiance must be to Parliament, their second allegiance must be to Parliament and their third allegiance must be to Parliament. I also underlined that, while the Canadian Parliament had indeed recently re-affirmed the Public Service Commission mandate to guarantee a non-partisan, competent public service recruited on the basis of merit, they should not forget that they are themselves accountable to Parliament, not only for the outcomes of their work but also for their ethical conduct and the stewardship of the monies voted to them. When Parliament grants an agent of Parliament a trust on behalf of all Canadians, the very least Parliament deserves to receive in return is leadership that it can trust.

[*Translation*]

When I left the public service after 32 years of service, I truly believed that it was for good. When I was offered the position as Information Commissioner, I was asked to think carefully about it, rather than to simply refuse right away.

Some of you may be wondering why I would choose to give up the tranquility and comfort afforded by my active retirement, close to my wife and family. I also asked myself that very question. After discussing with my wife, we decided it was quite simply the right thing to do.

• (2010)

Here is what I have to offer: parliamentary experience, expertise in processes and procedures and sound management leadership abilities. I freely admit that I am opposed to the status quo when it comes to management. If confirmed, one of my priorities will be to evaluate the structure and management practices of the Office of the Information Commissioner to ensure that Canadians and Parliament receive the best possible value they are entitled to.

[*English*]

As an ombudsman and mediator, I am primarily an optimist. I usually see the glass as half full rather than half empty. My style is to find common ground and work on agreement from there. I can tell you that I have and will have a bias against going to court. It usually costs the taxpayer a lot of money and the outcomes are typically unpredictable. The former commissioner

[Mr. Marleau]

stated last fall before a committee of the other place that the Information Commission barely sees 10 per cent of access requests through the complaints process. That leads me to think that the system is not that badly broken if somehow 90 per cent of requests are not subject to complaints.

The Information Commissioner must fiercely protect his or her independence from government but, at the same time, he or she can only be effective in the role if a civil and substantive dialogue is sustained with the agencies and departments he or she oversees. Nevertheless, Canadians have rights under the ATIA and they deserve the best service the commission can deliver with the resources granted by Parliament. Despite my reluctance to go to court, when citizens' fundamental rights are at risk and mediation has failed, the commissioner has no choice but to aggressively pursue the matter before the appropriate tribunal, including the Supreme Court of Canada.

[Translation]

On the advocacy side, I want to state for the record that calling for greater transparency and accountability is an intrinsic part of the Commissioner's role. This was unanimously recognized during the debate at second reading of the original bill in 1981. Unfortunately, all the previous commissioners expressed frustration with the fact that successive governments merely conducted studies and consultations instead of making substantive amendments to the 1983 legislation. I may appear to be overly optimistic in expecting that, during my mandate, considered reform will be made to the Access to Information Act to strengthen its provisions and enhance its impact. If I am confirmed in the position, I will focus my efforts primarily on reforming this act.

[English]

The commissioner, however, is not the legislator and at the end of the day, despite the commissioner's best advice, it is Parliament in its wisdom that will determine what kind of access to information regime Canadians will enjoy. The Information Commissioner remains a servant of Parliament and through legislation he or she is an extension of Parliament's authority. I believe that Parliament has to be and has to be seen as the first champion of access to information.

Honourable senators, may I humbly suggest that you simply cannot delegate that responsibility to one individual and expect the government of the day to straight away lose its innate reflex to resist transparency. You must stay ever attentive, react to the commissioner's recommendations, and keep the pressure on governments to be even more transparent.

With your support, I believe I can advance the cause of open government by tenacious, focused and timely interventions. I believe that as interim Privacy Commissioner I demonstrated my capacity to be an effective and balanced advocate. I am confident that I can do that again in this new role.

I also believe that during my career in the service of both the Senate and House of Commons for over 32 years I have amply demonstrated my ability to be independent of government and to be seen as such in the performance of my duties.

[Translation]

Honourable senators, it is an honour for me to be appointed to this position, and the honour will be even greater if my appointment is confirmed by both Houses of Parliament.

Thank you, Madam Chair. My fate is in your hands.

[English]

The Chairman: Thank you. Honourable senators, I will now open a list for questioning. The first senator on my list is Senator Kinsella.

[Translation]

Senator Kinsella: First, I want to thank Mr. Marleau for agreeing to be a candidate for this position that is so important to Canadian democracy and our system of governance.

[English]

Obviously, honourable senators, having before us an honorary officer of the House of Commons, I think that it is only appropriate that, as Speaker of this house, who, from time to time has been required to refer to a significant procedural piece of literature of which the candidate is one of the authors, I might begin the questioning.

I would like to begin this way, honourable senators. Mr. Marleau, we know what the legislation is, but as a public administration manager now, how would you visualize in a general way the kind of mission statement that you would develop as the Information Commissioner?

Mr. Marleau: Thank you, Madam Chair, and through you, to the Speaker of the Senate, I would say that I have outlined in my remarks the mission statement that I think is required by the legislation and by the performance of previous commissioners. It is twofold. The first is sound administration. I learned that boldly in my short term in the Privacy Commission. The other is advocacy and, although the issue is personal in style for every commissioner, it must be balanced. It is not just advocating open government; it is advocating open government on behalf of Parliament. Without the support of Parliament behind that advocacy, one might as well go on *Speaker's Corner* and make a speech — it will have about the same effect. Parliamentarians may differ among themselves, but if you are speaking with the authority of Parliament, it makes a big difference. It is a twofold mission: advocacy and sound management.

Senator Kinsella: Madam Chair, my second question moves from the mission statement to the strategic plan.

Within the context of your reflections on your strategic plans, what would be, during the next fiscal year, some of the strategic objectives and some of the organizational imperatives, from a public administration standpoint, that you would want to underscore with honourable senators?

Mr. Marleau: In terms of the larger issue of access to information, the stage is somewhat set. The Minister of Justice has tabled a discussion paper which follows a proposed revised statute that the previous Privacy Commissioner tabled in

committee. The committee in the other place has filed a report with the House requesting the government to bring forward a bill based thereon by Friday of this week.

To a large degree, the positions, if I can put it that way, have been established. My approach to this in terms of strategic intervention would be to find the common ground between the government's white paper and the commission's proposed amendments to the act. My approach would be to get that common ground off the table, where we can agree in terms of advancing the cause of open government, work on the differences and go forward from there.

To a large degree, much of the work was completed before I arrived, and we may be on the cusp. As I said in my opening remarks, I may be overly optimistic that somehow during my term there would be a significant review of the act. The conditions are there, and I hope to be the catalyst to bring the two parties together.

• (2020)

I have no qualms about talking to the Minister of Justice. I do not see that as a loss of independence. You do need the dialogue. It is one thing to be a watchdog and then bite; it is another thing to be a watchdog and bark, but you wag your tail once in a while in approval.

