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OFFICIAL REPORT
(HANSARD)

Tuesday, April 30, 1996

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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

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THE SENATE

Tuesday, April 30, 1996

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, I am pleased to inform the Senate that the pages exchange program between the Senate and the House of Commons is continuing. I wish to introduce the two House of Commons pages who will be with us this week. First, Meaghan Cain from Lethbridge, Alberta. Meaghan is pursuing her studies in General Arts at the University of Ottawa. Welcome.

[*Translation*]

Samuel Saint-Onge is in administration at the University of Ottawa. He comes from Fredericton, New Brunswick. Welcome Samuel.

[*English*]

SENATORS' STATEMENTS

THE SENATE

SPEECH FROM THE THRONE—APOLOGY

Hon. Philippe Deane Gigantès: Honourable senators, I rise to offer my thanks and also to apologize. I offer you my thanks for the friendship and sympathy you have shown me, and I apologize because I embarrassed some of you. On the day of the Speech from the Throne, I fell briefly asleep. That was captured on film, and shown around the country. Several senators have spoken to me about the embarrassment that they felt upon being chided with the fact that senators sleep in the Senate.

I have been asked by various talk shows to explain myself, but declined since I did not think that one paraded one's private grief on talk shows.

For many months, I have not been able to sleep too well. I am under medication, as I was then. I am ashamed that it happened, and I am sorry.

Hon. Orville H. Phillips: Honourable senators, I do not think the honourable senator should feel self-conscious in any way. The reaction of most Canadians was to go to sleep during the Speech from the Throne, and I do not see why the honourable senator should do anything different.

• (1410)

ROUTINE PROCEEDINGS

OFFICIAL LANGUAGES

ANNUAL REPORT OF COMMISSIONER TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table the annual report of the Commissioner of Official Languages covering the calendar year 1995.

PRESENT STATE OF FINANCIAL SYSTEM

INTERIM REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ON STUDY—CONFIRMATION OF TABLING—MOTION FOR CONSIDERATION

Hon. Michael Kirby: Honourable senators, I wish to inform the Senate that, pursuant to the order adopted by the Senate on Thursday, March 28, 1996, I deposited with the Clerk of the Senate the second report of the Standing Senate Committee on Banking, Trade and Commerce entitled, "Crown Financial Institutions" on April 1, 1996.

I move that the report be taken into consideration at the next sitting of the Senate.

Motion agreed to.

SCRUTINY OF REGULATIONS

FIRST REPORT OF COMMITTEE—MOTION FOR CONSIDERATION

Hon. P. Derek Lewis: Honourable senators, I wish to inform the Senate that on Tuesday, April 23, last week, I tabled the first report of the Standing Joint Committee for the Scrutiny of Regulations.

I now move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

Motion agreed to.

VISITORS IN GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of a delegation of seven regional chairs and three members of the Federation Council of Russia. They are here under an exchange program with the Parliament in Moscow that has been in operation for two years, and which has now been extended to the regions. We wish to welcome you to the Canadian Senate.

Hon. Senators: Hear, hear!

ADJOURNMENT

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*h*), I move:

> That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 1, 1996 at 1:30 p.m.

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

Hon. David Tkachuk: No!

The Hon. the Speaker: Leave is not granted.

Senator Graham: Honourable senators, the motion, with leave, requires unanimous consent. Since leave was not granted, we will sit at the normal time, which is two o'clock, instead of 1:30 p.m.

CANADIAN ASSOCIATION OF FORMER PARLIAMENTARIANS BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-275, to establish the Canadian Association of Former Parliamentarians.

Bill read first time.

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

On motion of Senator Graham, bill placed on the Orders of the Day for second reading on Thursday next, May 2, 1996.

[*Translation*]

TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY CANADA'S INTERNATIONAL COMPETITIVE POSITION IN COMMUNICATIONS

Hon. Lise Bacon: Honourable senators, I give notice that, on Wednesday, May 1, 1996, I will move:

> That the Standing Senate Committee on Transport and Communications be authorized to examine and report upon Canada's international competitive position in communications generally, including a review of the economic, social and cultural importance of communications for Canada;
>
> That the papers and evidence received and taken on the subject by the committee during the First Session of the Thirty-fifth Parliament be referred to the committee;
>
> That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and
>
> That the committee present its final report no later than December 31, 1997.

[*English*]

BANKING, TRADE AND COMMERCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO ENGAGE SERVICES

Hon. Michael Kirby: Honourable senators, I give notice that on Wednesday next, May 1, 1996, I will move:

> That the Standing Senate Committee on Banking, Trade and Commerce have power to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such bills, subject-matters of bills and estimates as are referred to it.

[*Translation*]

QUESTION PERIOD

NATURAL RESOURCES

CLOSURE OF CANADIAN CENTRE FOR MAGNETIC FUSION—GOVERNMENT POSITION

Hon. Thérèse Lavoie-Roux: My question is for the Leader of the Government in the Senate. Honourable senators, the Canadian Centre for Magnetic Fusion, located in Varennes, Quebec, was established in 1987 to operate the Tokomak, a device used in research on fusion. The centre is independent and is run by a board of directors.

Research into fusion may, in the long term, lead to the development of an environmentally sound method for producing electricity on a large scale.

This project was started in 1987. The government made a 30-year commitment, because this is very long-term research. Then all of a sudden, in the budget, it is decided without any consultation with those involved — the Government of Quebec, Hydro-Québec and the centre itself — that funding will be cut and the project terminated in March 1997.

How can the Leader of the Government explain the government's position, considering that research is proceeding?

[*English*]

In its 15 years of operation, the reputation of this project has risen to international prominence as one of a handful of centres in the world studying in that field. Japan is another area where this type of research is taking place.

Could the Leader of the Government in the Senate explain the rationale of the government in scrapping 15 years of internationally acclaimed work and developed expertise in such an important area as alternative, environmentally sound energy sources?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I regret that I cannot give my honourable friend a sufficient answer today. I will try to do so on another occasion.

It is true that federal funds for the fusion projects in both Quebec and Ontario will end. In addition, basic nuclear research in Ontario will also be cut.

• (1420)

As I understand it, in the interests of the whole area of consolidating resources federally, and in order to pursue the objectives of the program review, Natural Resources Canada made a judgment that the fusion pursuits were at a lower priority than others. I realize this is not a satisfactory answer at all for my honourable friend. However, Natural Resources Canada will continue to fund research and development on energy efficiency and renewable energy sources at Varennes.

In the meantime, I will try to elicit more details for my honourable friend as to the rationale behind the decision. Nonetheless, that was the decision. I regret that I cannot give a more positive answer to the honourable senator.

[*Translation*]

Hon. Roch Bolduc: Honourable senators, is the Leader of the Government in the Senate aware that, in Canada, some budgets are being cut while others are increasing? It is important to realize this.

Senator Lavoie-Roux: Honourable senators, I support the question put by my colleague Senator Bolduc. Official government statements give all kinds of reasons for reducing the deficit. We all agree. At the same time — and I am happy for my colleague from British Columbia — the budget for research and development in that province is being increased from $19 million to $35 million. I imagine the minister will explain those decisions.

[*English*]

While the minister is seeking a response, will she also provide an explanation as to how the scrapping of this project fits in with what is set out in the Liberal government's Red Book? It is stated in the Red Book:

> The lack of an R&D culture within government...hampered our ability to spur on new technological developments and bring them from the laboratory to the market.

Will the cancellation of the magnetic fusion project enhance the bringing to market of this type of technology?

This is a most serious question considering the money that has been spent already on this project, as well as the interesting results which have been achieved. Everyone knew it would be a long-term project. Japan is still working on it. I would like to have one good reason why this project is being scrapped with no consideration being given to the consequences, the money involved, and the people working there. Approximately 30 doctors of physics are currently working on this project, not to mention the many technicians and researchers.

I hate to say this, but this decision reminds me of the events leading up to the disappearance of the Collège St-Jean. This is a serious question. I would like the minister to obtain all of the answers on this matter and, if possible, deliver them here in the Senate chamber.

Senator Fairbairn: Honourable senators, this is indeed a serious question. There is no doubt in my mind that, in the difficult choices that were being made, this project was given serious consideration. However, I will try to obtain further information on that specific project for my honourable friend.

I should mention that, in the field of research and development, the federal government spends $700 million in Quebec, which represents about 23 per cent of its total spending. The government also spends about a quarter of its regional research and development money in that province. However, that is not germane to my honourable friend's question. I will do my best to obtain the information she wishes.

Senator Lavoie-Roux: Honourable senators, I want the minister to understand that I am not asking questions about the statistics. We know that Ontario receives 20 per cent, Quebec receives 7 per cent, or whatever, and B.C. receives another amount. That is not the point. The point is that when someone —

[*Translation*]

— is involved in a long-term project such as this one, there are consequences for research in the medium and the long term. If the research was worthless, I would say that we are in agreement, and that we will begin again another time. The purpose of my question is not to get at comparisons between provinces, but at the manner in which the government establishes its priorities. Once again, the government is ignoring another small item in its Red Book.

[*English*]

FISHERIES AND OCEANS

EXPORT OF GROUNDFISH FROM NOVA SCOTIA— REQUEST FOR ANSWER TO ORDER PAPER QUESTION

Hon. Gerald J. Comeau: Honourable senators, my question is for the Leader of the Government in the Senate. On November 6, 1995, I placed on the Order Paper a question which related to the export of groundfish from southwestern Nova Scotia. I have yet to receive a response to that question. It is a source of embarrassment for me, when I go home to my area on weekends, not to have an answer to that question.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, as my honourable friend will know, the issue of questions from the previous session of Parliament is now before the Speaker for a ruling. Perhaps I should await that ruling before dealing further with my honourable friend's inquiry.

I am well aware that there were a great number of questions answered in the last session of Parliament, just as there were a number that were not answered. I await the Speaker's ruling after which, perhaps, there will be a way to fulfil my honourable friend's desire concerning this issue.

Senator Comeau: Honourable senators, I do not think that my constituents, who are asking about the government's position on this matter, would take too kindly to being told that the government does not want to respond because the Speaker might say that the government need not respond to the question. I am asking the Leader of the Government to respond to the question on behalf of the constituents of my area without having to wait for a Speaker's ruling on a question which is now six months old.

It is embarrassing for me to go back to my home area on weekends, visit the fish plants and say to the people there that the government cannot answer the question. It is a most important question, one to which we should have a response without having to wait for the Speaker to tell the leader whether she should respond or not, with all due respect to the office of the Speaker.

Senator Fairbairn: Honourable senators, this is a new session of Parliament. My honourable friend has asked me a renewed question, which I will pursue, as I was attempting to pursue the previous question. I will enquire about this matter again.

• (1430)

GOODS AND SERVICES TAX

HARMONIZATION WITH PROVINCIAL SALES TAXES—NECESSITY FOR COMPENSATION TO ATLANTIC PROVINCES—GOVERNMENT POSITION

Hon. Orville H. Phillips: Honourable senators, last week the Leader of the Government in the Senate sounded a great deal like Sheila Copps when she was describing the benefits to the Atlantic provinces of harmonizing the GST and the provincial sales taxes. If the benefits are as she described them, why is it necessary to offer $1 billion in compensation to the three Atlantic provinces who have agreed to harmonization?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, the benefits to Atlantic Canada in the longer term will be profound. As I said last week, in terms of consumers, jobs, business prospects, and exports, in the interim period there will be a change in the sales tax revenue in Atlantic Canada. For that reason, the federal government is sharing with the provinces in Atlantic Canada which have agreed to enter into this new harmonization process the initial burden of getting back on track, on the longer term, with the harmonized tax. I do not regard it as being wrong for the federal government to do this, as others have suggested. In fact, it is right for the federal government to do this.

The three provinces which have agreed on this plan believe it to be the very best deal they could have for the future of their provinces. They are sharing with us, in a transitional phase, this additional sum of money which will compensate them for the loss of revenue that they will sustain with the lowering, to a degree, of the sales tax rate in their provinces.

There is nothing behind the scenes about this agreement. Indeed, there is a public formula to which every province in Canada interested in harmonizing with the federal government will have access if they meet the requirements. Certainly, the aforementioned provinces in Atlantic Canada meet the requirements, and we are trying to be helpful to them in this way.

Senator Phillips: Honourable senators, with that answer, again the leader sounded a good deal like Sheila Copps.

HARMONIZATION WITH PROVINCIAL SALES TAXES—STUDIES CONDUCTED ON ADVERSE EFFECTS—REQUEST FOR PARTICULARS

Hon. Orville H. Phillips: Did the federal government conduct any studies on the adverse effects of the harmonizing of the two taxes? If so, would the honourable senator table those studies?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, this issue has been discussed at length with all of the provinces for two and a half years. Were there studies? I do not know. However, I will look into that matter for my honourable friend. Clearly, there have been very involved discussions with the premiers and with the finance ministers of the various provinces.

In any circumstance, these kinds of taxation issues are not entered into lightly. I can assure my honourable friend that those representing the provinces in Atlantic Canada who decided to take advantage of this opportunity would have done so with their eyes wide open and focused on the future, where there will be gains for the people of those provinces through this harmonization process.

Senator Phillips: I look forward to seeing the studies.

HARMONIZATION WITH PROVINCIAL SALES TAXES—NATURE AND TIMING OF COMPENSATION PAYMENTS—GOVERNMENT POSITION

Hon. J. Michael Forrestall: Since the Leader of the Government in the Senate seems to be very much up to date on the matter of harmonization, could she tell us whether the payments in lieu of lost revenue will come ahead of the loss or after the loss? In other words, will the provinces be required to pay for all of the loss and then receive a payment, or will they receive a payment up front? Is the leader in a position to give us an indication as to what stage in the process a form of *ex gratia* payment will be made?

