CANADA

Debates of the Senate

2nd SESSION • 35th PARLIAMENT • VOLUME 135 • NUMBER 19

OFFICIAL REPORT
(HANSARD)

Wednesday, May 15, 1996

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

CONTENTS

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

Debates: Victoria Building, Room 407, Tel. 996-0397

Published by the Senate
Available from Canada Communication Group — Publishing, Public Works and Government Services Canada, Ottawa K1A 0S9, at $1.75 per copy or $158 per year.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Wednesday, May 15, 1996

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

Prayers.

SENATORS' STATEMENTS

THE SENATE

SMOKING IN PRECINCTS OF PARLIAMENT

Hon. Philippe Deane Gigantès: Honourable senators, there is a regulation which prohibits smoking on the Senate premises. This regulation is infringed frequently by some senators, especially in the reading room. This is unfair for those of us who do not want to be affected by secondary smoke, and it is also unfair to the staff, who must go outside if they desire to smoke.

[*Translation*]

Honourable senators, there is a Senate regulation prohibiting smoking. This regulation is ignored by some senators who smoke, especially in the reading room at the back of the building. This subjects others who do not smoke to the damaging effects of second-hand smoke. This is very unfair to the staff in general and especially to smokers among the staff who must go outside in order to smoke.

[*English*]

UNITED NATIONS

INTERNATIONAL DAY OF FAMILIES

Hon. Landon Pearson: Honourable senators, May 15 marks the third anniversary of the International Day of Families, as proclaimed by the United Nations in September 1993 in support of the 1994 International Year of the Family. I have every reason to believe that all of us in this chamber value both the families from which we come and the families we have made. However, a day of recognition can be a useful reminder of all the other families in Canada. It can help us to focus our thoughts on how that irreplaceable and resilient institution, the family, is evolving to respond to the needs of its individual members.

The make-up of Canadian families has changed enormously over the course of the last century. One hundred years ago, the vast majority of families were on the land; both mothers and fathers were working hard and long. Each child was welcomed as an extra pair of hands, and there were many children in each family.

However, the cities beckoned with the promise of better lives, and by the 1930s less than 30 per cent of children in North America lived in two-parent farm families. For a brief period of time thereafter — very brief in the scale of human history, only 40 years — a small majority of North American families, scarcely more than 50 per cent, fulfilled the ideals so beloved by the traditionalists: father-breadwinner, mother-homemaker and two children at home.

Since 1970, however, other types of family structures have reduced this ideal to a minority, and this for quite a variety of good reasons. Some of them are economic as families move and change to better themselves, and some of them relate to an increase in personal choice. Thanks to education and other factors, there has been an expansion in the life choices of women, which few would want to reverse, leading to more and more women working outside the home engaged in the economic and political life of the country.

Personal choice has also contributed to our declining fertility rate. Personal choice, combined with positive public health measures, has increased the average age of Canadians, many of whom are now living alone.

There are risks for children in these changes but there are also benefits; benefits which can be enhanced when families have the support they need. In my view, changes in the ways that families are constituted and work out their individual arrangements do not necessarily impede them from performing those essential functions we cherish — the sharing of love and support; the sense of commitment on which we so often depend for our emotional security; the concern for the care, nurture and protection of children.

Honourable senators, it is the business of a humane state to respect and support the responsibilities, rights and duties of parents, children, partners and other family members. On this day of the family, left us not become distracted by the varieties of the forms which families may take now and in the future. Instead, let us ground our words and actions in the important functions of life that families, of all patterns and types, continue to contribute to Canadian society.

• (1340)

THE SENATE

COMMENTS OF REFORM MEMBER OF PARLIAMENT

Hon. Edward M. Lawson: Honourable senators, I am sure that honourable senators are as sick and tired as I am of hearing about statements made by Reform Party members. Preston Manning is apparently disciplining his members for making such statements by bouncing them out of caucus. However, I wonder how much of a punishment that is because, when you consider what they are saying publicly, we would probably all be shocked at what they say within the confines of their caucus.