Senator Kinsella: Moving from mission statement to a strategic plan brings me, as an old public administrator, to the budget. Have you had an opportunity to look at the budget proposal for the Office of the Information Commissioner for fiscal year 2007-08? Do you have any comments to make to honourable senators about the adequacy and appropriateness of the budget that is anticipated for the Office of the Information Commissioner, if you were to be endorsed for this position? Is the budget-planning process that is under way adequate, based on the information that you have, or are there certain irritants there that you would like to share with us?

Mr. Marleau: I believe commissioners before me have, in every report, complained of chronic underfunding. However, in the 2006-07 cycle, because of the framework, I believe, for review of financing of the parliamentary agents, there has been a bit of a breakthrough. Reading the estimates documents and the evidence given by the deputy commissioner before the committee of the other House, there has been a 47 per cent increase in the budget. They have not been able to spend it all yet because of ramping up staffing and investigators, and that takes time; as well, there is a need for space. I am getting all of this from the evidence; I have had no particular briefing.

The increase in funding is to deal with the backlog of investigations, which just kept growing at 2 per cent a year. I believe that, at least as a first pass, this breakthrough will go a long way to solving some of the complaints that the former commissioners have had. How efficiently that money can be used will be my focus.

Senator Milne: Our Standing Senate Committee on Legal and Constitutional Affairs recently had the opportunity to hear from the Office of the Information Commissioner on a couple of occasions in regard to Bill C-2, the so-called federal

accountability act. During the examination of this bill in the Senate, I proposed a number of amendments in committee to that bill that were supported by the Office of the Information Commissioner. Among them, I presented an amendment for consideration that would limit the secrecy exemptions that Bill C-2, now that it is an act, gives to the Auditor General and the Commissioner of Official Languages regarding access to information requests.

Do you feel that each officer of Parliament should be treated equally under the Access to Information Act?

Mr. Marleau: I read the evidence given before your Standing Senate Committee on Legal and Constitutional Affairs. I must say that I am not as well versed as you may be on Bill C-2.

On the face of it, I see no reason for a different treatment of one parliamentary agent as opposed to another. Most of them have investigations of some kind, audits and audit papers which are in process. The current exemptions in the statute are quite adequate, in my view. However, I have some difficulty with the concept of differentiating between the Chief Electoral Officer and the Commissioner of Lobbying, for instance. As agents of Parliament, if you will be the first advocate of open government, then all agents of Parliament should be on the same standing in terms of how they are accessed.

Senator Milne: My second question is about the Gomery inquiry and the Auditor General. In his report, Justice Gomery rejected the argument that audit working papers should be kept secret forever. The Auditor General contends that this would result in a dampening effect — I believe those were the words she used — on their ability to perform an audit. Meanwhile, the Office of the Information Commissioner stated publicly that audit working papers have been subject to access to information requests since 1983, and they were subject to all of the exemptions in that act. That arises out of your last answer. Can you tell me what your view is on the issue of disclosure of related audit working papers on the part of the Auditor General?

Mr. Marleau: Honourable senators, I have not had the opportunity to read the evidence given by the Auditor General on Bill C-2, so I hesitate to comment without having both sides of the story. I believe I read a report where she used the term “a chilling effect.” There are issues as in investigations, I am sure, parallel to audit where making documentation public before there is an outcome of that activity could be damaging to the audit. An auditor could be just reflecting on a course of action and that reflection might not necessarily be there in the final audit.

I believe the current exemptions of the act cover that situation. The Auditor General may become more explicit somehow. There was also a time factor as to when such papers would become accessible. Fifteen years is far too long; five years may be too long, too. The closer we get to when the audit is finished, the better.

Senator Milne: You do realize that the current or the past provisions in the act changed this afternoon on Royal Assent of the new bill?

Mr. Marleau: I am quite aware of that.

[Mr. Marleau]

Senator Milne: Mr. Marleau, most jurisdictions in Canada have an access to information provision that provides an authorization for disclosure where a clear, overriding public interest exists to have the information released. Do you feel that the inclusion of such a provision would be beneficial to the operation of this Access to Information Act as it exists today? That is, after Royal Assent.

Mr. Marleau: I would have to say that, since Royal Assent occurred today and the agreement between the two Houses occurred Friday and, as of last Thursday, there was still disagreement between the two Houses, taking into account the way in which the journals are written — something I should have cured when I was Clerk — you are dealing with numbers of amendments rather than texts of amendments. It has been difficult for me to assess the true outcome of Bill C-2.

With respect to all of the formulas of the public interest — prejudicial, damage and injury test — we can look at them going forward with a fundamental review of the statute rather than — I do not want to say “piecemeal” — a “carved duck” approach. It has to be holistic when you raise this particular question, rather than whether it applies to this department, agency or investigatory agency versus an auditing agency. I would rather save my substantive comment for you once I have had a chance to evaluate both sides.

Senator Di Nino: Mr. Marleau, I would like you to comment on a statement made by the Auditor General at a Senate committee hearing dealing with Bill C-2, I believe, on September 27. She was referring to the Deputy Information Commissioner and she said the following:

With respect, his position reflects a fundamental lack of understanding of the audit function. Our role is to enhance the accountability process by providing assurance to parliamentarians on government finances and operations; all of our conclusions deemed significant are provided in public reports tabled in Parliament. His position also reflects a lack of understanding of the potential harm that could result to our ability to conduct our audits if our audit records were subject to public disclosure. I believe that we would not receive the same level of candour and openness from the people we interview in our audits.

• (2030)

Do you have any comments?

Mr. Marleau: In response, I can only say that I have heard many discussions between lawyers and accountants who both claim to be right according to their own profession. I usually take tax advice from my accountant and legal advice from my lawyer. When the two get into an argument, I get worried.

In the context of your specific question, there is no doubt that the Auditor General knows her business and holds an opinion that a certain amendment to the act could be prejudicial to the quality of her work. To some degree, the same thing can apply to the Information Commissioner. The Information Commissioner has pretty extensive powers to subpoena people and cross-examine them in private. I suppose if people knew that out of that process that could be accessed, people would know what is being shared. That may have a chill effect on that particular process as well.

Maybe both are right from their professional perspectives. My task will be to see how I can step in between them and bring them together.

Senator Di Nino: Mr. Marleau, I can see that your extensive experience in a position that requires discretion has served you very well.

To put a little more focus on that issue, there will obviously be differences in tension that will exist among a number of different parliamentary officials such as you said, the Auditor General, the Privacy Commissioner, the Information Commissioner, and so on. I would probably know the answer, but just for the record, given the experiences you have had, do you foresee any difficulties? Would you share with us how you would deal with those things?

Mr. Marleau: I do not forecast any difficulties. From an access point of view, you have someone who is asking for information from a particular parliamentary officer. There is a process in place. The same would apply to any agency, by and large, so that should not be an issue of tension or difficulty, no more so than when the Auditor General will come and audit my books. There should not be a situation of tension other than if something is fundamentally wrong. That is a different kind of tension.