Hon. Joyce Fairbairn (Leader of the Government): The payments will be made annually, and the amounts are known now. The parties to this agreement will not wait until the end of four years to tote up any losses. The payments will be made on an annual basis, with the best efforts and knowledge that the two levels of government can bring to bear on the matter.

Senator Forrestall: I appreciate that very much. I am not sure of the actual figure, but if, for example, in Nova Scotia the figure was $180 million, and the province received that amount at the first of the year and banked it, that would mean another $18 million or $20 million annually in the provincial coffers.

Is this to be a game of smoke and mirrors? Is there any chance of that happening? Or will this be a transparent and open transfer of funds to the three Atlantic provinces?

Senator Fairbairn: Honourable senators, this is a transparent process. The formula is a transparent adjustment formula which is triggered once the provinces lose more than 5 per cent of their revenue. At that point, on an annual basis, the federal government will pay 100 per cent of that amount for the first two years, 50 per cent the third year, and 25 per cent for the last year. In any event, I will be pleased to ask of my colleagues the question with respect to the timing.

However, there is nothing behind the scenes or behind closed doors about this agreement. It has been openly stated, and I am confident that I can reassure my honourable friend.

[*Translation*]

HARMONIZATION WITH PROVINCIAL SALES TAXES—
STATE OF NEGOTIATIONS WITH THE PROVINCES

Hon. Pierre Claude Nolin: Honourable senators, now that the government has understood that the policy introduced by the Mulroney government was the best and the only solution, and now that the government has recognized that harmonizing federal and provincial sales taxes was the only option, can you tell us how negotiations are going with the other six provinces?

We now know that Quebec was right. Three provinces of Atlantic Canada recently recognized that fact. How is the harmonization process going with the other six provinces?

[*English*]

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, the position taken by the federal government will produce, for those who take advantage of it, a result that will be much fairer to consumers and small businesses, and will offer considerably more benefits than has been the case hitherto.

Since the announcement was made last week concerning the three provinces of Atlantic Canada, I do not know whether or not, within that week-long period, there has been any immediate continuation of discussions with the other individual provinces. However, it is certainly the intent of the Minister of Finance to press on as vigorously as he can in attempting to bring in the other provinces in Canada, for the culmination of what would be a national Canadian sales tax. That is the goal of the Minister of Finance, and he is confident that the other provinces will come along as well, particularly when they contemplate the benefits which will accrue to the provinces that have had the commitment and the foresight to take advantage of this proposal, which will be of benefit to every part of the country.

[*Translation*]

Senator Nolin: Honourable senators, since the Leader of the Government represents Alberta, does she have more information regarding what is going on between her province and the federal government? At what stage are the discussions with Alberta?

[*English*]

Senator Fairbairn: With respect to Alberta, the Minister of Finance has made it clear all along to the government and to the people of Alberta that, since that province does not have a provincial sales tax, the federal government is not pushing them to harmonize.

• (1440)

However, it is not penalizing them in any way for not having one. The people of Alberta are very clear about where they stand vis-à-vis this process. I am sure it is known to my honourable friend that the Premier of Alberta has suggested publicly that the basic tax be adjusted, and no doubt those views will be expressed, if they have not been already, by the Provincial Treasurer, Mr. Dinning. He and Mr. Martin are in regular communication. They will discuss these issues.

However, as far as the province of Alberta is concerned, the federal government is not putting pressure on Alberta to change its position, which it believes is to the benefit of its citizens, in the same way that other provinces make decisions for its citizens.

HARMONIZATION WITH PROVINCIAL SALES TAX—
COMMENTS BY MEMBERS OF FEDERAL GOVERNMENT—
REQUEST FOR CLARIFICATION

Hon. Herbert O. Sparrow: Honourable senators, my question is for the Leader of the Government in the Senate. The leader suggested in her last answer that no pressure has been put on Alberta to have a national tax that is equivalent to the other provinces. Why then are they putting that pressure on the Province of Saskatchewan? That government does not want a harmonized GST and PST, and has stated its position definitively.

I know of very few people in the province of Saskatchewan who would want a harmonized GST. Yet many sources in the federal government, including the Minister of Finance, blame the Province of Saskatchewan for not having a harmonized GST and provincial sales tax. What right has the Minister of Finance, the Prime Minister or anyone else in the federal government to tell the people or Government of Saskatchewan what is best for us? I ask the leader, if she would, to answer that question.

There is a memorandum in existence which says that the advantages for Saskatchewan are too good to miss, but we cannot seem to find out what exactly the "good" is that we will miss if the GST is not harmonized with the provincial sales tax. How could Saskatchewan deal with a harmonized tax when there is no provincial sales tax in Alberta? We have many problems with cross-border shopping now. Harmonizing the taxes means that the citizens of Saskatchewan will be taxed on all of their services and products which are not now taxed.

As I mentioned, we have this great problem with cross-border shopping and the 9-per-cent tax. What will be the impact on such shopping when we have a 14-per-cent tax on the services?

It has been said that harmonization will be encouraging to business, particularly small business. I know of no small business that is encouraging harmonization in the Province of Saskatchewan. You can ask anyone in the restaurant industry or the building industry; ask any plumber, electrician or contractor who has never collected a provincial sales tax whether he wants to start doing so. This action will not relieve any burden. It will increase the burden on 60 per cent of the businesses of Saskatchewan.

We may harmonize the tax for those businesses which already collect both, but that represents only 40 per cent of all

businesses. The burden will increase for the other 60 per cent. How can the government say that it decreases the burden, and that small business wants this change? I have no idea.

Saskatchewan currently collects over 48 per cent of its sales tax from taxing business inputs. That is not affected; the consumers will have to pick up that tab. The consumers will pick up another 48 per cent of the taxes collected in Saskatchewan. Surely the consumers of Saskatchewan are not interested in doing that.

Will the Leader of the Government in the Senate tell me why the federal government is blaming Saskatchewan for not wanting this tax when neither the government nor the people have asked for it and, in fact, are opposed to it? Is it possible that she could appeal to the Minister of Finance to leave us alone?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I have listened carefully to what my honourable friend has said. I can assure him that the federal government is not blaming Saskatchewan or any other province in Canada over this particular issue. The federal government has been trying to work out an arrangement with each of the provinces over the last two and a half years. Three of the provinces have agreed to a proposition that was put to them. The door remains open for the Government of Saskatchewan, if it so chooses. No one is blaming the Province of Saskatchewan, or forcing that province in any way to take an action which they do not wish to take.

My honourable friend has very strong views on this issue. He expresses strong views on behalf of those in his province and perhaps the government of his province. I am sure those views are considered back and forth between ministers, but I assure my honourable friend that no blame is being laid on anyone. There is no movement to force my honourable friend's province to do something it chooses not to do.

Senator Sparrow: Honourable senators, I beg to differ. That is exactly what the Minister of Finance is doing; he is blaming the Government of Saskatchewan for not harmonizing its sales tax with the goods and services tax. He says, "We want it. They do not want it." The blame is there. The Minister of Finance has been making comments and threatening that we will suffer politically because of our position. He is trying to tell the people of Saskatchewan that they are missing out on a great deal by not harmonizing their taxes, and the blame goes to the provincial government, not to the federal government. He has stated that the federal government is asking for harmonization, but he has not admitted that it will have a detrimental effect on the people of Saskatchewan.

Senator Fairbairn: Honourable senators, I believe the difference here is that the Minister of Finance does not share the view that harmonization would be a harmful agreement for the people of Saskatchewan. Obviously, my honourable friend and the Minister of Finance do not agree at this point in time, and neither does the Government of Saskatchewan.

To get back to the initial question by my honourable friend, in promoting what he believes to be the advantages of the harmonization process, the Minister of Finance is not blaming either the government or the people of Saskatchewan. The decision as to whether they wish to be involved lies with them. It is a question of judgment and opinion as to which is the better way. However, no blame is being placed on Saskatchewan, and none is intended.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, by way of a supplementary question, how does the Leader of Government in the Senate reconcile her assertion that the Minister of Finance is quite willing to let the provinces take the initiative on whether or not to harmonize with a statement the minister made on March 12, when he complained that the provinces were refusing to sit down with him to discuss harmonization. He stated that he could not negotiate alone, and that he believed it was incumbent upon provincial governments to recognize that Canadians want to have a single tax.

The Minister of Finance said then, and must still believe, that Canadians want a single tax, but the provincial governments are not cooperating with him. Now we hear today that it is the other way around; it is for the provincial governments to take the initiative and tell the Minister of Finance whether or not they want harmonization.

The government cannot have it both ways on this issue of harmonization; nor can you have it both ways on Somalia, or on any other issue. The minister cannot say one thing one day and then change his comments another day to suit the current thinking of this government.

The minister said that the provinces will not play ball because they do not understand. The minister is saying, in effect, that his government knows best, and that we should harmonize because Canadians want a single tax. Then we hear from Senator Sparrow and others that many Canadians do not want a single tax.

Senator Fairbairn: Honourable senators, obviously there were words of frustration in the —

Senator Lynch-Staunton: Come on! Like Sheila Copps?

Senator Berntson: In the heat of an election!

• (1450)

Senator Fairbairn: There have been discussions with all of the provinces.

Senator Tkachuk: Even Alberta?

Senator Fairbairn: The Minister of Finance is not forcing anyone. He is, and has been, making an offer for a considerable period of time. He will continue to do so. He will continue to discuss and to hope that provinces across the country will agree to take part in a harmonization process. It is that simple.

Senator Lynch-Staunton: That is not what he said.

Senator Fairbairn: He is not contradicting himself at all.

Senator Lynch-Staunton: You are contradicting him.

HARMONIZATION WITH PROVINCIAL SALES TAXES—
POSSIBILITY OF PENALTIES FOR PROVINCES NOT HARMONIZING—
GOVERNMENT POSITION

Hon. Consiglio Di Nino: Honourable senators, I have a great deal of sympathy for Senator Sparrow and his position. As a matter of fact, I thought it was John Nunziata speaking.

Honourable senators, my question is a follow-up to the answer the minister gave Senator Nolin a moment ago. I want to be sure I did not misunderstand what the minister said. When the senator asked the minister about the situation in Alberta, I believe she said, "We are not pressuring them." I believe she also said, "We are not penalizing them." I trust that penalties are not being considered for any province. Obviously, it would be of concern to all of us if the government were penalizing those provinces which do not harmonize. Perhaps the minister would clarify that for me.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I would be pleased to do so. There is absolutely no intention or thought in that respect on the part of the federal government. I used the word "penalize"; perhaps there is a better word. However, the message I am attempting to convey is that there is no question of the federal government trying to retaliate against a province because it does not agree with what the federal government is attempting to do. That is the case with Alberta, and it is the case with the other provinces as well. There is none of that involved.

DELAYED ANSWER TO ORAL QUESTION

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate on March 27, 1996 by the Honourable Senator Erminie Cohen regarding the Port of Saint John.

CANADIAN COAST GUARD

NEW BRUNSWICK—CESSATION OF FUNDING OF DREDGING AT
SAINT JOHN PORT—GOVERNMENT POSITION

(*Response to question raised by Hon. Erminie Cohen on March 27, 1996.*)

The Canadian Coast Guard's (CCG) decision to transfer dredging responsibilities to the Port of Saint John is in line with the government's position that those who benefit directly from service, should pay the costs for providing that service.

The decision is also supported by the House of Commons Standing Committee on Transport (SCOT) which recommended, in May 1995, that there should be cost recovery for dredging where commercial users can be clearly identified and that dredging for channel approaches and within port areas should be the responsibility of the commercial ports.

The mixed cargo terminal, currently under construction at the Port of Belledune, will play a key role in the movement of Canadian goods to world markets, serving the shippers, industries and communities of north eastern New Brunswick by providing efficient marine transportation infrastructure.

The expansion of Belledune Port will include a 315-meter long wharf, a 6,500-square-meter shed and 13.5 hectares of paved open storage area.

The cost of the project is currently estimated to $32.2M. Financing is as follows:

• Canada Ports Interport Loan Fund	$20.2M
• Provincial funds	$ 3.5M
• TC Harbours and Ports contribution	$ 1.5M
• Other federal contributions	$ 7.0M

(Infrastructure Program and Cooperation Agreement on Economic Diversification)

Federal contributions can be divided into recoverable and non-recoverable. Federal recoverable funding totals $3.85M while non-recoverable funding adds up to $4.65M.

The Department of Transport's $1.5M contribution has been programmed into the 1996/97 Departmental Operational Plan.

ORDERS OF THE DAY

WITNESS PROTECTION PROGRAM BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Bonnell, for the second reading of Bill C-13, An Act to provide for the establishment and operation of a program to enable certain persons to receive protection in relation to certain inquiries, investigations or prosecutions.

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Honourable senators, I wish to begin by thanking our colleague Senator Milne for her words at second reading of Bill C-13. I found her speech to be a balanced overview of the legislation now before us and, as such, I will not take up a great deal of time to repeat what she has already said.

Bill C-13 is not a controversial piece of legislation. It basically gives legislative effect to what has been practised by the RCMP for the past 12 years. That is not to say, however, that it is an unimportant piece of legislation; far from it. The protection of witnesses has always been an important part of our system of law and order and, in fact, I would suggest that it has been growing in importance with the passage of time.

It was only weeks ago when we were all reading in the newspapers of the arrests and the breaking up of a major crime

ring in Montreal. There were, of course, the deadly biker wars that affected several parts of Canada last summer, and threaten to do so again this summer. To combat these types of criminal activities, the law authorities inevitably rely on the assistance of those close to the scene. For obvious reasons, this places those individuals in a high-risk situation and, therefore, to encourage cooperation, some system of protection must be established, a system that is reliable to the individual in question. I believe that this initiative is right, proper and prudent.

It is prudent not only from the point of view of the "protectee" but also from the point of view of the taxpayer. It is, after all, the taxpayer who must fund this program and our system of law and order in general.