One statement that is troubling me presently is a recent remark by one of our Reform MPs from British Columbia, Jim Abbott. He ventured the opinion that, of B.C.'s six senators, only one is making a visible contribution, and that is Senator Pat Carney. However, I am sure that if you asked him on what basis that statement was made, or if he had researched it, his answer would probably be, "Research? In the Reform Party we do not need

research. We are encouraged to make spontaneous statements without benefit of research." Did he interview any senators as to their record of service? Did he interview Senator Perrault, who has a lifetime of service inside and outside of the Senate, or Senator Austin, or Senator Marchand, or Senator St. Germain across the way? No. Did he check it out?

Any British Columbian can look in any direction, from Canada Place to the new airport, and see the fingerprints and the stamp of B.C. senators who made some of those things possible.

Hon. Senators: Hear, hear!

Senator Lawson: I, for one, am a little tired of hearing these statements from Reform Party members. I do not know if they are on a quota system, under which they are encouraged to make so many dumb statements per week or per month. In any event, these attacks come like waves in a sea of ignorance. I am not sure whether Preston Manning recognizes that it is wrong to make statements about gays, homosexuals and minorities, but he obviously recognizes that it is politically incorrect, and so he disciplines some of his people. However, it is unfortunate that he threw Jan Brown out of caucus because she said they were intolerant. All she displayed was a tremendous grasp of the obvious.

I think I should draw to Preston Manning's attention that, while it is wrong to make statements attacking gays and minorities, it is equally wrong for MP Jim Abbott to be making false accusations against heterosexual senators from British Columbia.

ROUTINE PROCEEDINGS

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT BILL

REPORT OF COMMITTEE

Hon. Mabel M. DeWare, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Wednesday, May 15, 1996

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

FOURTH REPORT

Your Committee, to which was referred the Bill C-11, An Act to establish the Department of Human Resources Development and to amend and repeal certain related Acts, has, in obedience to the Order of Reference of Tuesday, April 30, 1996, examined the said Bill and now reports the same without amendment, but with the following recommendation:

That the government examine the feasibility of transferring the responsibility for the Status of Women to the Department of Human Resources Development.

Respectfully submitted,

MABEL M. DEWARE
Chairman

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

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

CANADA LABOUR CODE

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Mabel M. DeWare, Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Wednesday, May 15, 1996

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

FIFTH REPORT

Your Committee, to which was referred the Bill C-3, An Act to amend the Canada Labour Code (nuclear undertakings) and to make a related amendment to another Act, has, in obedience to the Order of Reference of Wednesday, May 8, 1996, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

MABEL M. DEWARE
Chairman

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

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

[*Translation*]

THE ESTIMATES, 1996-97

VOTE 25—REPORT OF STANDING JOINT COMMITTEE ON OFFICIAL LANGUAGES PRESENTED

Hon. Jean-Louis Roux, Joint Chairman of the Standing Joint Committee on Official Languages, presented the following report:

Wednesday, May 15, 1996

The Standing Joint Committee on Official Languages has the honour to present its

FIRST REPORT

Your Committee, to which was referred Privy Council Vote 25 of the Estimates for the fiscal year ending

March 31, 1997, has, in obedience to the Order of Reference of April 24, 1996, examined the said Estimates and now reports the same.

Respectfully submitted,

JEAN-LOUIS ROUX
Joint Chairman

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

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

[*Later*]

PRIVATE BILL

NIPISSING AND JAMES BAY RAILWAY COMPANY—BILL TO DISSOLVE—REPORT OF COMMITTEE

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

Wednesday, May 15, 1996

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

THIRD REPORT

Your Committee, to which was referred Bill S-7, An Act to dissolve the Nipissing and James Bay Railway Company, has, in obedience to the Order of Reference of May 8, 1996, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LISE BACON
Chair

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

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

[*English*]

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY PRESENT STATE AND FUTURE OF FORESTRY

Hon. Mira Spivak: Honourable senators, I give notice that on Thursday next, May 16, 1996, I will move:

That the Standing Senate Committee on Agriculture and Forestry be authorized to examine the present state and the future of forestry in Canada; and

That the Committee present its report no later than March 31, 1997.