Where there is potential for conflict is between the Privacy Commissioner and the Information Commissioner. You may remember that there was a discussion some months back about merging the two offices. I was asked by former Justice La Forest, who looked at this, to meet with him and give him the benefit of my experience in the Office of the Privacy Commissioner, and I advised against it. An important dynamic tension exists between these two offices, one that I think has to be maintained in two separate brains. By that, I mean it is much better to have two commissioners looking after specific interests and have them discuss an issue which may grind between the two offices and possibly reach an agreement. If an agreement cannot be reached in that kind of situation, even though I said I am reticent about going to court, I think it is much better for the court to decide ultimately which one shall be preponderant when a tension becomes unhealthy. That is the only area.

Between the Chief Electoral Officer and the Commissioner of Official Languages, unless I do not meet my commitments regarding official languages, there should be no tension. I can reassure you my intention is there. Public service integrity, all those things, I do not foresee anything other than what has been for some time this dynamic tension of privacy information becoming an issue.

Senator Di Nino: Thank you, Mr. Marleau. Obviously, if confirmed, we look forward to working with you.

[*Translation*]

Senator Dallaire: Mr. Marleau, I would like to shift gears. As you know, panic spread across western democracies, and in North America in particular, after September 11, 2001; often panic reigned when dealing with certain matters of national security. Civil liberties and human rights were tampered with and measures such as the Patriot Act in the United States and our equivalent were implemented.

That being said, I would like to know how comfortable you are with this new concept of national security within agencies such as Foreign Affairs, National Defence and the RCMP, for example.

Do you believe that the parameters are reasonable or should they be reviewed now that the dust has settled somewhat?

Mr. Marleau: Honourable senators, I must admit that, during my short tenure as interim Privacy Commissioner, the evolution of Canadian and international legislation on matters of security and its impact on individual privacy was a major concern. I need not remind you about the recent cases that illustrate the serious consequences of all this, even if the government has good intentions.

However, on the access-to-information side of things, I must say that, even though the context has changed since 2001, the legislation has been in place since 1983. In my opinion, national security issues in Foreign Affairs or National Defence or the Intelligence Service have not suffered because of this legislation. I see no obvious detrimental aspect that has caused serious problems for the government because the legislation sets out conditions for exemption and access.

The events of 2001 may force us to undertake a thorough review of the act, not only with that specific context in mind but substantively in terms of its scope, to ensure that there is a balance and some degree of transparency so that excessive secrecy and backroom dealings, though they are not necessarily ill-willed, can be avoided in favour of acting in full view of the Canadian public.

Senator Dallaire: Honourable senators, statistics — though I do not have specific references — show that since 2001 at least, and particularly since the coming into force of new national security legislation, a lot of blacked-out documents have been showing up instead of clear informative documents. This has been a growing trend.

As part of the in-depth analysis you intend to perform — an initiative I find particularly useful at this time, five years after the events — I would like to know if you could pay close attention to the information provided to determine whether the nature of the beast has changed with respect to potential abuse in these organizations.

Basically, do you plan to look at the current application and reaction from outside to answers provided?

Mr. Marleau: Honourable senators, in short, my answer is yes. I think that the events of 2001 prompted us to look at several aspects of the situation, but that is not the only reason to take a very careful look at the act.

• (2040)

I would say that the growing tendency of governments to react by becoming less transparent is obvious even to those who are not directly involved in these matters. The last commissioner did not mince words in this regard. As a Canadian citizen, I find that the urge to systematically become non-transparent is stronger than ever, not necessarily because of bad intentions, but perhaps simply because there is concern for the security of this country.

[Senator Dallaire]

A recasting of the law, a considered review, could put into context the issue you are raising and perhaps even make it possible to outline the changes that have occurred since 2001. If we have become more pessimistic, that must nevertheless mean something.

Senator Dallaire: Would you feel comfortable preparing analyses, to be made public, of the attitudes of various departments or agencies with regard to the application of the Access to Information Act in today's more demanding context?

Mr. Marleau: Honourable senators, I would be prepared to do that. I do not know what resources are available to the Office of the Commissioner to carry this out in the near future. My predecessors prepared performance reviews of various departments and it may perhaps be possible to provide a context for these reviews, based on whether they were prepared before or after 2001. I do not know if this is scientific enough for you, but I believe that we could at least discern the trends.

[English]

Senator Fraser: Welcome, Mr. Marleau. This comment follows on your remarks about reflexes. When you mentioned Keith Spicer, I was reminded that part of your job is to be a preacher, in addition to complaints, reworking the law and managing the place.

About a year and a half ago, the Canadian Newspaper Association published what it called a national audit. It was a thorough inquiry into freedom of information systems. It gave 75 per cent of federal departments a failing grade. In large measure, surely that had to do with institutional culture. If you talk to a civil servant over a drink one night, you will get 20 stories of how one resists complying with access-to-information requests.

While you wait for the law to be changed, fixed and made wonderful, what can you do to start chipping away at that culture?

Mr. Marleau: I think I can do two things. I do not know that I am a very good preacher. I think, though, that I am a very strong strategist. I do not like to waste my energies with loud advocacy. You have to be strategic in your interventions.

I am familiar with the national journalistic association's views. Some of the report cards I have read in the commissioner's report show a decline.

First, I would like to preach for the professional status of ATIP officers. In the public service, we have recognized professions such as internal auditors, the legal profession and human resource managers, who have a certain certification and a larger duty within a department than just reporting to the next manager. We can provide more training and certification to ATIP officers. We are getting the bureaucracy to buy into the accountability loop that the Access to Information Act creates.

There is a lot of good work being done by ATIP officers. Sometimes they are rolling the rock uphill, probably not necessarily because there is resistance. There is a lack of resources, a lack of priority and a lack of understanding about the act. If these ATIP officers had a higher certification, their cause would be advanced.

Second, I would devise a strategic series of interventions on where the common ground is. Commissioners do not want another study. There was a study in 2002, and there have been several other studies since. Let us find the common ground that can be brought into a piece of legislation.

Those are the two things I would do in the initial part of my term.

Senator Fraser: One of the frequent complaints is the very high cost of some access-to-information requests. I served on the Senate Anti-terrorism Committee. A woman told the committee about receiving a bill for \$25,000 for a request to the Department of the Environment.

I also have a note about a woman in Toronto who sought information on city spending on playground repairs. That is not national security or arcane science. She got a bill for nearly \$13,000 for that request. That would have been from the City of Toronto, not the federal government. Nonetheless, those examples make the point.

The Transport and Communications Committee recommended that access-to-information fees charged for searches be based on a reasonable price rather than the access. The government should be prepared to absorb some of those costs as part of running an open, transparent and democratic system. Have you views on that recommendation?

Mr. Marleau: Honourable senator, in an ideal world, it should be free because to some degree the taxpayer has already paid for the creation of this document. There is assembly, copying and time taken to put these files together. To my knowledge, there has not been a fundamental review of the fee structure since 1983. It is \$5 to apply. It was not designed to be self-sustaining. It is not a user-pay system and should not be. Twenty cents a page for photocopying is fairly steep.