Bill C-13 provides a mechanism for accountability through the Solicitor General in order to ensure that scarce public funds are being used wisely.

Honourable senators, the last point I wish to draw to your attention is that this legislation also takes into account the federal nature of Canada's law enforcement community. Under this bill, the RCMP will be able to work with police forces of other jurisdictions, be they provincial or municipal, in the quest to provide safer streets and homes for Canadians. In a country like Canada, this is a necessity and one that is so often overlooked.

As I stated earlier, this appears to be a straightforward piece of legislation, and, therefore, I suggest that it be sent to the appropriate committee where departmental officials, who are well versed in the bill's detail and history, can be called upon to answer any outstanding questions.

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?

On motion of Senator Milne, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

FINANCIAL INSTITUTIONS BILL

SECOND READING

Hon. Michael J. Kirby moved second reading of Bill C-15, to amend, enact and repeal certain laws relating to financial institutions.

He said: Honourable senators, Bill C-15 is familiar to me and other members of the Standing Senate Committee on Banking, Trade and Commerce because it reflects the recommendations of a report of the Banking Committee tabled about a year and a half ago. That report was entitled "Regulation and Consumer Protection in the Federally Regulated Financial Services Industry: Striking a Balance," and was tabled in this chamber in November of 1994.

Some of you may remember that report. It dealt with issues relating to the safety and soundness of the Canadian financial system, and was developed as a result of hearings which were undertaken by the Banking, Trade and Commerce Committee in light of the failure in the fall of 1994 of Confederation Life and its related trust company. One of the committee's key goals at the time was to assess the mechanisms that were in place to protect the Canadian consumer in the financial services market and to make recommendations on how those measures could be strengthened. After a series of hearings in June, the committee reopened its hearings that fall to look into the policy implications arising from the specific case of the collapse of Confederation Life and its associated trust company.

Bill C-15 results from a white paper issued by the department in February of 1995, some four months after the Banking Committee reported. The white paper was based largely on the findings of the Banking Committee.

There are four key principles in Bill C-15, principles which were initially espoused by the committee in its report in November of 1994. The measures in the bill all flow from those four principles.

• (1500)

The principles are: First, that ownership of financial institutions is a privilege and not a right; second, that it is preferable to have early intervention and early resolution of problems when financial institutions are experiencing financial difficulty; third, that financial institutions need an appropriate framework to encourage them to solve their own problems in a timely and efficient manner; fourth, that there be accountability and transparency in the financial system.

Underlying each of these principles is an even more basic assumption. The supervisory and regulatory system is designed to protect the rights of depositors, policyholders and creditors. It is not designed to protect individual firms.

As legislators, we cannot be concerned with the detailed specifics of which financial services companies will succeed or fail. This is a decision that only the market and market forces can make. To involve the regulators of financial services companies in management decisions to such a degree that no failures ever occur would clearly constrain the sector to the point where it would be unable to compete internationally and, indeed, within Canada. Consumers must be protected, but financial service providers must also have the ability to innovate and take risks if they are to be successful and useful to their customers.

A fine balance must therefore be struck between these two conflicting goals of allowing adequate incentive for risk and progressive decision making, while at the same time ensuring adequate protection for consumers.

Achieving this balance was the goal of the report of the Standing Senate Committee on Banking, Trade and Commerce some two years ago and is, in turn, the goal of Bill C-15. In pursuance of this goal of striking a balance, Bill C-15 seeks to protect the rights of policyholders, depositors and shareholders by setting up an effective early intervention mechanism for troubled financial institutions.

Specifically, Bill C-15 gives the Office of the Superintendent of Financial Institutions the power to deal with the problems of an institution early on, before capital is depleted. This measure flows from a key and central recommendation made in the Banking Committee's report. In the past, the Office of the Superintendent of Financial Institutions had more scope to close

an insurance company before it became insolvent than it did for a deposit-taking institution. Bill C-15 eliminates this gap and applies an identical framework to all federally regulated financial institutions.

It is worth noting that under the early intervention measure in Bill C-15, the Minister of Finance will no longer need to come to an independent view regarding the solvency of an institution. This function is more appropriately placed in the hands of the regulator who, after all, is involved in the day-to-day monitoring of the activities of an institution. Flexibility is built into this new mechanism by giving the minister the power to prevent a closure if, in his or her view, it is not in the public interest to do so.

Of course, this does not mean that the Office of the Superintendent of Financial Institutions will micromanage financial companies. To do so, as I have said and as the committee stressed in its report, would be clearly counter-productive. This is why an important emphasis of Bill C-15 is to provide a framework in which financial institutions can deal with their own problems in a timely and efficient manner.

Again, as per the Banking Committee's report, the priority in Bill C-15 is on problem prevention rather than focusing solely on how to resolve a problem once a financial institution gets into serious trouble. A troubled financial institution will now have an incentive to act when they know that OSFI has the power to move in to take over the company if its concerns are not dealt with properly.

Bill C-15 also provides important new powers for the CDIC — the Canada Deposit Insurance Corporation — that will enable it, like the Office of the Superintendent of Financial Institutions, to emphasize problem prevention for deposit-taking institutions. The CDIC is given the power which has been recommended in at least three Banking Committee reports that I can recall over the last decade. Specifically, CDIC is being given the power under this act to introduce risk-based deposit insurance premiums. The introduction of these risk-based premiums makes it possible for CDIC to create incentives for institutions to change their behaviour.

In addition, the bill increases the options available to CDIC after an institution is taken over, when CDIC is involved in restructuring the institution. Bill C-15 also makes it possible for the CDIC to borrow money from sources other than the Consolidated Revenue Fund.

Each of these measures, whether undertaken by CDIC or OSFI, reflects the principle that ownership of a financial institution in Canada is a privilege and not a right. No owner of a financial institution has the right to continue in business until the firm hits a brick wall and then expect taxpayers to pay the cost.

However, if a company does hit the brick wall, regardless of monitoring by OSFI or CDIC, Bill C-15 makes some important changes as to how the affairs of insurance companies are to be managed in liquidation. Basically, the bill will provide more flexibility to the liquidator to restructure the insurance company's affairs. The liquidator will have greater scope to enhance the value of assets placed in receivership and to improve recovery on assets. Again, the essence and direction of these changes are absolutely consistent with the Banking Committee's report of two years ago.

The bill also introduces a number of steps to provide for strong, effective corporate governance of financial institutions. These corporate governance changes also focus on problem prevention. An effective board of directors is the ultimate front line of problem prevention. Both Bill C-15 and the report of the Banking Committee of two years ago pay specific attention to this fact.

For example, Bill C-15 adopts the Banking Committee recommendation that makes it no longer possible for the board of a financial institution to be identical to the board of its unregulated parent company. This measure focuses the attention of the board of directors of the financial institution on the company on whose board they sit, rather than on the business affairs of the parent company.

Bill C-15 also follows the recommendation of the Banking Committee by granting the Superintendent of Financial Institutions the power to veto appointments to boards and senior management positions of troubled companies. In addition, for insurance companies the Superintendent will also have the power under Bill C-15 to preclude a chief financial officer from being appointed actuary of the insurance company unless the Superintendent and the audit committee of the board expressly authorize such a joint appointment in writing.

A key focus of the Banking Committee's report was on the powers of OSFI. The committee recommended that OSFI be given a clear mandate and broader powers of regulation, and that it be enabled to act early and effectively rather than having to wait until a financial institution was essentially beyond the point where it could be saved.

Bill C-15 reflects the spirit of those recommendations by giving the Superintendent several powers in addition to the ones I have already mentioned, such as the power to develop standards of sound business practices for insurance companies; the power to appoint an external actuary for an insurance company at the insurance company's expense; the power to allow financial institutions to enter into transactions with a related party if the institution's decision to enter into the transaction was not likely influenced by the related party. This change essentially addresses some of the extremely rigid rules which currently exist with respect to insurance companies.

All of these additional powers for the Office of the Superintendent of Financial Institutions again confirm the emphasis in Bill C-15 on problem prevention. This emphasis is also explicit in the measures in the bill providing for a new framework for OSFI to provide better disclosure of data to the public. This in turn provides a better base for financial analysts to work so that they can provide better information to the public. When the public knows more about the institutions they deal with and the risks associated with these institutions, the public will act as a front-line regulator through its purchasing decision.

The Banking Committee felt it was very important to involve the public in the regulation of financial institutions. In line with this view, Bill C-15 adopts a significant committee recommendation that makes it easier for consumers to distinguish a holding company from its financial institution's subsidiary. Under Bill C-15, it will no longer be permitted for a

holding company to be called "Something Trustco" or "Something Lifeco" where its financial institution subsidiary is called "The Something Trust Company" or "The Something Life Insurance Company." In other words, we attempted to ensure that the name of the holding company and the name of the financial institution subsidiary are clearly distinguishable in the minds of consumers.

It is clearly critical that consumers know who they are dealing with and have as much information about that financial institution as possible. That information, in turn, must be comprehensible to the consumer if financial regulation is to work to its maximum efficiency.

• (1510)

Finally, honourable senators, Bill C-15 makes a number of significant amendments to the Payment Clearing and Settlement Act. The bill takes significant steps to control systemic risks to the payment system. The payment system is the major clearing and settlement system for financial institutions. The failure of one participant in a clearing system cannot be allowed to spread to other members of a group.

Accordingly, Bill C-15 puts into place three important measures to control this type of systemic risk. The bill gives the Bank of Canada explicit powers in the oversight of clearing and settlement systems that are potential sources of systemic risk; the capacity to participate in aspects of these systems, including large-value transaction systems, and statutory recognition to what is called in the industry netting arrangements in payments and clearing and settlement systems so that Canadian participants, specifically in derivatives markets, have greater certainty that their transactions will close. Each of these measures will reduce the probability of systemic risk and enhance the international competitiveness of Canada's clearing and settlement systems.

I should add parenthetically, honourable senators, that the payment system is a subject that has interested the committee for some time, and is likely to be a subject to which we will be paying special attention in the future, including the possibility of holding a set of hearings on the payment system sometime later this year or early next year.

In summary, let me say that there can be no doubt that Bill C-15 is an important piece of legislation. Canada's financial institutions will go through profound change in the coming years. This change will be technology driven and consumer driven. It will be both self-sustaining and dynamic. Moreover, the pace of change will not slow down. To take one example, in the not too distant future, it is conceivable that Canadian consumers, through advances in information technology, will have the ability to shop for their financial services provider on a global rather than on a national or regional basis.

In the face of this scenario, Bill C-15 works to ensure the continuing success of our supervisory and regulatory system. It is an important step in ensuring that both our financial institutions and our regulators have the ability to respond to change.

The need for Canadian financial institutions to be both safe for the consumer and competitive both nationally and internationally will become more important as we go into the future. Therefore, on this basis, and because of the fact that this bill implements the vast majority of the recommendations made by the Senate Banking, Trade and Commerce committee two years ago — recommendations which were supported unanimously by the committee and which arose out of the so-called Confederation Life set of hearings that the committee held — I urge speedy passage of this bill in this chamber on second reading, and that it be referred to the Standing Senate Committee on Banking, Trade and Commerce as quickly as possible.

Hon. Consiglio Di Nino: Will the honourable senator take a question?

Senator Kirby: Absolutely.

Senator Di Nino: I agree generally with the bill and its contents. However, I have a couple of concerns. Perhaps the honourable senator could either give me some answers now to my questions, or perhaps during the committee's deliberations he could look at them and report to us at a later date.

My concern is, first, that the smaller institutions not be unduly penalized or disadvantaged because of their size; and, second, that entry into the industry will be restricted in some manner that will make competition less, which would mean that the consumer would suffer.

Does the honourable senator know what criteria will be used to assess the risk on which the premium will be based?

Senator Kirby: I do not think anyone at the present moment knows the answer to that question. However, what I do know — and this information is up to date as of approximately one week or ten days ago — is that the CDIC is currently in the process of developing exactly the question that the honourable senator has asked, namely, what criteria should be used for a risk-based premium system; and, second, the extent to which a risk-based system ought to be applied right off the top, or whether it should only be applied once an institution gets into trouble.

The committee has strongly urged the government — at least for the decade that I have been on the committee — to do various things to promote smaller institutions. In fact, I have stated on the public record many times that it is the small institutions in Canada that have fundamentally made all the significant, innovative changes. The best two examples that come to mind are, first, the decision to extend banking hours beyond 10 a.m. to 3 p.m., when Canada Trust extended their hours to 8 a.m. to 8 p.m. A number of other small trust companies jumped on the same bandwagon, and finally the banks were forced to respond. Similarly, the decision to go to daily interest savings accounts was started by credit unions in British Columbia and, ultimately as a response to this, the larger institutions responded.

You will find that it is not only the committee but also senior people, both in OSFI and CDIC, who are very aware of the need to ensure that you do not inhibit the smaller player. I will endeavour to respond in detail to the senator's questions. Once those criteria are developed, I suspect it likely — and I would need to speak with Senator Angus about this — that the committee will ask representatives from the CDIC to come before the committee and explain to us what the criteria are. This will likely occur in the fall, not now. When we do that, I will invite you to come to the committee. Given your background, you will be quite helpful.

Senator Di Nino: If we are to be looking at a piece of legislation where a risk-based premium is a major component and we do not know what that will be based on, then I suggest we should not be passing that legislation in this house. However, I am pleased that the honourable senator will look at that aspect for us. I would be more than happy to attend that particular meeting.

I must point out a small correction. Notwithstanding all the credit due to Canada Trust, I think you will find that a number of other, smaller trust companies created the longer banking hours before Canada Trust.

Senator Kirby: I am sorry. I thought I had corrected that.

Senator Di Nino: That is neither here nor there.