[*Translation*]

FISHERIES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY MATTERS RELATED TO ITS MANDATE

Hon. Gerald J. Comeau: Honourable senators, I give notice that tomorrow, Thursday, May 16, 1996, I will move:

That the Standing Senate Committee on Fisheries, in accordance with rule 86(1)(*o*), be authorized to examine such issues as may arise from time to time relating to Canada's fisheries and oceans generally in Canada; and;

That the Committee present its final report to the Senate no later than March 31, 1997.

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

EMPLOYMENT INSURANCE BILL—NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO TRAVEL DURING STUDY

Hon. Jean-Maurice Simard: Honourable senator, I give notice that on Thursday next, May 16, 1996, I will move:

That it be an instruction of this House that the Standing Senate Committee on Social Affairs, Science and Technology adjourn from time to time and from place to place in Canada when it begins consideration of Bill C-12, an Act respecting employment insurance in Canada.

• (1350)

QUESTION PERIOD

JUSTICE

SALE OF AIRBUS AIRCRAFT TO AIR CANADA—ALLEGED CONSPIRACY TO DEFRAUD FEDERAL GOVERNMENT—IMPLICATIONS OF ENDORSEMENT OF INVESTIGATION—GOVERNMENT POSITION

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I want to follow up on a number of questions which were raised yesterday by Senators Doyle, Murray and myself. They involve the government's request that a civil action initiated by former Prime Minister Mulroney be set aside until January 10, 1997, on the argument that it could hinder an RCMP investigation into what is known as the Airbus affair.

First, can the Leader of the Government give more precise answers to the questions raised yesterday, namely: Is the government satisfied with the way the investigation has been conducted to date? Does it agree with the charges made by a Department of Justice lawyer to Swiss authorities that Mr. Mulroney engaged in criminal activities? Was the decision to seek a delay in his civil action made with the approval of the Prime Minister, the Minister of Justice and the Solicitor General?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, these issues were raised yesterday. My honourable friend made reference at that time to the press release regarding the proceedings in Montreal. That press release speaks for itself when it comes to questions asked by my honourable friend.

The Commissioner of the RCMP recommended the extension to the Solicitor General, and the release itself indicates the grounds for that recommendation. The recommendation was accepted by the Solicitor General and by the Attorney General. As far as the investigation is concerned, two quite separate matters are involved. One is the ongoing RCMP investigation. As I have said many times in this house, my colleagues and I have no knowledge of the details of that investigation. The other matter is the court case in Montreal. That is the one that is at issue here, wherein the Commissioner of the RCMP made a recommendation, which recommendation was accepted by the Solicitor General and the Attorney General.

Senator Lynch-Staunton: Honourable senators, I thought I had been clear in my questions. It has nothing to do with the press release or the content of the press release. The question arises from the fact that the government now endorses the RCMP investigation. Does that mean that the government agrees with the contents of the letter sent by the Department of Justice to the Swiss authorities, which states, in effect, that Mr. Mulroney had engaged in criminal activities? Does the government also agree that the investigation so far is proceeding to its satisfaction? Who authorized the request from the RCMP and government lawyers to ask for a delay in Mr. Mulroney's civil action?

The answers should be based on the questions and not on a press release where that information is not to be found.

Senator Fairbairn: Honourable senators, I referred to the press release only inasmuch as my honourable friend did yesterday.

Senator Lynch-Staunton: That is right.

Senator Fairbairn: The information in the press release is information which speaks directly to the questions asked by my honourable friend. The Commissioner of the RCMP, under which an investigation has begun and is in progress, has made a recommendation to the Solicitor General. The Solicitor General has accepted that advice. The minister and other ministers of the Crown have not been involved in any way with the investigation, not now and not earlier. The Commissioner of the RCMP was acting within his responsibility of advising the Solicitor General when he recommended an extension in the court case. That advice was accepted by the Solicitor General and by the Attorney General of Canada.

As my honourable friend knows, there is a case in Montreal in which the plaintiff has sued the government and certain individuals. For that reason, counsel is present. It is as simple as that.

Senator Lynch-Staunton: No, it is not as simple as that, honourable senators. Let us get away from the press release, and I will try to base my question on the following assumptions which the leader has yet to contradict.