There must be a balance between what a citizen and what a corporation is looking for. We could have classes of requests with cascading fees. Those are my initial thoughts on how to deal with the fee issue. Again, that has not been looked at in that context.

The minister's discussion document talked about the current cost of administering the ATI at \$50 million a year. The proposals by the former commissioner might raise it to \$150 million a year, which is triple. I have some difficulty with that. I do not know how they arrived at those figures. They are just there on the page. Multiple costs go into responding to a request for information that is part of the overhead of a department and if those costs are factored in, then they should not be attributed to access to information. Of course, in modern times costs must be looked at. I would suggest that a cascading set of fees be implemented.

• (2050)

I offered another thought to former Justice La Forest in his study from my experience in the privacy commission. The Privacy Commissioner has audit powers and can verify how the department organizes the information to guarantee privacy. The Information Commissioner has investigative powers and can use his or her powers to audit, if you like, but he or she does not have specific audit powers.

There is a technique in privacy that is very effective, which would not likely need an amendment to the act, but I would like to look at it for the information side. On the privacy side, there are privacy impact assessments, PIAs; and on the information side, we could have information impact assessments, IIAs. A government department launching a new program and database approach to managing information would call in the Information Commissioner to seek the commissioner's advice at the front end to know whether the information to be accessed will cost \$17 million or \$1.7 million. As well, the department would ask for recommendations on how that information could be structured so that it could be easily accessed in the context of who might be asking.

That is just a thought. Certainly, you do not need to amend the statutes for that to happen because it is not in the Privacy Act. It is an agreement between the commissioner and a volunteer deputy head who might want to save time and money dealing with complaints versus seeking advice so that there are no complaints.

Senator Fraser: Thank you for the most interesting answers.

[Translation]

Senator Comeau: Thank you, Mr. Marleau, for agreeing to stand for the position of Information Commissioner. We are very happy that you did.

As Privacy Commissioner and throughout your lengthy career, you have held positions where discretion was very important and access to information was closely guarded. If you are appointed Information Commissioner, will this habit of discretion pose a problem for you?

Mr. Marleau: Honourable senators, I do not believe that it will pose a problem. The role I played in the other place often required that I exercise discretion on several levels. I could not share all the information I had with the parties I was dealing with. This knowledge had to be invested, in one way or another, to move things forward.

When the Information Commissioner meets with a minister or agency head, he or she must take more or less the same attitude. He or she will share knowledge on which he or she will not have to take a public stand. That does not prevent the commissioner from acting within his or her authority when dialogue breaks down.

If you suspect me of having been too discreet in my duties as clerk and you are concerned now that I must become more transparent, let me reassure you. I believe that the transition will be fairly easy, as it was when I became interim Privacy Commissioner.

Senator Comeau: You will have to maintain a balance between discretion and transparency.

[English]

Senator Grafstein: Mr. Marleau, you are well known to this chamber as a result of your work here. I have one philosophical question and one specific question.

You have told us that you have to think strategically, and we agree. You cannot be all things to all people because of funding, budgets and allocation of time. Tell us how your organizing ideas

work philosophically when there is the question of access to information and the public's right to know. Tell us how your organizing ideas work philosophically when there is the question of privacy and the right to privacy, a good policy question that conflicts all the time. There is then the more complicated question of security —, the information that government must keep secure in the public interest, security and safety.

What goes through your mind, for a philosophical standpoint, when you have an issue that conflicts with all of these and you have the mandate, jurisdiction and responsibility to deal with access to information?

Give us some insight on how your mind works when there is a clash of three good public policy principles.

Mr. Marleau: I did not anticipate that question, but it is a good one. What you are trying to get at is the qualification and attitude of a commissioner. From a philosophical standpoint, both privacy and information are even-standing. One, in my view, does not trump the other just by the mere fact that one is called "privacy" and one is called "information." The Information Commissioner must have due respect and, as provided for in the act, must look to privacy as an issue when he makes a decision or a recommendation. Philosophically, you are coming at it from an attitude of open government, but you weigh that with privacy.

On the personal side, throughout my career, I have tried to do the right thing, not just getting it right but doing the right thing. If it means from time to time that my recommendation is that privacy is paramount, I will have no hesitation. If I believe that something is right, I will have no hesitation in saying so. I will have come at it from an open government approach before I reach that conclusion. Perhaps that answers your question.

Senator Grafstein: That is most helpful, Mr. Marleau. Allow me to provide an example of something that occurred by the predecessor of your office and good friend and a former parliamentarian, Mr. Reid. If my memory is flawed, you will correct me.

An information request was made to a former prime minister for his appointments book. The rationale was that the information officer had a right to know what a prime minister does in his office because a prime minister is the most public officer in the land.

My reaction to that, for your benefit, is that the Prime Minister is entitled to seek the best advice he can get from as many sources as possible. Some of that information might be public and some might be private because people cannot be candid with him if they are called to public account. We have private caucuses where we exchange candid views. We do not want those views to be made public because at times we take harsh and extreme positions on matters. It involves the exchange of good ideas. What is your take on that example?

Mr. Marleau: I followed that debate in the media but the information commission has not briefed me on the background of that case. I do not recall the outcome of the court case. The matter did go to the Federal Court, but perhaps it has not yet been decided. I am not in a position to second-guess the action taken by Commissioner Reid without having further knowledge of that file.

• (2100)

I will say, however, that there are issues that are part of our democratic makeup and our style of government; things such as cabinet confidence, solicitor-client privilege, Crown privilege and parliamentary privilege that will come into contact with access to information over time. Each one has to be looked at with regard to whether it is prejudicial to the particular practice.

The Minister of Justice has raised the solicitor-client issue, and the commissioner has taken the position that it is not a privilege that is everlasting; that a piece of advice given by a lawyer 100 years ago that is now part of history is not necessarily captured by solicitor-client confidence. I do not know; I would need to look at that. I would not say absolutely that an opinion from a lawyer filed with the Department of Justice 100 years ago, which could still be valid and be used by the minister today, would or would not qualify. However, when you get into the zone of cabinet confidences, Crown privilege, parliamentary privilege and solicitor-client privilege, you must be extremely cautious.

Senator Segal: Mr. Marleau, congratulations on having accepted this difficult and onerous task. It gives me hope for two reasons. The first is that a parliamentary personality of such standing and so well respected on all sides of the house would accept this burden. While you look remarkably younger than your advanced years, the fact that you would take this on at this point in your life in order that we will have the benefit of your wisdom and experience is very encouraging.

I want to ask you about your thoughts on differences between Bill C-2 and the legislation that governs your own activities. Currently, with respect to access to information, if a corporation or a not-for-profit organization were consulting with government for an appropriate reason and sharing confidential information in that context, a competitor could not have that information released without the permission of the third party.