By way of a question, I should like to place on the record a recommendation to the committee: When looking at the legislation — that is, taking into account the question I asked about how this premium will be based — does the legislation envision that size will play any role in the assessment of the strength of the organization in arriving at what kind of premium they should charge?

Senator Kirby: I have not asked this question of the CDIC nor of OSFI, but I would be surprised if size is an issue. Many of the smaller institutions are successful institutions. There are a number of criteria that have nothing to do with size.

To give you an example, when we looked at the issue of the collapse of Confederation Life and its trust company, the members of the committee at the time were extremely surprised that something in the order of a little over 60 per cent of the trust company's investments were in real estate, largely in the Toronto area. This was done, obviously, on the misplaced assumption that real estate in Ontario in general, and in Toronto in particular, could never go down. At the time, Confederation Life was the country's fourth largest insurer.

Size has nothing to do with degree of risk. In no meetings that the committee has had, or I have had, with people from the CDIC or OSFI, has it ever been suggested that size is a factor. I would be very surprised if that arose.

• (1520)

Hon. W. David Angus: Honourable senators, I, too, rise with reference to Bill C-15. As stated by Senator Kirby, the proposed legislation was inspired by the work and the report in 1994 of the Standing Senate Committee on Banking, Trade and Commerce. Among other things, the committee studied the public policy implications of the Confederation Life Insurance Company failure. The bill follows a rather timid government white paper entitled, "Enhancing the Safety and Soundness of the Canadian Financial System" issued in February 1995.

As mentioned, the legislation came before us in the last session of Parliament as Bill C-100, but died on the Order Paper at prorogation.

In its report, the Banking Committee had attempted to encourage the striking of a fine balance between regulation and consumer protection through its 42 complementary and interrelated recommendations. I am pleased to note that much of Bill C-15 faithfully reflects the committee's suggestions. However, I am concerned that by failing to adopt certain of the recommendations the government may have disturbed this fine balance. An example of such a flaw is the government's disappointing failure, for purely political reasons, to introduce in Bill C-15 at least a symbolic element of co-insurance regarding public deposit insurance, or to delineate a clear and viable rationale for deposit insurance in the contemporary economic environment. It is my intention to address this and other such disturbing omissions in the bill at a later date.

Today, however, I should like to focus, with approval, on the bill's obvious and necessary intent to enhance the ability of OSFI to intervene with remedial or conservatory measures to protect consumers, customers or potential customers of Canada's financial institutions. When the Banking Committee scrutinizes this legislation, possibly as early as this evening, its members will be interested in learning whether or not Bill C-15 adequately empowers the Office of the Superintendent of Financial Institutions to require disclosure of key information, to intervene in a timely enough fashion in the event of an imminent or potential failure of a financial institution, and whether or not the proposed regulatory powers and responsibilities for OSFI and CDIC are clearly enough defined.

I understand, for example, that certain technical provisions in the bill might have the effect of removing an appeal remedy currently available to an institution in the face of a controversial inhibiting order from the regulator. The committee, after study, may well consider that an amendment would be appropriate in that regard.

During its 1994 study, the Banking Committee emphasized three key objectives relating to public deposit insurance. They were: first, to protect the integrity of the Canadian payment system; second, to provide an element of consumer protection; and third, to enhance competition among federally regulated deposit-taking institutions. I believe it is important that Bill C-15 be examined closely within the context of these stated objectives.

As far as the payment system is concerned, the bill seems to include a number of initiatives which address the integrity issue. However, does it go far enough? Since the clearing and settlement functions are considered so fundamental to the soundness of our financial system, the committee will wish to examine the payment system, as Senator Kirby has suggested, either in committee or in a more meaningful way at a later date.

Finally, honourable senators, the committee will wish to understand clearly the government's public policy rationale in Bill C-15, how this policy objective fits into the overall scheme of existing Canadian financial institution regulations and, more important, in light of its recent dismal record, how the government intends to be accountable for its actions in implementing its proposed new regulatory powers.

Consequently, I look forward to dealing with this piece of legislation in committee.

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

On motion of Senator Kirby, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

[*Translation*]

DEPARTMENT OF HEALTH BILL

SECOND READING

Hon. Eymard G. Corbin moved second reading of Bill C-18, to establish the Department of Health and to amend and repeal certain Acts.

He said: Honourable senators, before getting to the content of Bill C-18, to establish the Department of Health and to amend and repeal certain Acts, I want to make a comment on the process followed by the document before us.

Bill C-18 had another life in the House of Commons, where it was introduced on March 8, 1996. A framed note on the title page reads as follows:

> Printed, pursuant to Order made on March 4, 1996, in the same form as Bill C-95 of the First Session of the Thirty-fifth Parliament as amended in committee, as a working copy for the use of the House of Commons at Report Stage.

Bill C-95 went through first reading in the House of Commons on June 1, 1995. It was debated at second reading on November 2, 6 and 7, 1995. It was sent to a committee on November 8, reviewed on November 23 and 28, and then amended on November 30, 1995. The bill was reinstated in the House of Commons on March 28 of this year as Bill C-18. A vote at third reading took place following the debate held on April 19 and 22. The bill was passed on April 23 and then referred to us.

In the meantime, the Prime Minister proceeded to make some ministerial changes. The Honourable Diane Marleau, who had introduced Bill C-95, was replaced by the Honourable David Dingwall, whose name replaced that of Ms Marleau on the title page of the bill. So, a new sponsor, changes in the original text, a new number and, eleven months later, the bill finally arrives here. This is where we are, honourable senators.

I will now move on to Bill C-18 itself, but first I want to thank the staff of the minister and of the department for helping me get a better grasp of this legislation. Honourable senators, I ask for your patience since, at this stage of the review of Bill C-18, I may not have all the answers to your questions. The detailed study in committee will be closely followed by departmental personnel so that they can answer your questions and comments.

The fact is that this bill is very simple. However, the department that it seeks to establish is of paramount importance to the health of Canadians.

This is an administrative measure which is part of the federal government's restructuring process. Other departments underwent such a restructuring process in the past and some will undoubtedly do so in the future. Come to think of it, is there any department, in the last 100, 50 or even 25 years, that has not undergone any change, even a change of name?

Bill C-18 will not change in any way the objective content of the acts that the Department of Health will administer. Nor will it change the department's basic mandate or the minister's responsibility.

Clause 4 of Bill C-18 clearly defines the powers, duties and functions of the minister. The bill, as you may have noticed, includes a recommendation from His Excellency the Governor General.

In addition to the general provisions that apply to many departments, the bill includes the authority to make regulations.

In particular, I want to point out that, and I quote:

> Nothing in this Act or the regulations authorizes the Minister or any officer or employee of the Department to exercise any jurisdiction or control over any health authority operating under the laws of any province.

Your preliminary review of Bill C-18 will certainly have shown the transitional provisions made necessary following the transfer to Health Canada of the responsibilities of the former Department of National Health and Welfare, and following the transfer of a sector of the Department of Consumer and Corporate Affairs.

As you already know, the "welfare" component of the former Department of National Health and Welfare has been transferred to the Department of Human Resources Development.

The expression "technical amendment" usually describes many provisions in a bill such as this one, which includes no new policy statement.

However, the bill includes technical improvements, such as: the appointment of inspectors and analysts for the purpose of any act for which the minister has responsibility, with the same powers that they would have under the Food and Drugs Act; the possibility of imposing fees, for example in regard to services providing a commercial benefit, without having to go through the usual legislative process, while guaranteeing that the parties concerned are treated fairly; and the harmonization of the penalty structure with the Criminal Code.

These are all provisions that my honourable colleagues may want to discuss with departmental officials when they appear before the committee if, of course, this is the wish of committee members.

[*English*]

Honourable senators, I could wave the flag long and enthusiastically on behalf of what is surely one of the crown jewels of the national government of Canada, the Department of Health, but I will dispense with the rhetoric, convinced that you share my views.

The purpose of Bill C-18 is to confirm the creation of the Department of Health, and defines the mandate and the responsibilities of the minister. The legislation translates into law the reorganization of government departments of some two years ago. Welfare-related responsibilities were then assigned to the Department of Human Resources Development. It is a simple piece of legislation, yet it is a strong statement. It provides that the Minister of Health is responsible for all matters over which Parliament has jurisdiction relating to the promotion and preservation of the health of Canadians.

The definition of "health" in the bill is the same as the one adopted by the World Health Organization, namely the physical, mental and social well-being of the people of Canada. This is a recognition that the protection of health extends more broadly than the mere treatment of illness. The social determinants of health must be taken into account in order to improve the health of the population. Promotion and education also play a major role in this respect, and the bill recognizes it.

The bill makes it clear that the investigation and research into public health and the monitoring of disease is a function which must be viewed from the national perspective. The Laboratory Centre for Disease Control located in the Department of Health is dedicated to programs preventing and reducing the impact of chronic and communicable diseases in Canada.

The bill also recognizes the crucial role played by the Department of Health in protecting the public against risks to health. This includes the evaluation of drugs and medical devices, and ensures that these therapeutic products are safe for public use and that they do what the manufacturers claim they will do.

The Department of Health works to assure Canadians that their food supply is safe. Recent events in Europe regarding the so-called "mad cow disease" illustrate vividly the importance of ensuring the safety of food, not only from a health point of view but also from the point of view of trade and commerce.

Health Canada has also an important role to play in working with other countries to combat health threats coming from abroad. It does this, in my opinion, very well. It is also in the national interest that standards are set and enforced so that Canadians are assured of comparable health care services no matter in what province they reside or travel.

All of this is to be done in a spirit of cooperation with the various stakeholders and, in particular, in collaboration with the provinces. The bill makes this clear at the end of subclause 4(2) when it stresses the importance of cooperating with provincial authorities with a view to coordinating efforts for preserving and improving public health.

Health Canada is committed to accomplishing its mission through its ongoing work with the provinces and territories to improve the efficiency and effectiveness of our health system while safeguarding the principles of the Canada Health Act. Improving the health of Canadians in a way that reflects the values of Canadians requires national leadership and commitment that can best be achieved through the programs and services of Health Canada.

The government's efforts to maintain a high quality, responsive and affordable health system is being strengthened by the creation of the new Department of Health. The implementing legislation for Health Canada ensures that the department's resources and activities are devoted to the policy and funding challenges facing our national health system.

The cost-recovery provisions of the bill will also help face the current context of fiscal restraint and shrinking resources. The Department of Health Act will assist the government in meeting the challenge of ensuring that Canadians continue to have access to the best health system in the world, comprising health care principles, health promotion, disease prevention, regulation of food, drugs and medical devices, research, and service delivery to First Nations. The bill ensures that the department will continue to work closely with all health stakeholders and the people of Canada. Health Canada will provide national leadership and remain a full and active partner on all matters concerning the health of Canadians.

The activities and programs of the new Department of Health will promote equity of health among Canadians in all regions of the country. It is my strong belief that, through the work of the new department, the government will be in a good position to safeguard the health system that binds us together as a nation.

Hon. Mabel M. DeWare: Honourable senators, I rise today to express a few words on second reading of Bill C-18, to establish the Department of Health. I thank the honourable senator for his remarks.

In June 1993, the former Progressive Conservative government proposed the most significant downsizing and restructuring a government had ever undertaken in Canada. This included a cut in the number of departments from 32 to 23. Eight departments were to be created or fundamentally redesigned. They were to have new mandates. Another 15 were to be merged or broken up. Many of these changes were maintained, we were pleased to see, by the present government.

• (1540)

Bill C-18 outlines the powers, functions and duties of the minister. In general, these concern matters under federal jurisdiction regarding health promotion and preservation that have not been assigned to another department. The minister may appoint any person to be an inspector or an analyst for any act for which the minister is responsible. Bill C-18 also allows for cabinet to appoint a Deputy Minister of Health.

Subject to conditions set by the Treasury Board, the minister may fix fees for services or facilities, for products, rights and privileges, and for regulatory processes or approvals. The minister must consult those affected prior to setting a fee. The fees must be published in the *Canada Gazette* and may not exceed the cost of providing the service. In addition, the fees may be reviewed as a statutory instrument by the appropriate parliamentary committees. It will be an offence punishable on summary conviction to contravene a regulation passed under this act.

This legislation does not give Ottawa authority to exercise any control over any provincial health authority.

While in principle Bill C-18 does not appear to be contentious, some concerns had been raised during the study of Bill C-95. Therefore, this legislation should be referred to committee in order to review this bill in more detail.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Corbin, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

[*Translation*]

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT BILL

SECOND READING

Hon. Bill Rompkey moved that Bill C-11, to establish the Department of Human Resources Development and to amend and repeal certain related Acts, be read a second time.

He said: Honourable senators, Bill C-11, to establish the Department of Human Resources Development, has been described as a "housekeeping bill." It officially establishes a department that has been in existence for three years now by order in council, a department made up of the former Department of Labour, plus certain components of Employment and Immigration, Health and Welfare, and Secretary of State.

It creates no new legal powers, changes no programs, modifies nothing in the division of jurisdictions between the federal and provincial governments. The programs and services offered in the entire department will remain as they are once this bill is passed.

How, then, is this bill important?

[*English*]

It is important, honourable senators, because of the vision that lies at the heart of this bill and of the new department. It is important because, while it does not, in itself, change programs, it sets out a legislative framework for a new way of delivering services. It is important because it underlines the government's commitment to provide Canadians with services that are affordable, effective and responsive. It draws together all of the different elements, programs and policies of the federal government related to human resources into one integrated, coherent system, the basis for a new approach to helping Canadians as they deal with incredible changes in the workplace, in society, and in the economy. It also provides the basis for new relationships between the federal government and individual Canadians, between different levels of government, and between governments and local communities.