By allying itself with RCMP lawyers to ask for a delay in the civil trial, the government is endorsing the investigation, contrary to what we were told last fall when the Prime Minister, the Solicitor General and the Minister of Justice claimed, over and over again, absolute ignorance of this investigation. Now, by joining with RCMP lawyers, they are accepting the investigation and, therefore, are a party to it.

My question to the leader is as follows: By being a party to the investigation, do you accept the claim made in the letter sent to Swiss authorities on Department of Justice letterhead, signed by a senior counsel of the department, to the effect that Mr. Mulroney engaged in criminal activities?

I read one quotation yesterday. I will read another today, and it is from the translation of a letter which was accepted as evidence in court in Montreal. This letter is written on Department of Justice letterhead and signed by a senior counsel in that department. The letter deals with the commissions which were allegedly paid on the sale of various airplanes:

> The police was informed that Mr. Moores travelled to Switzerland in —

It is unclear —

> — 1986 or 1987 in order to establish two bank accounts with the numbers 34107 and 34117, the latter under the code name "Devon" with Swiss Bank Corporation in Zurich. Account no. 34117 was established to direct a part of these amounts to Mr. Mulroney.

There is not even an attempt here to say "we think" or "it could be" or "it is alleged." It is baldly stated in the original language and in the translation that Mr. Mulroney received commissions which were then directed to a bank account.

The government has now identified itself with this investigation. Does it agree with that accusation?

Senator Fairbairn: Honourable senator, I will not, in this chamber, debate issues which are properly before the court in Montreal. My honourable friend may wish to do so.

Senator Lynch-Staunton: Let them carry on.

Senator Berntson: Let them stay in the courthouse, then.

Senator Fairbairn: I will not discuss this matter any further. There is a case in process. A judgment will be made next week. That is the business of the court; it is not the business of this house.

Senator Kinsella: Does that apply to Bill C-28?

Senator Fairbairn: My friend talks about the Government of Canada endorsing the investigation. I will repeat again: The investigation has been carried out by the RCMP. It is not an investigation involving ministers of the Crown. It was not before it became public knowledge, and it is not now.

Senator Berntson: Except that the government has now joined them in the court-house.

Senator Fairbairn: One of the reasons for the present court case in Montreal is the leaking of a completely private and

confidential communication resulting from the investigation and not from any action by ministers of the Crown. This has not happened before to our knowledge. That document was not leaked by the Government of Canada.

Senator Lynch-Staunton: How do you know that? Where is the proof?

• (1400)

Senator Fairbairn: It was not leaked by the Government of Canada.

Senator Lynch-Staunton: By whom was it leaked, then?

Senator Fairbairn: I have no idea by whom it was leaked.

Senator Lynch-Staunton: Then do not say you know who did not leak it.

Senator Fairbairn: Honourable senators, neither the ministers of the Crown nor the Government of Canada is involved in the investigation that is the subject of a court case.

Senator Berntson: Why did they join them?

Senator Fairbairn: They are there in the courtroom in Montreal.

Senator Berntson: Why did they join the RCMP there in the courtroom, then?

Senator Fairbairn: Because the Government of Canada, the Attorney General and others have been sued. They have instructed counsel, as would any individual citizen. Certainly, the government must do so in a case such as this. They have instructed counsel in Montreal to represent them in the court. Does my honourable friend see something sinister in this?

Senator Lynch-Staunton: I certainly do.

Senator Fairbairn: But that is the process of justice in this country.

Senator Berntson: Yes, under this government.

Senator Lynch-Staunton: Not in this country, but by this government. I was very interested to hear, as all of us were, that we should not discuss events that are taking place in court. Yet we are being told that we should look at Bill C-28, although there are certainly events tied to that bill which are still before the courts. You cannot have it both ways.

Be that as it may, if the government is so concerned with the possibility of a criminal investigation being derailed by a civil suit, why did it not spell out its concerns before the civil suit was heard, rather than wait until weeks after the start of a pretrial examination before the Superior Court of Quebec?

If this argument had any validity, the government would have told the court, "Do not even start the pretrial." Yet we had one and a half days of pretrial examination, and suddenly the government says, "Oh, my goodness. We better not carry on here because we might muck up that investigation." Why did they not plead that argument in a more timely fashion?