However, under the lobbyist legislation as amended by Bill C-2, there is a requirement that when lobbyists interact with officers or agents of the Crown in the federal right, they have an obligation, as do the people with whom they are interacting, to disclose the nature and content of their interaction. It strikes me that we are faced with two different standards of disclosure, albeit inadvertently, I am sure.

Have you given any thought to what your role might be relative to the implementation of Bill C-2 and any unintended disagreements in the existing statutory basis by which you are governed?

Mr. Marleau: As I said earlier, I have barely had time to catch up on the final outcome of Bill C-2. I take note of what you have just said and I will make a point of looking into that possible discrepancy with regard to disclosure.

I am not entirely familiar with the Lobbyists Registration Act. I believe that the 1983 statute, before being amended by Bill C-2, adequately dealt with third-party disclosure, commercial activity and such things. I do not recall any commissioner's report that set that out as a real problem.

In our system of governance, practice is a very important part of how one exercises these duties within the law, of course. When there is a grey zone, how you have consistently done it before becomes an indicator of how to do it again.

Senator Segal: When you have had an opportunity, with your staff, to review any implementation issues that may emerge around Bill C-2 and to develop, as I suspect would be appropriate, an implementation plan relative to your own terms of reference, do you think you might share that plan with the public or with either of the Houses of Parliament in order that they can understand the way in which you choose to proceed?

Mr. Marleau: That is an excellent point. The number of agencies, Crown corporations and officers that have been added to the schedule will demand that such a plan be developed. I hope that the commission is already looking at the impact that the bill will have and at how it will need to adjust.

I will have no problem with sharing that plan. If I do not, you can always access me.

Senator Segal: I have a question about your own discretion. Sometimes lost in the debate about access to information is that if private corporations have the right to plan in their own interest in private, if foreign governments have the right to plan in private on matters that may impact negatively upon Canadian interests, and if individual Canadians have the right to make their own plans in ways that may or may not be in the national interest, then governments should have the right, within reason, to some measure of privacy in their plans in defence of the public interest.

Do you have any bias with respect to the balance between a democratic government's right to do some planning in private because many of the interests against which it is arrayed in the national interest may be also planning in private, or is it your view that all information should be made public as quickly as possible, except where protected or otherwise limited by law?

Mr. Marleau: Governments, and cabinets in particular, need to preserve the confidentiality of their deliberations in arriving at good public policy. They must not have their deliberations assailed because of differences of opinion on how to achieve public policy.

We have a very good precedent in the work of the Auditor General. She does not audit the policy or the advice given to ministers in the context of a comprehensive audit. Her audits stop at good stewardship of money against a legal framework, and the procedures and policies in place for the delivery of services and programs. I have a fundamental belief that, to a large degree, the Information Commissioner must stop there, too.

One difference compared to the Auditor General is the time factor. We had this debate in the last Parliament on when census information can become public. At one point, the information on how a cabinet made a decision becomes of historical significance, as does research. The only qualifier to the authority of the commissioner stopping at that door is that the time factor must be revisited.

[*Translation*]

Senator Dawson: Mr. Marleau, I join my colleagues in congratulating you. Back in 1981, when we adopted the Access to Information Act, a cellular telephone was as big as a Smart car, the Micom 2000 used to type up the bill was as big as a small car, and we did not have cell phones, email, the Internet or BlackBerry devices. Today, with developments in technology, you are right to insist on the modernization of the legislation.

• (2110)

The evolution of the tools that give us access to information has not been accompanied by modernization of the legislation governing this access. This is a legitimate endeavour and I encourage you to continue sending out the message that you delivered this evening. I also encourage you to persevere as nominee for this position, since the legislation must be updated because of technological changes and you must be given the tools to deal with these changes.

I will give the example of cell phones that take photos — Dick Tracy had one in the comic strip, but no one else did. I believe it is important that you have the tools to deal with this issue. Above all, I wish to congratulate you, encourage you and assure you that, insofar as I am concerned, I will be pleased to help you.

Mr. Marleau: Thank you. I would like to add a comment in response to this praise. I have already spoken to the vice-president of the University of Ottawa about this. The University of Ottawa, my alma mater — and this is not intended as advertisement — is the only university in Canada with both a civil law faculty and a common law faculty. A great deal of work has been done at the University of Ottawa in the area you mentioned; that is, information management in a legal context.

The vice-president of the University of Ottawa offered to arrange a lunch for me with the deans of both faculties to discuss this reality. It is just this kind of initiative that the new commissioner must take: not abandoning the complaint and investigation approach, but trying to respond to the impact of technology on information, which gives rise to complaints and investigations.

The Chairman: Mr. Marleau, on behalf of the Senate, I would like to thank you making yourself available. We wish you all the best and a very Merry Christmas.

Senator Comeau: Honourable senators, I think we all agree that the Committee of the Whole has completed its deliberations.

The Chairman: Honourable senators, is it agreed?

Hon. Senators: Agreed.

[English]

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Rose-Marie Losier-Cool: Honourable senators, the Committee of the Whole, which has received Mr. Robert Marleau, has asked me to report that the committee has concluded its deliberations.

**SOFTWOOD LUMBER PRODUCTS
EXPORT CHARGE BILL, 2006**

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Tkachuk, seconded by the Honourable Senator Keon, for the second reading of Bill C-24, to impose a charge on the export of certain softwood lumber products to the United States and a charge on refunds of certain duty deposits paid to the United States, to authorize certain payments, to amend the Export and Import Permits Act and to amend other Acts as a consequence.

Hon. Ross Fitzpatrick: Honourable senators, the trading relationship between Canada and the United States is vital to both our countries, each of which is the other's largest trading partner. Softwood lumber, the subject matter of Bill C-24, is one of the most important commodities that we export to the United States. In 2005, our lumber exports to the United States were valued in excess of \$8.5 billion Canadian. The Province of British Columbia is particularly dependent on this industry for jobs and prosperity, as it accounts for 57 per cent of the total compared to Quebec at 16 per cent; Ontario at 9 per cent; the Maritimes at 8 per cent; Alberta at 7 per cent; and Saskatchewan and Manitoba at 1 per cent each.

Softwood lumber is also one of the most significant trade irritants between Canada and the United States, and the disagreements over softwood lumber are of a long-standing duration. The latest incarnation has cost Canadian companies approximately \$5.3 billion in interim duties paid to the United States government. It has also cost many Canadian jobs. For example, in 2000 British Columbia had 34,948 jobs in forestry and logging. By 2002, that number had declined to 25,970. Similarly, in 2000, British Columbia had 43,352 jobs in the wood products industry. By 2002, that number had decreased to 34,448. Since 2002, those employment figures have remained flat. The job losses are particularly troublesome because the impact is heavily concentrated in certain small communities, especially in the British Columbia interior and the Kootenay region.

The United States economy has also suffered. It has been recorded that the current dispute has increased the price of lumber for home construction in the United States to the point where many Americans have not been able to obtain mortgages.