The old ways are simply not relevant to the kinds of conditions we face today, honourable senators. In a complex, increasingly competitive environment, we must recognize the social realities that people face today. We cannot neatly pigeonhole people's needs for job skills, for employment support, for social security. We cannot, for example, address child poverty without addressing the need for parents in low-income families to adapt and to retrain constantly. We cannot provide meaningful, long-term solutions for workers displaced by technological change without helping people to keep learning and adapting to change throughout all of their lives. We cannot help communities pursue solid, sustainable economic development without identifying and building the kind of labour force that can drive economic growth. We cannot maintain a compassionate, affordable, social security system unless we ensure that all components of the system work together to create jobs and opportunities for Canadians.

Bill C-11 provides the basis, then, for an integrated, coordinated approach to Canada's social and labour market programs; a single focal point in communities all across the country, drawing together all the resources of the federal government to help people find and keep jobs, and providing programs for which the federal government is responsible, such as Unemployment Insurance and Old Age Pensions.

Honourable senators, these measures have already been in place for a year. This is enabling legislation. In 1994-95, Human Resources Development Canada, for example, served 59,000 recipients of Old Age Security and Canada Pension Plan benefits. Helping Canadians find and keep jobs is the priority of the government. It is the number one priority for Canadians, and it is the fundamental philosophy behind this bill.

For young people, it means youth internships that have already led to some 24,000 real jobs for young Canadians. It means Youth Service Canada, some 130 projects across the country that have already helped young people get valuable work experience while serving their communities. It means student loans that are more accessible, more flexible, more sustainable, helping more than 300,000 students last year alone. It means special grants, up to $9,000, to help more than 13,000 high-need students continue their education.

An example of how Youth Service Canada is benefitting the people of my province, for example, is the project operating in Milltown. The Hope Literacy Council is receiving $96,000 to promote family literacy activities for children and seniors. Twelve young Canadians are participating in this project.

It means increased funding for sector councils, bringing business and labour together in key industries across the country to re-engineer for the future, with every federal dollar generating $1.50 from private industry to train Canadians. It seems to me that this is the pattern for the future in terms of worker training. The partnership that will be created by these sector councils in such fields as mining, the auto industry and so on, bringing together labour, management, the federal and the provincial governments, will be a good pattern for training in the future, which is so important for our productivity.

This bill will mean federal-provincial initiatives helping some 60,000 single mothers, older workers, aboriginals and young people to get new skills and new jobs. For example, in my province again, we are helping 5,300 individuals gain access to education and work through the initiative called "Transitions". The federal and provincial governments are committing $20 million over three years on a cost-shared basis on this program.

• (1550)

This bill means new partnerships and new technologies to deliver services to Canadians when and where they need them, with a new integrated, decentralized service delivery network that is growing from 450 points to 750 points of service, reaching many smaller communities 24 hours a day and offering four times as many offices where seniors, for example, can get in-person service. It means faster, more efficient service where people using automated telephone service can get help without leaving home and where Canadians can access new products, such as self-service kiosks in community centres. Already, the time it takes to process a UI claim and an Old Age Security claim has been lessened considerably.

This bill expands this vision of integrated service to Canadians to include "single window" offices working with provincial agencies, local governments, community groups and the private sector. For example, in Edmonton, Alberta, Human Resources Development Canada has opened an integrated office with Alberta Family and Social Services and Alberta Advanced Education and Career Development. Clients coming in the door are no longer shunted from one program to another, or office, or building. They do not have to worry about which government or which department they need. There is one point of contact. This is something for which many of us have asked for many years in order to eliminate the duplication in government services.

In Huron, Ontario, Human Resources Development Canada has formed a new coalition with the provincial Ministry of Community and Social Services, the Huron County Social Services, the Municipal Employment Program and the Huron Employment Liaison Program. Instead of all of these agencies operating their own isolated offices, they are working together to provide more services which are improved, integrated and more affordable.

In Coaticook, Quebec, the department has formed a new, single window with all of the major socio-economic partners — the Chamber of Commerce, the Corporation du développement économique de la région de Coaticook, the Société d'Aide au Développement Communautaire, the Société d'aide aux jeunes entrepreneurs, the Table agroalimentaire and the Centre d'emploi — all working together to address common problems and stimulate economic development. This is what the new department is doing, and that is why this bill is so important.

The framework is particularly important, too, with regard to labour issues. As you know, while Bill C-11 integrates the former Department of Labour into Human Resources Development, we continue to have a separate Minister of Labour representing the concerns of working people across Canada. One of the minister's main responsibilities is the Canada Labour Code. The code governs industrial relations, occupational safety and health and labour standards in areas under federal jurisdiction. The code is an important part of Canada's economic fabric. It affects the working lives of 1 million Canadians. It applies to train engineers, longshoremen, truckers, grain handlers, telephone operators and bank employees. All of these people turn to us for stable industrial relations, for safety and health, and for fair and productive work places.

The Minister of Labour must also answer for other statutes. One of these is the Canadian Centre for Occupational Health and Safety Act. The centre produces and disseminates occupational health and safety information and helps to protect the lives and health of Canadian workers. There are many other statutes which fall under the minister's responsibility, acts which deal with security, justice, equity and other matters. These matters include the Canadian union movement, labour management relations, conditions in the workplace and equity for workers.

Bill C-11 ensures that the minister can work full time on these critical issues. Everything the Minister of Labour needs to do the job can be found within the framework of this restructured organization. This keeps costs down without depriving the Minister of Labour of services he needs.

The minister is working to better harmonize federal occupational health and safety legislation and regulations with those of the provinces and territories and has also been very active on industrial relations. Last May, for example, he appointed an industrial inquiry to study industrial relations in longshoring, grain handling and other federally regulated industries on the West Coast. In addition, in June, the minister established a task force to review Part I of the Canada Labour Code, which deals with labour relations. The minister also wants to modernize the other two parts of the code. Work is continuing in that regard.

Finally, the minister is reviewing the labour program itself with a view to making it work better and be more cost effective, while, at the same time, working on a North American agreement on labour cooperation.

The new department, which integrates the minister's responsibilities within a single social policy framework, has energized the labour program. There has been a healthy continuity between the new and the old. We have seen how an integrated approach can lead to improvements in the economic and social well-being of Canada's citizens.

All of these issues in human resources are related and all of them should be considered within a single, holistic framework, and that is exactly what this bill does. It saves money and it offers a cohesive vision of Canada's human resource needs. At a time when technology changes almost everything we do, this, I submit, is the kind of measure that we need.

The existing arrangements set up through orders in council are legitimate as transitional arrangements, but, in the end, I am sure all of us would prefer to see the trail of statutory powers put aside and one coherent piece of legislation put in place. That is the purpose of Bill C-11.

It is important to ensure that as the department continues to move forward with new ways of helping Canadians, there is a solid foundation to build on. Bill C-11 provides that foundation and I hope that we pass it very quickly.

Hon. Noël A. Kinsella: Senator, does this new department have as one of its units the secretariat on the status of women? In other word, does the Advisory Council on the Status of Women report to the minister who heads that new department?

Senator Rompkey: Honourable senators, I have not been advised that that is a part of the new department. I stand to be corrected. I can certainly double check that, but I have not been advised that it is part of this new department.

Senator Kinsella: Honourable senators, my point is that the mission of the new machinery of government is to give focus to human resources development in Canada in a manner that is sensitive and includes the participation of all Canadians. As we know, unfair pay practices continues to be one example of inequality. If responsibility for the status of women has been moved to that ministry, that would be very congruent. I will wait for committee study to explore that question further.

We are dealing here with machinery-of-government legislation. Status of women has been bounced around and I cannot remember whether it has been moved to Human Resources Development or to Heritage Canada.

My other question has to do with the funding of post-secondary education, which in effect is the administrative responsibility for the management of the Canada student loan program. Has that been moved to Human Resources Development from Heritage Canada?

Senator Rompkey: It is my understanding that it has.

The point with regard to status of women is well taken and is something we should pursue. My understanding is that it is not part of this bill.

• (1600)

Hon. Mabel M. DeWare: Honourable senators, I should like to thank Senator Rompkey for his overview of the new Department of Human Resources Development, and just add a few remarks.

Bill C-11 outlines the powers, functions and duties of the Minister of Human Resources Development. These concern matters under federal jurisdiction regarding human resources development that have not been assigned to another department. Under this legislation, the Minister of Labour may be appointed. The minister will be responsible for federal labour matters not assigned to another department. If a labour minister is not appointed, the relevant duties are to be carried out by the Minister of Human Resources Development.

Bill C-11 also allows cabinet to appoint a Deputy Minister of Human Resources Development. In addition, there may be one or more associate deputy ministers, each with the rank and status of the deputy head of a department.

The cabinet may designate either the Deputy Minister of Human Resources Development or one of the associate deputy ministers to be Deputy Minister of Labour.

Subject to conditions set by the Treasury Board, the minister may fix fees in exactly the same manner as the new Department of Health, when it provides services or facilities, products, rights and privileges, and regulatory processes or approvals. The minister must consult those affected by these fees, and the fees must be published in the *Canada Gazette*. They may not exceed the cost of providing these services. The fees may be reviewed as a statutory instrument by the parliamentary committee.

The legislation continues the National Council on Welfare within its new department, but reduces the maximum numbers of the members from 21 to 14. It also provides that while the council may hire staff, these employees do not automatically become public servants.

The Canadian Employment and Immigration Commission will continue but will become the Canadian Employment and Insurance Commission. Previously, the employees of this commission were considered officers. If Bill C-11 is passed, these people will become employees of the department. Several clauses also allow work to be carried out by persons other than employees of the department.

The Program for Older Worker Adjustment has its legislative mandate in the Department of Labour Act. The program is continued under the new act. However, the minister will no longer need cabinet approval for agreements made under that program.

Bill C-18 should be referred to committee for a more thorough review. I am sure that it will be an interesting review, because there is a lot to be considered under this bill.

Honourable senators, I agree that this bill should be sent to committee.

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?

On motion of Senator Rompkey, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

PEARSON INTERNATIONAL AIRPORT AGREEMENTS BILL

SECOND READING—POINT OF ORDER

Hon. Michael Kirby: Honourable senators, I move second reading of Bill C-28, respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport.

POINT OF ORDER

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I should like to raise a point of order. The purpose of raising this point of order lies in the fact that while Bill C-28 is similar to Bill C-22, which was introduced in the House of Commons over two years ago, circumstances surrounding its introduction last week in the Senate are totally different from the ones which existed when Bill C-22 was first read in the other place in the spring of 1994. Consequently, proceeding with this bill is manifestly out of order for a number of reasons.

Honourable senators are aware that, after argument, the Ontario Court decided that the Pearson agreements referred to in Bill C-22, and again in Bill C-28, were valid, and that they had been breached by the Government of Canada. Judgment in this regard was rendered against the Government of Canada in January, 1995, by the Honourable Mr. Justice Borins of the Ontario Court General Division. A trial for damages was authorized by the same court. The Court of Appeal dismissed the appeal of the government to this judgment, thereby confirming the judgment of the lower court.

By not asking leave to appeal to the Supreme Court, the government clearly accepted the judgment and admitted breach of contract, thereby recognizing the validity of the agreements. It is now a defendant in an action for damages, the trial having commenced on February 12, 1996, with the Honourable Donna Haley of the Ontario Court General Division as presiding judge, and the trial is continuing.

Honourable senators, to my knowledge, nowhere in the history of the Parliament of Canada will you find legislation which annuls a valid court judgment. I cannot believe that any member of this chamber of the Parliament of Canada, whatever his or her feelings on the purpose and intent of Bill C-28, is willing to be a party to creating such dangerous precedents, which is exactly what the Senate will be doing should debate on second reading be allowed to proceed. This is my major argument, to which I will return.

However, there are other important representations I also wish to submit. Because a trial is under way, it would be improper for the Parliament of Canada to discuss any matter before the court. It should only do so after a verdict has been rendered. Bill C-28 is specific in its treatment of the Pearson agreements and any damages claimed as a result of their cancellation, subjects which have been before the Ontario Court since mid-February.

During committee hearings on Bill C-22, a number of references were made on the right of Parliament to amend a court verdict, including citations from the work of Peter Hogg. However, amending a court verdict is far removed from annulling a valid court judgment. Indeed, I cannot find a single occasion when Parliament has not only been called on to pass legislation annulling matters before the courts — and in which the government is one of the litigants — but also has been asked to annul a judgment the government had previously accepted in its decision, in this case not to initiate an appeal to the Supreme Court of Canada. As a matter of fact, I cannot find any legislation of the Parliament of Canada amending a court verdict.

Bill C-28 does not ask the legislator to wait for a verdict; it provides for the contracts being declared null and void — contracts presently recognized by the Government of Canada. You will find that provision in clause 3. Furthermore, it provides for no action in damages, which is already accepted through a judgment allowing an action in damages. The bill now would no longer allow that, and sets aside proceedings which are already under way, proceedings to which the government is party, and to which the government accepted to be party by not appealing the judgment of the court of appeal.

These circumstances did not exist in 1994 when Bill C-22 was first introduced. However, they do now, as Bill C-28 is introduced. While the two bills may be similar, or even identical, the conditions under which they were presented are totally different. It is in light of the current conditions that the point of order is to be assessed.

What the government is doing, or wants to do with Bill C-28, is to interfere in a court action in which it is a defendant, and substitute itself for the court, thereby challenging the independence and intervening in the proper function of the judiciary. With Bill C-28, the Government of Canada is asking the Parliament of Canada to absolve it of a responsibility which it has already recognized following two judgments. Bill C-28 would do this by declaring null and void agreements which the government, by its own admission, has agreed and admits that it has breached, and also would do this by withdrawing access to the courts and its remedies to a plaintiff when access has already been granted under the constitutional guarantee of the rule of law, and by the acceptance of the judgment by the Government of Canada.

• (1610)

In other words, with Bill C-28, the government is thumbing its nose at the Canadian judicial system, which is putting it mildly. It is asking Parliament, the Parliament of Canada, to legislate where no other Parliament has ever legislated before.