Senator Fairbairn: Honourable senators, unlike my honourable friend, I will not stand in this house and take responsibility for the process of justice through the courts of this land. That is a matter for those who are involved in the proceedings in the Montreal court. It is a matter for those who are arguing the case on either side, and for the judge who will make the decision.

I feel very strongly about this — and so I should, because that is my responsibility. I will not comment on the internal workings of that court case in Montreal. I simply say to my honourable friend that the Commissioner of the RCMP, who heads the police organization that is carrying out the investigation, has made a recommendation and given advice to the Solicitor General of Canada on the subject of the court case, and a possible extension of time in that same matter.

Senator Berntson: I hope you read this tomorrow.

Senator Fairbairn: I will read it tomorrow. I will repeat it.

The Commissioner of the RCMP has made a recommendation and given advice to the Solicitor General on why there should be an extension of time in the court case. That advice has been accepted in principle by the Solicitor General and the Attorney General of Canada. That is the position of the government. The case is before the courts. A judgment in that motion will be issued, I believe, next Wednesday. However, that is the business of the courts in Canada.

In relation to my honourable friend's comments about another piece of legislation, Bill C-28, we are arguing on the merit of that piece of legislation in Canada, and certainly not on its relationship to what is happening in a court somewhere in Toronto. This is a principle, my honourable friend.

Senator Lynch-Staunton: I will let the minister wrestle with her own contradictions when she has to face them in *Hansard*. I find it absolutely unbelievable that, on the one hand, we are told we cannot discuss a matter in the courts, and that we must let justice take its course when the case is in Montreal — which does not necessarily appeal to the government — while, on the other hand, we are told that we can go ahead and discuss matters that are before the courts in Toronto because the government has a vested interest there. There is no reconciliation between the two positions.

Senator Stanbury: Talk about contradictions! These are entirely different situations.

Senator Lynch-Staunton: Certainty not. It is a matter that is before the courts, to quote your leader. You are shaking your head, but that is what the Leader of the Government in the Senate has just said.

Is it not a fact that the government's real concern is not with respect to any effect that might be wrought on a criminal investigation, but that they have come to the conclusion that the charges and accusations listed by the Department of Justice to Swiss authorities regarding Mr. Mulroney are without foundation? Furthermore, rather than apologize to Mr. Mulroney and retract the accusations and charges, which any government with any concern for the presumption of innocence would never have sanctioned in the first place, the government is desperately attempting to hide its violation of basic rights with a spurious

argument which, had it credibility, it would have invoked long before any court proceedings had even begun.

Senator Fairbairn: With regard to the assumptions that my honourable friend makes, I reply with a simple "no." I will repeat once again that there is a court proceeding under way. As far as I am concerned, that court proceeding will be respected.

Senator Lynch-Staunton: Good. We will remember that when Senator Kirby rises.

Hon. Orville H. Phillips: Honourable senators, my question is supplementary to the one asked by the Leader of the Opposition in the Senate. In view of the recent rulings in this chamber, is it the intention of the government to introduce a bill of pains and penalties similar to that of Bill C-28, preventing Mr. Mulroney from proceeding with this legal action?

SALE OF AIRBUS AIRCRAFT TO AIR CANADA—ALLEGED CONSPIRACY TO DEFRAUD FEDERAL GOVERNMENT—POSSIBILITY OF ENLARGEMENT OF INVESTIGATION—GOVERNMENT POSITION

Hon. Gerry St. Germain: Honourable senators, my question is also for the Leader of the Government in the Senate. I never cease to be amazed at the Liberals' capacity to manipulate the public mindset in order to achieve their political ends.

Having approved of, if not initiated, an accusation against the former Prime Minister that he was a criminal, they now want the ridiculous accusation to ferment forever, thus denying the right of the former Prime Minister to defend himself in a timely fashion.

Honourable senators, what is happening here reeks of McCarthyism. How many other people in this country are being investigated without the knowledge of the Solicitor General, the Minister of Justice, or the Prime Minister and the staff of the PMO? You will not take responsibility for the court. Will you at least take responsibility for the ministry and tell us this: Are there any other people being investigated in this country, in this manner, without the knowledge of the Minister of Justice, so that possibly other letters could be floating around the world? Are there any others? Can you tell us?