Honourable senators, a key characteristic of a prosperous trading relationship is stability. As I said in this chamber in May of this year, it is vitally important to settle the immediate dispute

and critical to the future of the industry and our trade relations to find a viable, long-term, efficient dispute resolution process. We must ask ourselves if Bill C-24, and the agreement that it implements, provides the requisite stability and certainty for a successful long-term trading partnership. Among the many criticisms of the agreement is that it is characterized as a capitulation because it surrenders \$1 billion that trade panels and tribunals have ruled are illegally collected duties. Of these funds, \$500 million will be available to the U.S. lumber industry, which it can use to finance legal and political attacks against our Canadian industry.

The agreement has also been criticized as an abandonment of our position that the Canadian softwood lumber industry is not subsidized when international trade panels, both at NAFTA and the World Trade Organization, have repeatedly upheld this position. The agreement also contains anti-surge provisions that deprive our Canadian softwood lumber industry of the necessary flexibility to deal with unexpected or unusual circumstances such as the pine beetle infestation.

There is also an escape clause, added at the insistence of the United States, that gives either country the option of walking out on the agreement only after 23 months.

Honourable senators, we must ask if 23 months represents the long-term stability and certainty that we were seeking. Have we ceded too much for too short a period? Could the Minister of Foreign Affairs and International Trade have done a better job of negotiating an agreement with our neighbour and largest trading partner? What about the dispute resolution process we sought contained in article XIV of the agreement? If they can destroy the dispute resolutions of NAFTA by simply ignoring them, will the provisions of article XIV of the agreement fare any better?

Much of the current agreement support is based on coercion and not consent. The agreement is flawed and the government used uneven, heavy-handed force to force the Canadian industry and communities to accept it. I feel it is time to put an end to the economic uncertainty on both sides of the border. However, at what price?

Honourable senators, I am afraid that we may never attain free trade, whatever that is in softwood lumber, but we must remain vigilant to ensure that we have fair trade, not in 23 months or seven years, but now.

Honourable senators, we must do the right thing for the industry and the country and consider this agreement very thoroughly in committee, and allow those who have been affected to speak before we approve it.

• (2120)

Hon. David Tkachuk: I move that Bill C-24 be referred to the Standing Senate Committee on National Finance.

An Hon. Senator: It is too early to do that.

The Hon. the Speaker: We are on debate on the motion for second reading.

Are honourable senators ready for the question?

Hon. Senators: Question!

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Hon. David Tkachuk: I move that the bill be referred to the Standing Senate Committee on National Finance.

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

An Hon. Senator: On division.

Motion agreed to and bill referred to the Standing Senate Committee on National Finance, on division.

INTERNATIONAL BRIDGES AND TUNNELS BILL

REPORT OF COMMITTEE ADOPTED

On the Order:

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Transport and Communications (Bill C-3, An Act respecting international bridges and tunnels and making a consequential amendment to another Act, with amendments and observations), presented in the Senate earlier this day.

Hon. Lise Bacon moved the adoption of the report.

She said: Honourable senators, the amendments adopted by the committee are technical and they do not change the substance of the bill. In the English version, subsection 7(1.1) and 24(1.1) have been amended. The terminology used in these provisions was not consistent with the terminology found elsewhere in the bill.

In subsection 7(1.1) and 24(1.1) in the bill, as amended by the House of Commons, there is a reference to levels of governments that have authority. The problem is that the terminology used elsewhere in the bill is not consistent with the term “authority,” and the term “jurisdiction” is used instead.

In order to ensure that no element of uncertainty is introduced in the meaning of the provisions by the presence of the two distinct terms, the proposed amendments are necessary.

[*Translation*]

There is also a legal problem with the terminology used in the French version. The municipalities are not covered in the current wording of subsections 7(1.1) and 24(1.1) of the bill. There is a reference to levels of government that have authority. It is well established in Canadian terminology, in the French language, that there are only two levels of government in Canada: the federal government and the provincial governments. Furthermore, we

cannot talk about the federal minister consulting with the other levels of government because, besides the federal government, there is only one other level of government. It is therefore impossible to use the plural in this sentence.

Finally, in clause 15(2), in French, the expression “l’administration municipale” is replaced with “la municipalité”. This is a correction to the translation.

[*English*]

Hon. Terry M. Mercer: Honourable senators, my speech says I am pleased to rise, but I am not overly excited about rising to debate this bill, as it presently exists. However, I am happy to talk on Bill C-3, the international bridges and tunnels act.

I would like to make it clear at the outset that I am not opposed to the premise or the content of this bill. However, I am dismayed by the quickness with which we are passing it through the Senate.

My colleagues will suggest we have already studied this bill in detail both here and in the other place. While that may be true, that does not necessarily mean that it is a reason to push the bill through the process.

Let us review what has happened thus far. Several amendments were made in the other place to improve upon some aspects of the bill, which included, for example, the concerns of municipalities. While in the Standing Senate Committee on Transport and Communications, we heard from stakeholders, including the Minister of Transport.

In the other place, and here in the Senate and in committee, much concern was expressed over the Windsor-Detroit corridor, as well as the other crossings in Canada. The Windsor crossing was mentioned several times, not only by the bridge operators but also by the Mayor of Windsor himself. This is not surprising as this is the most important passage of trade goods between Canada and the United States.

Traffic concerns were discussed and, most importantly, security matters in this era of heightened diligence post-9/11. That being said, you may wonder why I seem to be impeding the passage of this important piece of legislation. I do not think I am.

Honourable senators, as far as I am aware, the existing legislation has served us well. Special acts of Parliament are approved currently to build a bridge or tunnel. During the process, regulations are and have to be followed, including but not limited to addressing security concerns and monitoring environmental impacts on the region.

My overall concern with this bill is the processes that are currently being completed. If we pass this new legislation, what is to happen to those processes? Significant amounts of money and time have already been invested by government and by the private sector.

As an aside, honourable senators, I find it interesting that I, a very left-leaning Liberal, will be giving a speech defending private enterprise in Windsor, Ontario, while the government members, who are the free enterprise party, are pushing this and want to get this through the Senate very quickly. I look at myself in the mirror as I debate this motion and wonder what has gone wrong.

With respect to the people who are proposing new things in Windsor, in particular, do they have to endure the process again, the very processes that were already followed to the letter and in concurrence with existing statutes?

Our own briefings in committee on this topic stated that there are currently a number of proposals under consideration for the construction or alteration of new and existing facilities. We heard from one, the Ambassador Bridge. Why did we not hear from the others?

Honourable senators, let me be clear; I am not opposed to anyone, any private company or our own government, to follow the rule of the law. My concern is that we are doubling our efforts and impeding the process already in place. As well, are we standing in the way of free enterprise and private sector investment? Are we also increasing government spending at this point in time when we do not need to, when private enterprise is willing to do it for us?

The purpose of this bill, to my understanding, is to streamline the process. However, we cannot forget that many are already following the very processes the bill proposes to outline.