Honourable senators, allowing second reading of Bill C-28 to proceed would be a gross violation of the independence of the judiciary, and a gross interference in a judicial proceeding already under way.

For those reasons, I ask Your Honour to rule in favour of my point of order and declare that it is not appropriate for the Senate to proceed with Bill C-28 at this time.

Honourable senators, I apologize if I have not submitted with these representations quotations from acknowledged authorities and sources on the main point raised, because I have yet to find any of them, if in fact they do exist. Nor have I been able to find legislation of the Parliament of Canada annulling a valid court judgment, or even any attempt by a government in the past in this direction, and any debate on it. Research, which has been fairly exhaustive so far but, I admit, not complete, indicates that the Parliament of Canada has never engaged in such an extraordinary proceeding, and surely Your Honour is not prepared to sanction one today, or at any time in the future.

Hon. Richard J. Stanbury: Honourable senators, I was about to say I was amazed, but I am never amazed at the ingenuity of the opposition, and particularly the Leader of the Opposition, to find ways to delay the processes of the law. Their performance in the past session of delaying, for years, a piece of legislation

simply on the basis of having a majority on committee is hardly representative of the high moral principles my friend proclaims now.

Honourable senators, the point we are dealing with here is whether we should give second reading to a piece of legislation that has gone through the normal processes of legislation in our Parliament. The question as to whether it is legal and whether constitutional courts in the future will determine that this is a proper action by Parliament is not a question that we should decide now. We are dealing with a piece of legislation that has gone through the processes of Parliament, is still in the processes of Parliament, will be dealt with by our committees, and will be determined, finally, by the Senate itself.

Honourable senators, the actions of my honourable friend anticipate that this bill will proceed to second reading. He has not mentioned this today, but he brought a motion in the courts to have thousands of pages of documents presented to him personally for use in the Senate committee. In my opinion that is quite an improper motion. However, that is beside the point.

Senator Lynch-Staunton: Why raise it, then?

Senator Stanbury: Why raise it? Because it is indicative of my honourable friend's frame of mind when he says he wants thousands of pages of documents made available to him. What other purpose could there be than to deal with them in the Standing Senate Committee on Legal and Constitutional Affairs when this matter comes before it, after we have given second reading to the bill?

Honourable senators, there is no logic to what my friend says. The answers to the questions he raises will be determined after discussion in the Senate committee, the proper committee under our procedure. After those answers have been determined, the Senate will make a final decision as to whether or not to pass the legislation.

I will not delve into legal questions. Legal questions and constitutional questions have been all that has concerned our committee in the past in dealing with Bill C-22. I suggest that the legal opinions we received then are completely contrary to what my honourable friend has said. Those legal opinions, from the best constitutional experts, were that the government has every right to override the decision of a court. There is no reason why a legislature, a court of the people, cannot override a judicial court if that is determined to be in the public interest.

Honourable senators, I simply say that we are very premature in discussing this issue. We have now arrived at the question of second reading. We must do that, get the bill into committee where this issue will be battled out, and then if the Senate determines that it should not pass the bill, then it will not so pass the bill.

Hon. John B. Stewart: Honourable senators, Senator Lynch-Staunton makes an ingenious intervention, but it is one which I think should not delay us very long. He has advanced the proposition that circumstances alter the authority or the jurisdiction of Parliament. If that is a valid proposition, it opens up a Pandora's box. I really do not believe that he would assert it seriously.

In any case, let us ask this question: What are the circumstances which Senator Lynch-Staunton says alter the authority of Parliament and the right of Parliament to enact the proposed statute? His answer is that certain circumstances and certain proceedings in the law courts estop Parliament. I should have thought that Senator Lynch-Staunton would have admitted that the Senate is not part of the court system and, similarly, that the law courts are not part of Parliament. Surely, things have not deteriorated to the point where the distinction between these two important parts of our constitutional structure have been lost so that there is an interplay between what happens in the courts and what happens in Parliament.

In any case, honourable senators, Senator Lynch-Staunton has put before us a constitutional argument. He has every right to raise it as a constitutional argument when the motion for second reading of the bill is under debate, but it is not a point of order.

Honourable senators, *Beauchesne's Parliamentary Rules and Forms*, 6th Edition, is painfully clear on this issue. I quote from page 97, citation 324.

> The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

It may be raised, but the Speaker will not rule.

I agree that this is a constitutional argument. I think that it is an invalid constitutional argument, but my opinion on its validity or invalidity is irrelevant to the nature of the argument. It is a constitutional argument, and I say it is invalid.

In any case, the Speaker does not rule on constitutional arguments or points of law, only on points of order, and I think we ought not to go down this track very long. We ought to get into the substance of the debate.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, if that were so clear, the government could introduce legislation to prevent the courts from exercising their powers. I imagine the government can quote precedents to us. We tried to find one and could not.

• (1620)

[*English*]

If it is so clear that the government is in its full right in introducing such legislation to impeach the tribunal — even more, to say to the tribunal that they have decided something and that it is wrong — you must have a precedent. We tried to find one; we are not able to find any. If you have some precedents, show it, please.

Senator Stewart: Is that a question?

Senator Nolin: Yes.

Senator Stewart: I simply submit that the jurisdiction of the law courts in this country is clearly defined. The jurisdiction of Parliament is pretty well defined. It is no accident that there are not many cases where the two collide because each respects the other's jurisdiction. I do not see how we can raise as a point of

order the fact that certain proceedings have taken place in the courts. That is really, I suggest, a constitutional argument. It is a constitutional argument, I submit, which would have the effect of altering the Constitution. In any case, whatever the merits on that, this is a constitutional argument, not a discussion on a point of order.

Senator Lynch-Staunton: I had hoped that our friends opposite would have replied to the main argument. The main argument has nothing to do with the constitutionality of the bill, nothing to do with the content of the bill. It deals with procedure — not the law or the Constitution, but with the proper procedure.

Is it proper for the Senate of Canada to proceed with a bill that, in fact, is a direct challenge to two court judgments and, if passed, would void those judgments? Is it proper for us to proceed on that? There is no precedent.

Our friends opposite should produce precedents if they have them. We have searched and searched, and there is no precedent that we have found of this happening or even being attempted in the Parliament of Canada, although there certainly have been many occasions when that could have happened.

We have heard from authorities. The authorities upon whom I have relied have not come before our committee. They tell me that, in common law, a challenge to a court decision by Parliament is unheard of. However, we were told before the committee at the time of the discussion on Bill C-22 that it is possible; that it would be constitutional and so legal for the Parliament of Canada to amend a court verdict.

It was said by an expert witness — it may have been the minister or one of his officials — that if the government was dissatisfied with an award, Parliament could reduce it to a more acceptable price — yes, even to zero. This would be a difficult point to argue, but that is what the experts tell us, and in any event we have not yet reached that stage. We are being asked here to proceed without even waiting for the verdict. We are being asked to intervene not only in the case which is proceeding now —

Senator Berntson: The government accepted it.

Senator Lynch-Staunton: — but a case which the government accepted to enter, in which it is an active party, and where it is giving an active defence of its position.

It is hard for us to accept the responsibility of discussing a law which, in effect, is telling the court, once the debate starts: Careful, someone is keeping an eye on you. Your proceedings may be challenged. Your proceedings may be affected because, in fact, the Parliament of Canada is slowly coming in to interfere in what you should be doing independent of the Parliament of Canada.

This is not a question of the Constitution. It is not a question of law as such. It is a question of procedure. It is a question of proceeding with this bill despite the facts as I have enumerated them; and despite the two court judgments in particular. That is the main argument. The added argument is that the matters in the bill are before the courts. I maintain it would be highly improper, irregular and unprecedented for Parliament to proceed under those circumstances.

Senator Stanbury: Honourable senators, my friend might have had some merit to his argument, I suppose, if he or his Conservative colleagues in the House of Commons had raised this question when the bill was being presented.

Senator Berntson: When it was re-plugged in?

Senator Stanbury: It was presented in the House of Commons.

Senator Berntson: Circumstances have changed. This thing did not go through the House of Commons.

Senator Stanbury: Please, if you will. Bill C-28 was introduced in the House of Commons.

Senator Berntson: At what stage?

Senator Stanbury: It was approved to the stage that brings it to us here. It has passed through that much of parliamentary process. If Parliament was so wrong in dealing with this matter because it was before the courts, then that should have been dealt with by your colleagues in the House of Commons.

Is there any precedent for a bill which has passed the House of Commons and has received first reading here —

Senator Berntson: Passed the House of Commons?

Senator Stanbury: — to be refused by the Senate, to be even considered in committee? You talk about precedents. I have not heard a single precedent from that side of the house about what you are proposing. As far as I am concerned, this is not a point of order; it is an invitation to His Honour the Speaker to unilaterally destroy parliamentary tradition and constitutional conventions that have been in place worldwide for centuries. You cannot find a precedent.

Senator Berntson: Worldwide for centuries?

Senator Stanbury: You cannot find a precedent to tell the Senate that it may throw out or refuse second reading for a bill based on the kind of reasoning suggested by the Leader of the Opposition after that same bill has already received the approval of one of the Houses of Parliament.

Senator Lynch-Staunton: Let us be careful how we explain the procedure in the House of Commons. Bill C-22 came back as Bill C-28 under a motion of exemption which allowed the government to bring back certain public bills, certain private bills, at whatever stage they were at the time of prorogation of the First Session of this Parliament.

Senator Berntson: Within 30 sitting days.

Senator Lynch-Staunton: Within 30 sitting days, they had the right to do that. That did not allow a debate on this bill because this bill had already been passed by the House of Commons; a vote had been taken; third reading had taken place. Therefore, it was impossible to open a debate because the motion is specific: that the bill must be in the same form, and accepted at the same stage that it had reached at the time of prorogation.

As a matter of fact, Mr. Gouk, a Reform member, got up to ask a question, and he was ruled out of order.

There was no way that the House of Commons could debate this bill. If there had been a way, then the government itself would have been tempted, I would hope, to bring in amendments which it brought earlier to the Senate on Bill C-22, and let the house debate the amendments. Somehow they realized they could not do that, because the bill was at the stage where it could not be reopened. The vote had been taken on it at third reading.

I want to clarify that point. I hope His Honour the Speaker will not be swayed by the over-imagination of our colleagues opposite. This is a fundamental issue. There are no precedents to it which can be quoted on the other side — certainly none that we have found where the Parliament of Canada is being asked to intervene directly to contradict a decision taken by a court in one of our provinces. That is a key issue.

Senator Stewart: Honourable senators, if I may, just to help the house, I have found another passage which I think might be useful in *Erskine May Parliamentary Practice*, 21st Edition, at page 90, under the heading, "Right to exclusive cognisance of proceedings."

> The law declared in the Bill of Rights excludes all outside interference with the proceedings of either House. It encapsulates (without necessarily limiting) many historical developments sketched in chapter 5. These include the judicial pre-eminence of the High Court of Parliament, the concern that Members should not be tried or punished by any inferior court, the notion of each House as a court, and the claim to freedom of speech in the form both of the collective right of the two Houses to discuss subjects of their own desire without reference to the Monarch, and the right of the individual Member to participate freely in debate.

I will skip two or three sentences concerning peers and so on.

> Nevertheless, the right of both Houses to be sole judge of the lawfulness of their own proceedings, or to settle—and depart from—their own codes of procedure is fully established. This is equally the case whether a House is dealing with a matter which is finally decided by its sole authority, such as an order or resolution, or whether, like a bill, it is the joint concern of both Houses. This holds good even where the procedure of a House or the right of its Members or officers to take part in its proceedings depends on statute.
>
> For such purposes, the House can, 'practically change or practically supersede the law'.

It goes on to give an instance. I think that might be useful in deciding whether or not this is indeed a genuine point of order.

Senator Lynch-Staunton: Honourable senators, we are not talking here about superseding the law; we are talking about negating a valid court judgment. That is not the law. That is a decision of the judiciary. It is not the interpretation of a law given by a court, with which Parliament then may disagree and change to have it fit its original intent, which is perfectly proper. In those cases, Parliament is supreme over the courts because Parliament must have the last word in the laws and how it intends them. If the courts interpret them differently from Parliament's intentions, then of course Parliament has full right and responsibility to refine them as it sees fit, although the Charter of Rights limits Parliament's powers even in that regard.

However, the question here is not a question of law. It is a question of respect for the judiciary which will be completely disregarded by proceeding with Bill C-28.

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I think we should emphasize that at the moment we are debating the principle of the bill —

Senator Berntson: We are on a point of order.

Senator Graham: Senator Stanbury has raised the obvious question: Why was a point of order not raised in the House of Commons? All the points made today by Senator Lynch-Staunton could have been made in the House of Commons. The situation was exactly the same; yet not a single member of the other place objected.

Senator MacDonald: The motion was not debated.

Senator Graham: The principle of Bill C-28 is to set aside the Pearson Airport Agreements and to limit the government's exposure to damages. This is the principle that we are being asked to approve at second reading. The details of how that principle is put into effect are what our committees are normally empowered to examine. That is their work. When Bill C-22 was before the Senate, the government proposed amendments that would have recognized that the agreements were valid and that they then expired, so even under my friend Senator Lynch-Staunton's criteria, that amendment would have met his objection.

I suggest that we proceed with second reading, allow the debate to continue and then send this bill to committee, where it belongs, and examine the various proposals that may come before the committee.

To follow further on Senator Stanbury's point, it is known that Senator Lynch-Staunton filed an affidavit last week in court swearing that senators needed certain documents in order to properly consider Bill C-28, but today he is proposing that senators not be allowed to consider the bill. I believe that is remarkably inconsistent.

Senator Berntson: Since you are so learned in the law.