Senator Berntson: I only know of one.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, my honourable friend has used certain words such as McCarthyism, which I find offensive.

Senator Lynch-Staunton: That is quite soft.

Senator Fairbairn: I find it offensive because the position of this government and the position of the ministers from the very beginning has been —

Senator Berntson: Get Mulroney!

Senator Fairbairn: — that they have not had any part whatsoever in the police investigation that has been under way, nor should they. On the day that ministers of the Crown insert themselves into police investigations, my honourable friend should have a considerable degree of concern. This government has not done so, nor will it.

• (1410)

Senator St. Germain: Honourable senators, are we being run by a police state? Is the minister saying that the police are not under the direction of the Solicitor General? Would she answer "yes" or "no."

Senator Fairbairn: Honourable senators, no, we are not being run by a police state. We are being run, in a democracy, by the rule of law. That is the rule that is respected by this government.

Senator St. Germain: Honourable senators, when I was a minister of the Crown, I felt responsible for every letter that came out of my department. A letter was sent from the Department of Justice to Switzerland, making these charges against the former Prime Minister.

We now have an expression of regret from a government lawyer who said:

> We regret that something that was supposed to remain secret ended up in the public place.

Is it now known where this leak came from? Are we trying to determine how this went askew? If the government is so scandalized by what has taken place that they have involved their lawyer, has the government initiated an investigation into what is going on and how Canadians are being treated?

We are dealing here with a former Prime Minister. However, this could happen to anyone. The fact that it happened to a former Prime Minister makes it that much worse, regardless of which party that former Prime Minister is from. If the government regrets that this "ended up in the public place," what is being done about it?

Senator Fairbairn: Honourable senators, my honourable friend will be aware, having been a minister of the Crown, that communications, for example, between the Government of Canada and Swiss authorities have always been conducted in secrecy and confidentiality. Ministers have not been involved in this process. I hope that my honourable friend is not suggesting, either for this case or any other case, that they should be.

SALE OF AIRBUS AIRCRAFT TO AIR CANADA—ALLEGED CONSPIRACY TO DEFRAUD FEDERAL GOVERNMENT—REQUEST FOR EXTENSION OF TIME IN FILING DEFENCE IN LIBEL CLAIM—IMPLICATIONS OF PRESS RELEASE—GOVERNMENT POSITION

Hon. Lowell Murray: Honourable senators, I read carefully the press release to which the Leader of the Government referred earlier. I noted that it was written carefully. The Honourable Leader of the Government has said that the Minister of Justice and the Solicitor General accept the principle that the Commissioner of the RCMP has a duty to intervene in such a case when he believes that the interests of the investigation are best served by doing so. I believe I am paraphrasing correctly.

Did the Minister of Justice and the Solicitor General satisfy themselves as to the case put forward by the Commissioner of the RCMP or did they simply "accept his recommendation"? My question leads to the important question as to whether now, for the first time, the responsible ministers — the Solicitor General and the Minister of Justice — are accepting ministerial responsibility, not only for the investigation but for the entire conduct of the Crown's case in this suit.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, for the benefit of senators, I will quote from the paragraphs in the press release which my honourable friend was paraphrasing. We might as well have them on the record. It states:

> The Solicitor General agrees with the principle that the Commissioner of the RCMP has a duty to recommend an extension in the time permitted for filing a Defence in a civil matter, when the Commissioner is concerned that failure to do so would result in public disclosure of the contents of an ongoing investigation and would jeopardise the investigation.
>
> Given the above, the Attorney General and the Solicitor General accept the Commissioner's advice, and agree that it is necessary for the Crown to seek an extension in the time permitted for the filing of a Defence, in order to allow the RCMP additional time to complete their investigation.

Honourable senators, it is clear from those paragraphs that the ministers have done precisely what I have been saying over and over again. They have accepted the advice and the recommendation of the Commissioner of the RCMP, who is in charge of the police force which is continuing to carry out the investigation. Contrary to what others have tried to suggest, this does not mean that the ministers of the Crown are party to or part of the investigation. They have not been involved in that way from the beginning, and they are not now.