Honourable senators, I am also concerned that funding for the Windsor corridor and for many of the crossings in Canada previously announced may be in trouble. We have seen decreases in numbers of crossings at various places, including the tunnel from Windsor to Detroit. By the way, the committee that oversees that tunnel is chaired by, guess who? The Mayor of Windsor. I would suggest perhaps the Mayor of Windsor may have a conflict as he debates how other people see this.

In September of 2002, \$300 million was approved over five years as part of an overall federal-provincial plan for border crossings, signed by Premier Eves of Ontario and by Prime Minister Jean Chrétien on behalf of the Government of Canada. This deal will end in 2007. Has the funding been spent? If not, is it in trouble of being withheld if we pass this bill?

Some of my colleagues suggest that has nothing to do with the bill; I respectfully disagree. While no bill before us will be perfect and no bill will resolve our problems, I am concerned this bill may impede certain aspects of regulatory authority already working well. That is why I proposed an amendment in committee to section 57 to clarify that the current process be allowed to continue and be approved, using the current process. The law emanating from Bill C-3 would then apply to all proposals. That was to remove the part of the bill that was retroactive. Most of us do not feel comfortable passing retroactive laws. This seems reasonable and fair.

• (2130)

However, this amendment was not approved by the committee and, therefore, I will not impose the same amendment on the chamber. Since it did not pass the committee, I suspect it would not pass the chamber. However, I ask that honourable senators review what has happened with this bill and think about what I have said when you vote at report stage and at third reading of this bill.

[Senator Mercer]

Honourable senators, this seems to be a very straightforward bill but, quite frankly, it is a bill designed to do one thing and one thing only, and that is to impede the process of a private company in the Windsor-Detroit corridor and to allow the Government of Canada, in conjunction with the City of Windsor, to get involved in the profitable business of border crossings at the busiest border crossing in our country.

Hon. David Tkachuk: Honourable senators, I want to thank the members of the committee, who were very diligent in studying this bill. We spent some seven meetings on it. It is a fairly simple bill and has been before us in one form or another twice before.

We did not always agree on certain aspects of the bill and some of the issues were contentious. However, at the end of the day, the committee agreed that the bill only merited a few technical amendments that were left over from amendments, as the chairman of the committee has mentioned, from the House of Commons. We also added observations to the bill, on which we all agreed. I think that will help the government as it moves to implement the legislation, which reflected some of the concerns that some members had about certain aspects of the bill.

I want to especially thank Senator Bacon, the chair of the committee, who sets a standard for this chamber in reasonableness and common sense. We worked together on the observations, and they were passed unanimously.

Having said that, I also want to add that the Minister of Transport has asked me to convey to the Senate that upon passage of Bill C-3, the government will undertake to move as quickly as possible to ease congestion at all of Canada's bridge and tunnel crossings with the United States, particularly at Windsor and Fort Erie.

Hon. Jeremiah S. Grafstein: Honourable senators, I do not mean to impede the passage of this bill, but I am in a bit of a quandary, having heard Senator Mercer and the sponsor of this bill, Senator Tkachuk.

As honourable senators know, a key issue for productivity in this country is bridge crossings. Sixty-seven per cent of all goods by traffic flow through two border points: Windsor-Detroit and Buffalo-Niagara. These border points have not been expanded — I do not use the word “modernization” — in over 70 years. While our trade is racing ahead by leaps and bounds, these are still two choke points on the ground.

We have several situations, as Senator Mercer pointed out. The bridge is in private hands; the tunnel in Windsor is in city hands; and the other bridge is in other hands.

The report was interesting in that it is somewhat contradictory of the public interest. I am not clear because I did not sit on the committee and have not had a chance to read all the testimony. I am looking to the comments in the report, and it reads:

On the question of the federal government's potential involvement in future international crossing projects, your Committee heard suggestions that the provisions in the bill that allow the Minister of Transport to recommend to the Governor in Council whether or not to approve a project

would lead to a substantial conflict of interest for the Minister. On this point, officials noted that Transport Canada currently does not own or operate a single international bridge or tunnel. The existing federal structures belong to Crown corporations, which are autonomous even if the Minister of Transport is responsible for them. To quote an official, "the Minister has absolutely no authority over the day-to-day activities of these organizations, including those dealing with safety and security." Therefore, given the autonomous ownership and operational arrangements established for existing federal structures, your Committee is confident that the Minister of Transport will not be in a position of conflict of interest in the future. However, the Minister of Transport should be particularly sensitive to any situation where the federal government is in a situation where there is the appearance of conflict, especially when the interests of a private enterprise are at stake.

I am respectful of all of that, but, again, it is a clash here between the private interest and the national interest. The national interest demands that there be expansion of these two bridges. I am delighted to receive Senator Tkachuk's statement from the minister. However, I ask him this: Would the sponsor of the bill give the Senate of Canada assurance that the Government of Canada is committed to a speedy expansion of border crossings at the Windsor-Detroit and Buffalo-Niagara regions, which would be in the great interest of Canada's productivity and economy?

Senator Tkachuk: Yes.

The Hon. the Speaker: Is there further debate?

Are honourable senators ready for the question?

Hon. Senators: Question!

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

Motion agreed to and report adopted.

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Eyton, bill, as amended, placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

BUSINESS OF THE SENATE

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, given the late hour, I would like to move that all other items on the Order Paper stand in their place.

THE SENATE

MOTION TO EXTEND WEDNESDAY SITTING AND AUTHORIZE COMMITTEES TO MEET DURING THE SITTING ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of December 11, 2006, moved:

That notwithstanding the Order of the Senate of April 6, 2006, when the Senate sits on Wednesday, December 13, 2006, it continue its proceedings beyond 4 p.m. and follow the normal adjournment procedure according to rule 6(1); and

That committees of the Senate scheduled to meet on Wednesday, December 13, 2006, be authorized to sit even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[English]

Hon. Joan Fraser (Deputy Leader of the Opposition): Honourable senators, I should inform the house that the Deputy Leader of the Government did raise this matter with me earlier. It was a clear undertaking that the only purpose of extending the sitting tomorrow beyond what would otherwise be our four o'clock adjournment would be to enable us to get through the Order Paper in normal form. The intention is not to prolong the sitting unduly.

As we all know, sometimes four o'clock comes on Wednesday and there are still several items that everyone wishes we could dispose of, but we have the guillotine at four o'clock. The idea here is to turn off the guillotine without unduly prolonging the work of the chamber. It was on that understanding that I said I thought this motion would be acceptable.

Hon. Terry M. Mercer: Honourable senators, again, like everyone else, I am anxious to get out of here this evening.

I am curious. If we go beyond four o'clock tomorrow afternoon, is there an indication as to when it is anticipated the sitting will end? Will it be four to six, four to eight, four to five? For those of us who have other commitments tomorrow, it would be practical to know that.

Senator Comeau: I can assure Senator Mercer that the Deputy Leader of the Opposition and myself had an extensive conversation on this subject.