Senator Lynch-Staunton: There is no contradiction in asking for information on proposed legislation and suggesting, at the time the legislation is introduced, that it is not proper to bring it in. "At the proper time" could be whenever this case is over with or whenever circumstances are more amenable, and the government will bring in a bill similar to this one. As long as there is information out there which will help us assess legislation similar to this, or its successor, we certainly have a right to it and are entitled to ask for it. Whether we will get it is something else. There is no contradiction.

The argument today is not regarding a request to the courts; it is not on the merits of the bill; it is not on the content of the bill, except as it refers to matters which are before the courts, matters which the Government of Canada has accepted to have argued before the courts. The same government is now saying to Parliament, "By your authority, if you have it, annul proceedings to which we have agreed to be a party." It is not a question of whether we think damages should be awarded; it is not a question of whether we think the consortium is right or the contract should have been cancelled; it is a question of the direct intervention of the Parliament of Canada in judgments which have been accepted by the government. At the same time the Government of Canada, which has accepted and is proceeding with matters in Toronto, is acting in Toronto to defend the case, it is saying to Parliament, "Bail us out by cancelling that case and cancelling the judgment authorizing that case which we have accepted."

Senator Stanbury: Honourable senators, I do not want to carry on this debate because I do not think it is worthy of being carried on at length, but I would like to address the point that Senator Lynch-Staunton has made. The court decision was that the contracts had been breached. The legislation does not deal with the question of whether the contracts have been breached. The legislation deals with how the contractors are to be compensated, if they are to be compensated. The ongoing action has to do with the damages. Those are two entirely separate and parallel matters. They do not conflict with each other at all. I think the honourable senator has gone off on the suggestion that the legislation is directly contrary to the court and that, I believe, is not so.

Senator Lynch-Staunton: Honourable senators, I do not want to prolong this discussion either, but I have to get up and correct what Senator Stanbury has said. The bill makes direct reference to the contracts. It does not say, "You have contracts there, we are declaring them invalid, we are cancelling them, and then damages will be set under our own conditions." The bill says, in clause 3:

> The agreements...

They being the Pearson agreements which are the subject of debate in the court in Toronto,

> ... are hereby declared not to have come into force and to have no legal effect.

Now, whether or not we agree with that proposition is one thing, which is not the subject of my intervention today. What I am saying is that Parliament is being asked to declare invalid contracts which the government has recognized as being valid in Toronto, following two court judgments and its refusal to appeal the Court of Appeal judgment to the Supreme Court of Canada. So it is engaging already in recognition of the agreements by its action in the Toronto courts. It is giving conditions on how damages can be awarded. It has accepted in Toronto that the damages be assessed by a third party, without condition, under the normal workings of the court. These are the issues. Instead of using the same judicial system to have the agreements cancelled or amended, which is the proper way of proceeding, the government is saying, "Well, we lost in the courts. Let us find a way for Parliament to intervene and give us a decision which the courts refused to give." I say, and I maintain, that it is, at the least, improper, highly irregular, and we should never be a party to such an intervention.

Hon. Anne C. Cools: Honourable senators, I have been listening carefully to the remarks made by Senator Lynch-Staunton. It seems to me that for every assertion he makes, the opposite can be argued in favour of the actions of the government and Parliament.

I would have liked to have had the opportunity to prepare a little more for this debate. The subject-matter is very difficult, complex, and extremely timely. However, speaking extemporaneously, to build on the arguments raised by Senator Stewart, the source of the proposition which he cited from Erskine May is the Bill of Rights of 1689. If I am not mistaken, it is Article IX of the Bill of Rights of 1689. Article IX essentially says that no proceedings in Parliament may be questioned anywhere else. The exact language of Article IX is, in part:

> "...Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament.

To follow on Senator Lynch-Staunton's logic, if one of either the courts or Parliament is behaving inappropriately, it is the courts that are inappropriate. I suggest that not only are the government's actions proper but that they are appropriate and necessary.

If Senator Lynch-Staunton is concerned about decisions in the courts, it seems to me that we should speed up our process in the Senate so that the courts will quite clearly understand that they should not be ruling or passing judgments on subject-matter that is before us. In other words, we should pass Bill C-28 quickly.

There is no doubt that there we have a problem in debate. The problem is not within the Speaker's jurisdiction but within the adjudication of the Senate as a whole. I understand that Senator Lynch-Staunton is asking His Honour the Speaker to adjudicate. However, the adjudication of this issue is a matter which concerns us, the Senate as a whole, properly and solely, as Senator Stewart has said.

Honourable senators, the real question is whether or not we wish to pass Bill C-28. There is no doubt that Parliament has the powers. Obviously, the Department of Justice knows Parliament's powers, for the powers are contained in Bill C-28. The question before us is whether or not we want to pass Bill C-28.

This is not a point of order. This is a point of healthy debate. It is the debate on the consideration of the bill itself, and whether we want to pass it. I understand very clearly that Bill C-28 extinguishes all rights at common law. I understand that perfectly well. I also agree with it.

If one of the two institutions, the courts and Parliament, in what is called the constitutional coordinate comity between the two of them, is acting irregularly and in an unusual way, it is the courts which are doing so in entertaining these lawsuits when the subject-matter of Bill C-28 is before Parliament.

Hon. Pierre Claude Nolin: Why did the government not make that argument to the Supreme Court? It has all of the powers necessary to go to the Supreme Court, but did not do so.

Senator Cools: Honourable senators, that is because Parliament is the supreme authority of the country. It is the sovereign authority and it has the right to pass laws, including Bill C-28. Section 18 of the BNA Act 1867 gives Parliament those powers. The powers to which Senator Stewart referred, which come from Article IX of the Bill of Rights 1689, are received into Canada by section 18 of the BNA Act 1867.

It is not proper or fitting that any one of our membership of the Senate should constantly devalue, demean or lessen the powers of Parliament, and of the Senate. We have the power. There is no doubt about that. Honourable senators, let us pass Bill C-28.

The Hon. the Speaker: Honourable senators, I have allowed a very extensive debate on this matter. If there are any speakers who have not spoken but wish to do so, I am prepared to hear from them. I have received a good deal of advice, which I appreciate.

Hon. Eric Arthur Berntson: Honourable senators, when this debate began, I was convinced that there was nothing terribly complicated about it. It seems to me that it is still not particularly complicated, in spite of the fact we have had some attempt to confuse the issue, particularly by my good friend opposite.

The facts are that there was a bill brought before the Parliament of Canada which sought to deem certain agreements to have never been in existence. Parliament has the right to do that. The circumstance which has changed since then is that the Government of Canada has accepted that the agreements did, in fact, exist and that they did, in fact, breach those agreements. Twice now, the court has said that that is, in fact, the case. The Government of Canada lost its appeal and chose not to appeal to the Supreme Court so, as is pointed out by my colleague Senator Lynch-Staunton, the government has accepted that to be the case.

If the government has accepted that the agreements did exist and that it is in breach of those agreements, how can it then bring in an identical bill and expect us to say that this is procedurally correct? This is not a constitutional question or a legal question. This is clearly a question of procedure. It is absolutely unprecedented for such an action to take place.

However, perhaps we have gone a little overboard in making complex this simple, straightforward matter. Perhaps we should all take a little time to study the consequences and look for citations to support the position of the government on this matter. I think that, after due consideration, His Honour the Speaker will find that this action is, in fact, procedurally incorrect and that the point of order is well founded.

The Hon. the Speaker: Honourable senators, if no other senator wishes to speak, I wish to thank all those who participated in this very interesting exchange. I will take the matter under advisement and report as early as I can.

SPEECH FROM THE THRONE

ADDRESS IN REPLY—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Bacon, seconded by the Honourable Senator Rompkey, P.C., for an Address to His Excellency the Governor General in reply to his speech at the Opening of the Second Session of the Thirty-fifth Parliament.—(*6th day of resuming debate*).

Hon. Richard J. Doyle: Honourable senators, the English have St. George, the Irish, St. Patrick. St. Dismas is the Patron Saint of Thieves. Although we have limited knowledge of the way in which his natal day is observed, celebrated, committed or perpetrated, we are certain that the umbrella of his patronage is wide enough to shelter all manner of people in the Department of National Revenue.

• (1650)

On this, the very last day to avoid punishment for the payment of ancient and acknowledged taxes, it would seem appropriate to pay tribute — or at least attach blame — to those new geniuses in the service of Revenue Canada who go on collecting money while enabling our finance ministers to say, without malice or apology, "We do all this without increasing your taxes."

Those who have pondered the great budget of March 6 will remember the throat-clutching, gut-wrenching pledge from Mr. Martin: "We are not raising corporate taxes; we are not raising personal taxes; in fact, we are not raising taxes."

How can it be that governments can provide all kinds of electable goodies without betraying the fact that we, the taxpayers, will get the bill? The answer, of course, lies with the new revenuers — the task force of St. Dismas — to come up with the dues, surcharges, punctured exclusions, add-ons, user fees, abstracts, codicils, excises, impositions, assessments, columns opposite, and assorted vulgarities that can be introduced while ministers softly sing, "My, how the money rolls in."

Honourable senators, do you not agree that it is particularly appropriate on April 30 to salute this government for its unequalled, unsurpassed and unscrupulous use of sources, other than personal and corporate, to provide the gouge?

Each of us could single out the add-on of her or his choice. Never mentioned in a Throne Speech, these charges are not taxes, of course, but little levies that are, as the poet says, "Our own suffering and pain."

My own choice of the newest batch is the special non-tax to be added generously to the price of audio tapes — those innocent little cassettes on which we may hoard our own musicianship or our own flawed re-recording of 33s on their way to the church bazaar.

Last week, we were told by the commanders in chief of Canadian Heritage that an undisclosed sum — probably between 35 and 85 cents in addition to GST — would be added to the charge for each blank tape in a grand gesture to save Canadian culture. The bite will be tucked into otherwise useful revisions of the Copyright Act. How the government intends to funnel such funds to poor poets and needy musicians is not explained. Nor is there any assurance that slices of the collection will not go to English rock stars, the three tenors and the Russian Army Chorus. Nor have we been told that the new extraction of money from one thing because it might lead to another has gone about as far as it will go.

What about saving bankrupt bakeries by imposing levies on flour, yeast and sesame seed? Why not underwrite subways and elevated railways with a surtax on gasoline? Has the time not come to add-on to the price of Band-Aids for thoughtless efficacy in curing the infections that are the bread and butter of our starving hospitals? The potential for a condom service fee is mind boggling.

Perhaps the easiest way to do away with such surcharges would be to insist that any money collected for any special purpose be spent for that purpose and none other. Not put in general funds to be used to save us all from whatever, as we were told the money from surcharges for pensions would be, only to find it lost and gone forever when we needed it — while the revenuers go marching on.

On motion of Senator Berntson, debate adjourned.

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming the debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Sparrow, for the second reading of Bill S-3, to amend the Criminal Code (plea bargaining).—(*Honourable Senator Wood*).

Hon. Dalia Wood: Honourable senators, I rise to speak to the motion for second reading of Bill S-3. I should like to express my support for the initiative of Senator Cools.

My interest in the matter developed as I observed the trials of both Karla Homolka and her ex-husband, Paul Bernardo. I have been reading the newspapers and watching the news on this issue. Like many Canadians, I was shocked at the brutality of the atrocities committed. I am also dismayed that a criminal such as Karla Homolka could have received such a light sentence through plea bargaining. I wholeheartedly support Bill S-3, as it would make these plea bargains reviewable by the courts in certain circumstances.

The purpose of the legislation is clear. As Senator Phillips said in the speech he presented in this chamber on April 24, 1996, the bill seeks to give the courts the power to set aside a plea bargain and impose a sentence which would be more fitting to the crime that had been committed if it was found that the individual had not been forthcoming or misrepresented facts during the plea bargaining negotiations.

The Karla Homolka case demonstrates that there are some serious concerns with the administration of plea bargaining in this country. Not only did she receive a very light sentence for the crimes she committed, but she was only charged with two counts of manslaughter, despite the fact that three people are dead.

• (1700)

As Senator Cools pointed out in her second reading speech in this chamber on March 19, the facts concerning the death of Homolka's sister Tammy were read into the record without charges having been laid. The reasons for this are known only to those involved in the inner workings of the deal. Furthermore, the Crown prosecutor clearly admitted that he had enough evidence to charge her with murder, but because of prosecutorial discretion, he only charged her with manslaughter. The prosecutors charged her husband, Paul Bernardo, with multiple first-degree and second-degree murder and several other sexual assault charges.

Honourable senators, Dr. Malcolm, one of the psychiatrists who examined Karla Homolka, was quoted by Mr. Justice Kovacs in his reasons on sentencing. In Dr. Malcolm's opinion:

> Karla shows no sign of any psychotic disorder.

Homolka's craftiness and deceptiveness are even more frightening because, since she exhibits no psychotic disorder, one can say she is a normal individual! This "normal person" is more sinister, more evil, than many serving life sentences for murder at this very moment.

Mr. Justice Kovacs, in his comments at the sentencing of Karla Homolka, noted that she had cooperated with police, although I have to question the extent of the cooperation she offered the police. The Jane Doe incident only surfaced on December 6, 1993, exactly five months after she pleaded guilty to two charges of manslaughter and was sentenced to 12 years. That is when she disclosed her recollection of a sexual assault. Yet, on February 23, 1993, a short video had been found at 57 Bayview Drive, a video showing Karla Homolka engaged in the sexual assault of a young girl who turned out to be Jane Doe.

On May 16, 1993, Homolka was shown a photograph during the cautioned statement she was required to give under the terms of the resolution agreement. She was obviously concerned when she saw it. She said she was uncertain about who the other person was and she could not identify her from the photograph. She asked if there was another picture. She was not told that a video which showed her conduct over the span of just over a minute and a half existed. Instead, she was told by Sergeant Bob Gillies that he would like to wait until he got better quality photographs. The matter was left there. Perhaps if they had pursued this matter, Karla Homolka might have been charged with the sexual assault of Jane Doe and given a proper sentence for the commission of this offence.