Senator Murray: Honourable senators, that is exactly what the Leader of the Opposition was trying to find out with the questions he put to my honourable friend a few minutes ago. I request that the Honourable Leader of the Government find out whether, rather than simply accepting the recommendations, the two ministers satisfied themselves as to the soundness of the background of the arguments put forward by the Commissioner.

Senator Fairbairn: Honourable senators, I am not privy to discussions of this nature, as my honourable friend would know. He made a point at the beginning of his question of the care that has been taken in putting forward this recommendation.

Senator Murray: Honourable senators, I was referring to the care that has been taken in drafting the press release. They were much more careful with that than they were with the letter.

Senator Fairbairn: It is quite clear that the two ministers of the Crown have accepted the reasoning set forward for the recommendation; they have accepted the advice.

SALE OF AIRBUS AIRCRAFT TO AIR CANADA—ALLEGED CONSPIRACY TO DEFRAUD FEDERAL GOVERNMENT—COMMUNICATION SENT TO SWISS AUTHORITIES—GOVERNMENT POSITION

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, surely we all agree that care was obviously taken in drafting the letter to the Swiss authorities. It was not a slap-dash, post card type message sent to the Swiss to get an investigation going.

The translation reads as follows:

> The Minister of Justice and Attorney General of Canada is most kindly asking the Minister of Justice of Switzerland for judicial assistance for the Canadian government in the investigation of breaches of Canadian law.

How can the Leader of the Government in the Senate tell us that her government knew nothing about it; that the Prime Minister and the two ministers directly involved in this issue knew nothing about it, when the official document that went to Swiss authorities was done on Department of Justice letterhead? The demand was made by the Minister of Justice and Attorney General of Canada, in the name of the Canadian government, and it is signed by a senior official of the Department of Justice.

How can the minister suddenly say "We were not involved," when the involvement is evident right here in documents made public and available to anyone who wants to analyze exactly what the government is up to? The government has been complicitous in this thing from day one. Why it does not want to admit it, I will leave to others to decide.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I most strenuously disagree with the conclusions the honourable senator has reached. The document to which he referred was transmitted in the form in which those documents are transmitted.

• (1420)

The fact of the matter is that the ministers did not have any knowledge of the contents of that letter. They have had no knowledge of the investigation. Once again, honourable senators, and I say this most sincerely, the ministers should not be party to the workings of a police investigation: not then, and not now.

I am sure that it would be of great concern to everyone in this house if I were to give a different answer from that which I am giving today.

Hon. Gerry St. Germain: Honourable senator, my question is: Did the PMO or the PCO know of this particular letter?

Senator Comeau: Yes or no.

Senator Fairbairn: Honourable senators, as the Leader of the Opposition has indicated, this communication was sent through the Department of Justice. This investigation is an investigation of the Royal Canadian Mounted Police.

Senator Lynch-Staunton: And they are accountable to no one.

Senator Fairbairn: No minister has been involved in this investigation or has knowledge of it. It is a matter for the police, and that is where it sits, with the police and not with other departments, other ministers or other members of staff.

The Hon. the Speaker: Honourable senators, the time allotted for Question Period has expired. Senator Forrestall has been attempting to ask a question on several occasions. Is it agreed that we hear the Honourable Senator Forrestall?

Hon. Senators: Agreed.

NATIONAL DEFENCE

SEARCH AND RESCUE HELICOPTER REPLACEMENT PROGRAM—EFFICACY OF MODEL CHOSEN

Hon. J. Michael Forrestall: Honourable senators, my question to the minister has to do with the replacement helicopters for search and rescue purposes. It is my information that a decision has been made regarding the purchase of this equipment. To this end, apparently a representative of the appropriate British company is in Ottawa today.

Coincidentally, the briefing that I have been attempting to get for some time now on this subject, which was set for this morning, was cancelled abruptly. I am curious as to why that happened.

Can the minister enlighten us as to any new developments regarding this matter? Has an announcement been made? Is one imminent? Are we settling for this little helicopter that will not do the job?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, my honourable friend is assiduous in his pursuit and knowledge of this topic. I will tell him honestly that I do not know of any new developments. I do not know why any briefing which he was to attend was cancelled today. I will attempt to obtain for him an answer to both questions.