• (2140)

I am very much aware that there is a special activity going on tomorrow night. I assured the deputy leader on the other side that we would be out of here with plenty of time to reach the other activity. That is not meant in any way to try to place any kind of hitch in those plans because from time to time we also wish to have that courtesy extended to us. To date, we have had the best of cooperation. Therefore, I would not in any way suggest that we will be uncooperative. That is not meant in any way to cause any undue harm to tomorrow night's activities.

Senator Mercer: I am glad Senator Comeau has said that. It is not I whom you need worry about, Senator Comeau. I will introduce you to my wife.

Hon. Jeremiah S. Grafstein: I was not clear on your motion. Do I require leave now for the Standing Senate Committee on Banking, Trade and Commerce to sit at 4 p.m.?

Senator Comeau: That is covered by part of the motion so that all committees sitting at that time will be permitted to sit at their regular time.

The Senate adjourned until Wednesday, December 13, 2006, at 1:30 p.m.

CONTENTS

Tuesday, December 12, 2006

	PAGE		PAGE
Royal Assent		Fisheries and Oceans	
Notice.		Committee Authorized to Meet During Sitting of the Senate.	
The Hon. the Speaker.	1486	Hon. Bill Rompkey	1491
<hr/>			
SENATORS' STATEMENTS		Foreign Affairs and International Trade	
President of Iran		Committee Authorized to Meet During Sitting of the Senate.	
Holocaust Denial Conference.		Hon. Hugh Segal	1491
Hon. Jerahmiel S. Grafstein	1486	Notice of Motion to Authorize Committee to Extend Date of Final Report on Study of Matters Relating to Africa.	
Liberal Party of Canada Convention		Hon. Hugh Segal	1491
Anti-Semitic Comments.		Agriculture and Forestry	
Hon. Yoine Goldstein.	1486	Committee Authorized to Meet During Sitting of the Senate.	
Hon. Mobina S. B. Jaffer	1487	Hon. Joyce Fairbairn	1491
Ms. Laura Gainey		Young Volunteers	
Lost at Sea.		Presentation of Petition.	
Hon. Francis William Mahovlich.	1487	Hon. Jean Lapointe	1491
Genocide		<hr/>	
Hon. Roméo Antonius Dallaire.	1487	QUESTION PERIOD	
<hr/>			
ROUTINE PROCEEDINGS		Finance	
Canadian Air Transport Security Authority		Budgetary Cutbacks.	
Report Tabled.		Hon. Daniel Hays	1492
Hon. Gerald J. Comeau	1488	Hon. Marjory LeBreton	1492
Commission of Inquiry into Actions of Canadian Officials in Relation to Maher Arar		The Environment	
Second Report Tabled.		Climate Change Programs—Audits and Assessments.	
Hon. Gerald J. Comeau	1488	Hon. Grant Mitchell.	1493
First Nations Jurisdiction Over Education in British Columbia Bill (Bill C-34)		Hon. Marjory LeBreton	1493
Report of Committee.		Agriculture and Agri-Food	
Hon. Gerry St. Germain.	1488	Canadian Wheat Board—Proposal to Eliminate Single-Desk Selling Function.	
Study on Concerns of First Nations Relating to Specific Claims Process		Hon. Lorna Milne	1494
Report of Aboriginal Peoples Committee Tabled.		Hon. Marjory LeBreton	1494
Hon. Gerry St. Germain.	1488	Foreign Affairs	
Study on Issues Relating to Fiscal Balances Among Orders of Government		Somalia—Internal Strife.	
Interim Report of National Finance Committee Tabled.		Hon. Mobina S. B. Jaffer	1494
Hon. Joseph A. Day.	1488	Hon. Marjory LeBreton	1495
National Finance		Answers to Order Paper Questions Tabled	
Budget—Study on Issues Relating to Fiscal Balances Among Orders of Government—Report of Committee Presented.		Indian Affairs and Northern Development— Auditor General's Report 2003.	
Hon. Joseph A. Day.	1488	Hon. Gerald J. Comeau	1495
Judges Act (Bill C-17)		Veterans Affairs—Deployment of Staff.	
Bill to Amend—Report of Committee.		Hon. Gerald J. Comeau	1495
Hon. Joseph A. Day.	1489	The Senate	
International Bridges and Tunnels Bill (Bill C-3)		Iran—Notice of Motion to Condemn Holocaust Denial Conference.	
Report of Committee.		Hon. Jerahmiel S. Grafstein	1495
Hon. Lise Bacon	1489	<hr/>	
Hon. Anne C. Cools.	1491	ORDERS OF THE DAY	
Hon. Gerald J. Comeau	1491	Business of the Senate	
		Hon. Gerald J. Comeau	1496
		First Nations Jurisdiction Over Education in British Columbia Bill (Bill C-34)	
		Third Reading.	
		Hon. Hugh Segal	1496

	PAGE
Judges Act (Bill C-17)	
Bill to Amend—Third Reading—Debate Adjourned.	
Hon. Pierre Claude Nolin	1496
Hon. Jeremiah S. Grafstein	1498
Hon. Anne C. Cools	1498
Hon. Yoine Goldstein	1501
Hon. Joseph A. Day	1504
Hon. Lorna Milne	1505
Hon. Lowell Murray	1505
Hon. Serge Joyal	1506
Hon. Mobina S. B. Jaffer	1507
Softwood Lumber Products Export Charge Bill, 2006 (Bill C-24)	
Second Reading—Debate Suspended.	
Hon. Grant Mitchell	1507
Hon. Hugh Segal	1509
Hon. Terry M. Mercer	1509
Hon. Pierrette Ringuette	1510
Royal Assent	1510
Business of the Senate	
Hon. Gerald J. Comeau	1511
Information Commissioner	
Appointment of Robert Marleau—	
Consideration in Committee of the Whole.	
The Chairman	1511
Senator Comeau	1511
Robert Marleau	1511
Senator Kinsella	1513
Senator Milne	1514

	PAGE
Senator Di Nino	1515
Senator Dallaire	1515
Senator Fraser	1516
Senator Grafstein	1517
Senator Segal	1518
Senator Dawson	1519
Report of Committee of the Whole.	
Hon. Rose-Marie Losier-Cool	1520
Softwood Lumber Products Export Charge Bill, 2006 (Bill C-24)	
Second Reading.	
Hon. Ross Fitzpatrick	1520
Hon. David Tkachuk	1520
Referred to Committee.	
Hon. David Tkachuk	1521
International Bridges and Tunnels Bill (Bill C-3)	
Report of Committee Adopted.	
Hon. Lise Bacon	1521
Hon. Terry M. Mercer	1521
Hon. David Tkachuk	1522
Hon. Jeremiah S. Grafstein	1522
Business of the Senate	
Hon. Gerald J. Comeau	1523
The Senate	
Motion to Extend Wednesday Sitting and Authorize Committees	
to Meet During the Sitting Adopted.	
Hon. Gerald J. Comeau	1523
Hon. Joan Fraser	1523
Hon. Terry M. Mercer	1523
Hon. Jeremiah S. Grafstein	1524



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