The retired Mr. Justice Patrick Galligan, in his report entitled "Report to the Attorney General of Ontario on Certain Matters Relating to Karla Homolka" delivered to Charles Harnick on March 15, 1996, refers to this event. He was tentatively of the view that the June 7, 1991 assault was not covered by the May 14 resolution agreement.

Honourable senators, Mary Hall, who was the head Crown attorney in Scarborough at the time, and Chief Constable Grant Waddell both agreed that the videotapes clearly demonstrated that Karla Homolka participated in a serious assault against this young girl and that she should be prosecuted for it. In my opinion, honourable senators, this very omission would have constituted a breach of item (A)-10 of her plea bargain agreement, which reads as follows:

> 10. The statement and any subsequent statement will be a full, complete, and truthful account regarding her knowledge and/or involvement or anyone else's

> involvement in the investigations into the deaths of Leslie Mahaffy; Kristen French; alleged rapes in Scarborough; alleged rape on Henley Island; the death of Tammy Homolka; and any other criminal activity she has participated in or has knowledge of.

However, in his report, Mr. Justice Galligan accepts the testimony of the many psychologists attending to Homolka and cites Dr. Brown, who is Karla Homolka's treating psychiatrist in Kingston. Dr. Brown states that Homolka:

> ...demonstrated quite clearly all the symptoms of a severe and chronic Post-Traumatic Stress Disorder and included some memory impairment or amnesia. This memory loss could be a result of various factors, either singly, or, more probably in combination, and these factors include 1. Psychological repression of events that are too painful for the individual to bear. This is a completely unconscious defence mechanism over which the individual has no control.

The doctor then concludes as follows:

> ...I am of the opinion that Karla has been consistently truthful in her recollections of past events in this case. She continues to show a natural concern about the areas for which she has amnesia....She continues to have no memory for her own involvement with Jane Doe, and this is consistent with her participation having occurred against her will and under the empowered direction of her ex-husband.

Honourable senators, one must wonder if such "cooperation" was motivated by pure and simple self-preservation or a willingness to see justice done, as the plea bargain dealmakers would have us think. We know that she is very bright. We know she had escaped detection for a long time. The videos played at Paul Bernardo's trial show he and Karla Homolka laughing at the police, who were unable to capture them. From where I stand, I see only self-interest at work here.

Honourable senators, it causes me some concern that the administration of justice and the imposition of a fair and equitable sentence in certain cases rest solely on prosecutorial discretion, especially when judges defer to such discretion in these sorts of extreme circumstances, even when the plea bargain agreement specifically makes reference to the judge's capacity to refuse to adhere to such an agreement. In Homolka's case, this capacity is expressed in clause (D)-9 of the plea bargain, which reads as follows:

> 9. A refusal by a judge to accept the charges upon which pleas are to be entered, or the proposed sentences, will result in a trial being held on whatever charges the police and the Crown deem appropriate....

This case was so unusual that one would have thought that more judicial scrutiny and examination of the evidence would have been called for.

Senator Phillips raised the fact that Mr. Justice Kovacs noted that the Crown asserted that Homolka had not personally inflicted the deaths of the victims — that Bernardo was the killer. At the Bernardo trial, no evidence was brought forward to prove that Karla Homolka did not "personally inflict the deaths" of those three young girls. If I remember correctly, even the notorious videotapes did not reveal who committed the murders. To this day, the trial has not solidly identified the murderer. Mr. Justice Galligan makes this point in his report. Only Homolka and Bernardo actually know who did it.

Honourable senators, I have always personally wondered why the police and the Crown have readily accepted Karla Homolka's version of the facts instead of Paul Bernardo's when there was no clear-cut evidence as to who actually murdered those girls.

I should like also to inquire why it was in the public interest to lay charges of manslaughter in this case if there was evidence to support charges of murder. I do not know how or by whom the public interest is determined. However, I can tell you that the public strongly disagrees that this plea bargain deal was in the public interest.

Senator Cools has informed me that as a result of a single article printed in *The Edmonton Sun* this month, she received well over 100 telephone calls requesting copies of Bill S-3 and copies of a petition which calls for an inquiry into the whole affair.

Honourable senators, in the case of this plea bargain, and I am sure in many other instances that have not yet come to the surface, prosecutorial discretion has resulted in a miscarriage of justice. The plea bargaining process was conceived to help with the administration of justice in this country.

In his report, Mr. Justice Galligan discussed the plea bargaining process. He quotes the case of *Chan Wai-Keung v. the Queen*, a judgment of the Privy Council, stating:

> It has been recognized for centuries that the practice of allowing one co-defendant to "turn Queen's evidence" and obtain an immunity from further process by giving evidence against another was a powerful weapon for bringing criminals to justice, and although this practice "has been distasteful for at least 300 years to judges, lawyers and members of the public", and although it brings with it an obvious risk that the defendant will give false evidence under this "most powerful inducement", the same very experienced court which so stigmatized this practice was willing to accept that it was in accordance with the law.

The logic of this practice, which places the interest of the public in the detection and punishment of crime above the risk which must always exists where a witness gives evidence for the prosecution, in the hope that he will obtain a benefit thereby, must also apply to situations where "the powerful inducement" takes the shape not of a promised immunity from prosecution, but of the expectation that it will be granted the "discount" from a sentence which the courts accord to those who give evidence against their co-defendants. It is this distastefulness which commands our attention.

Honourable senators, I agree that such plea bargain agreements are necessary. However, I am concerned that the determination of the public interest rests solely on prosecutorial discretion, a discretion that is exercised by private individuals.

• (1710)

Parliament must play an active role in assuring the Canadian public that higher authorities watch these proceedings, and that

the errors made will be corrected. Justice itself is at risk when one person's crime is overlooked in exchange for cooperation in the conviction of another because that offender has entered into the agreement with an agenda of their own. Parliament should not reward individuals for lying or misrepresenting facts.

Bill S-3 provides us with a mechanism whereby a balance could be struck between the preservation of the public interest and the efficient administration of justice.

I would like to thank Senator Cools for her leadership in this matter.

On motion of Senator Berntson, debate adjourned.

POST-SECONDARY EDUCATION

INQUIRY—DEBATE ADJOURNED

Hon. M. Lorne Bonnell rose pursuant to notice of Tuesday, April 23, 1996:

> That he will call the attention of the Senate to the serious state of post-secondary education in Canada.

He said: Honourable senators, in 1991, the Smith Commission of Inquiry on Canadian University Education concluded that our universities were fundamentally healthy and serving the country well. However, so much has happened in five short years. Cash-strapped governments have been dramatically reducing the direct and indirect funding to post-secondary education. The cost of tuition has skyrocketed and student indebtedness — as high as $40,000 or more for some students — is climbing.

Youth unemployment rates are twice the national average. Institutions, for better or for worse, have been forced to rationalize, even privatize, programs with little or no time to study the implications. Faculty hirings and freezes are in effect. Academic freedom and tenure are under fire. Grants for research and development have been cut. The list goes on.

This is not new information to many honourable senators, nor are these events unique to just the last five years. What is different, however, is the magnitude, conflict and compounding of these problems. Effectively, there has been a dramatic accumulation of a number of very serious issues leading to what I would characterize as a crisis in the future of post-secondary education in Canada.

As an example, debates over tuition have been ongoing for well over 40 years from province to province, from school to school. Premier Joseph Smallwood once offered free tuition to Newfoundland students attending his province's new Memorial University. Quebec froze the price of tuition for 21 years, until 1990. Since its founding 15 years ago, the Canadian Federation of Students has tirelessly lobbied for a tuition-free education.

All the while, most provinces and institutions have continued to adopt regular tuition and other fee increases. Today, however, in 1996, students are not just faced with unusual annual tuition fee debates. The headlines are not just about protests over fee hikes. Today, students face grave uncertainty. They want to know if they will find a job after graduation; how they can afford to pay off their student loans; or if their college programs will be forced to shut down. These are just a few of the very serious issues facing students today, all across Canada, on a regular basis.

What hope can we offer to them? For today, education is considered the means of achieving and maintaining an innovative and productive society. As we are well aware, Canadian colleges and universities provide more than just a general, formal education. Our institutions provide us with quality research and scholarship, as well as specialized training for business. They prepare men and women for leadership roles, and they strengthen the competitive edge of our economy.

Honourable senators, when many of us decided on our future, for some, many years ago, a university diploma meant a guaranteed job. In fact, a university degree basically meant a secure, lifetime career. Sadly, today, a degree or diploma does not even guarantee you a job, let alone a career. Yet it continues to open doors.

For our children and grandchildren, higher education is the ticket to better employment opportunities and a higher standard of living. In fact, the Department of Human Resources Development has estimated that just under one-half of the jobs created in this decade will require more than 16 years of education and training. Many Canadians now recognize the necessity for lifelong learning; that is, the constant need for retraining and updating of job and related skills.

All of these benefits to society, to business, and to the individual reinforce the need for a strong, effective and purposeful post-secondary education system in Canada in order to secure our country's international competitive position.

Honourable senators, Canada's investment in education is phenomenal. From 1992 to 1993, expenditures on all levels of education and training, from kindergarten on up, are estimated at $55.3 billion. Well over one million Canadians were enrolled in just post-secondary education alone.

Even so, for all the human resources and billions of dollars invested in higher education, there is a proper perspective, reinforced by the media and other social critics, that the quality of higher education in Canada is being eroded. Trends, such as government financial restraint, globalization and the information highway have forced dramatic changes on the roles of universities and colleges.

Ironic, honourable senators, is it not, how higher education has become so very important to our country's economic and social future, and yet how funding decisions continue to shun or ignore our universities and colleges, and ignore the next generation?

Admittedly, our government has begun the very painful task of eliminating the deficit and bringing the national debt under control. Yes, we have had to make tough decisions, and yes, through the loss of $7 billion in provincial transfers, post-secondary education must bear a large portion of the cuts. We have already seen some of the effects. Ontario, for instance, has reduced funding for universities by $400 million and allowed universities to raise undergraduate tuition by 20 per cent. On the crest of this, tough decisions are being made on universities and college campuses, in homes and in dormitories all across the country. While I sympathize with the many frustrated groups that

throw up their hands in protest, I should like to offer a different perspective for you, for I am getting a bit too old to be marching in the streets.

• (1720)

I believe the time has come for action — for a cross-Canada debate on the future of post-secondary education in this country. While I am very aware that education is the constitutional responsibility of the provinces, and while I fully recognize and respect the jurisdiction laid out in the Constitution, this debate is absolutely necessary. Many students, professors, organizations, employers and general citizens are very concerned with the declining quality of higher education, and many have offered as a solution the creation of a national guideline for post-secondary education.

The debate over national principles of post-secondary education is as diverse as the people involved. Some believe the goals of higher education must be clarified before any overall national strategy can succeed. Others in the debate promote a strong centralized agenda so that Canada is able to keep pace with the international trends as well as labour and marketplace demands. Many have argued for greater financial support from the federal government, all the while knowing education is exclusively within the provincial jurisdiction.

While the nature of the specific proposals for a national strategy may differ somewhat from one advocate to the next, the consensus around the notion is clear: Something needs to be done, and we as a country are in danger of losing out in trade, employment, investment, and other opportunities.

Honourable senators, let me finish by outlining some suggested national principles for post-secondary education. These ideas are not new, nor can I say they are all mine, but they certainly can be used to ignite the debate. As you know, I have long been a supporter of national principles, having been the sponsor in this chamber of our treasured Canada Health Act over a decade ago. As I outline these principles for higher education, I ask that you consider what education means to you, your family and friends, and what it means and could mean to this great country.

First, post-secondary education should be publicly funded. Any attempts to privatize universities and colleges in Canada would lead to an American two-tiered educational system. I am not promoting the exclusion of the private sector in partnership with higher education. In fact, I believe these partnerships should be encouraged and nurtured. Initiatives such as cooperative education and private sector internships should be loudly applauded and promoted.

Second, post-secondary education should be affordable and accessible to anyone who wishes and is able to attend. Part of the debate I believe needs to occur is as to exactly what we mean by "affordable" and "accessible." We often use these terms, but they often mean different things to different people. I do not believe a university or college education should be free, but I also do not believe it should only be for the economically well-off.

Third, as I have already mentioned in previous statements, students should be guaranteed mobility rights from province to province. That is, like the federal Canada Student Loan Program, provincial student loans should allow individuals to study at the university or college of their choice, anywhere in Canada.

Fourth, our higher education system should be comprehensive; therefore, students should have a full range of learning options, including college, university, as well as professional and vocational training. In many regions of this country, these options are not available.

Finally, courses taken at one institution should be easily transferrable or portable to any other school in this country. Today, many students lose a whole semester of work when they move from one university or college to another. This is a blatant waste of their dollars and a waste of public funding.

Honourable senators, I believe the time for the debate on higher education is now. The federal government has seen fit to stabilize the Canada Health and Social Transfers for five years, beginning in 1998. In addition, they have guaranteed a minimum floor of $11 billion for cash transfers. Both measures will allow all levels of government, universities and students to better plan for the future.

In addition, the federal government has made a firm commitment to end the duplication of services with the provinces. One small but fine example of this has been the harmonization of administrative procedures for student loans. This saves both levels of government money, it saves students time, and it demonstrates how the provinces and the federal government can work together in the area of post-secondary education.

Honourable senators, I hope many of you will find the time to participate in this very important inquiry. I also wish to inform you that should I see enough support for this issue, I would be prepared to refer it to the Standing Senate Committee on Social Affairs, Science and Technology for a more in-depth study.

On motion of Senator Berntson, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

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Tuesday, April 30, 1996