Senator Forrestall: Honourable senators, it is my understanding that the government has made a deal to purchase the Cormorant, which is the smaller version of the EH-101. If the minister knows nothing about it, am I to presume that had this matter been discussed in cabinet, she would, in fact, know something about it?

Senator Fairbairn: Honourable senators, my honourable friend will know that anything talked about in cabinet is not discussed outside of the cabinet room. As I indicated to the honourable senator, I will consult with those in the Department of National Defence to see what I can find out for him, as well as the circumstances surrounding the cancellation of his briefing.

ANSWERS TO ORDER PAPER QUESTIONS TABLED

FOREIGN AFFAIRS—VEHICLES PURCHASED—REQUEST FOR PARTICULARS

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 4 on the Order Paper—Senator Kenny.

INDIAN AFFAIRS—VEHICLES PURCHASED—REQUEST FOR PARTICULARS

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 5 on the Order Paper—Senator Kenny.

INTERNATIONAL TRADE—VEHICLES PURCHASED—REQUEST FOR PARTICULARS

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 11 on the Order Paper—Senator Kenny.

ORDERS OF THE DAY

PEARSON INTERNATIONAL AIRPORT AGREEMENTS BILL

SECOND READING—DEBATE ADJOURNED

Leave having been given to proceed to Order No. 3.

Hon. Michael Kirby moved 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.

He said: Honourable senators, at long last, I rise to begin second reading debate on Bill C-28.

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): I waited for it yesterday.

Hon. John Lynch-Staunton (Leader of the Opposition): We were here yesterday.

Senator Kirby: This bill will be familiar to many members of this chamber. Indeed, having listened to many of the points of order, it is clear that members opposite have a thorough understanding of the bill. As members opposite have pointed out repeatedly, Bill C-28 is identical to its predecessor, Bill C-22. What Bill C-28 does is cancel the famous, or perhaps I should say infamous, Pearson airport agreements and limits the claims that the developers can make against the government.

All of us in this chamber are very much aware of the controversy that has surrounded these agreements and the government's attempts to pass legislation cancelling them. As someone who spent the better part of six months last year studying the Pearson airport deal, I can say that I am very familiar with the strong opinions of some of my colleagues opposite about those agreements. I know that they are cognizant of my views on this issue.

Honourable senators, we have had our debate in this chamber on the Pearson airport agreements. I do not propose to reopen that debate now, as much as I might like to do so in light of some of the things that were said in debate on the points of order. Nor do I propose to repeat all the arguments I made in this chamber on February 1, at which time I detailed the reasons why I strongly believe that it is very much in the public interest that the Pearson airport agreements be cancelled.

The bottom line is that the government made a policy decision to cancel the Pearson airport agreements. This was a commitment made to the Canadian public during the last election. What Bill C-28 does is enable the government to fulfil its election commitment. As such, Bill C-28 is long overdue; and it is long overdue that members of this chamber allow the

government to make good on its electoral promise. In saying that, however, I am modestly hopeful, given the tenor of the discussion surrounding the points of order, that we can approach this matter without some of the unfortunate rhetoric that was unleashed on Bill C-22, the predecessor of Bill C-28.

• (1430)

In essence, Bill C-22 was criticized by some of the honourable senators opposite for very specific legal reasons. They claimed that Bill C-22 was unconstitutional, and they referred it for study to the Standing Senate Committee on Legal and Constitutional Affairs. That committee, as honourable members are well aware, held a number of hearings over a long period of time. It heard witnesses who testified that the bill was constitutional and other witnesses who testified that it was not. Over the months that the bill was in committee, the government proposed several sets of amendments to answer the concerns raised by some of the witnesses.

The government's position throughout that long process was clear: The bill, without any amendments, was legal, constitutional, and perfectly within the authority of Parliament. The Minister of Justice testified before the Standing Senate Committee on Legal and Constitutional Affairs, not just once but twice, stating in no uncertain terms, on each occasion, that Bill C-22 was constitutional and was within the authority of Parliament to pass. Officials from the Department of Justice also testified to the legality and constitutionality of Bill C-22. Highly respected professors of constitutional law, including, for example, Professor Wayne MacKay of Dalhousie Law School, also testified that Bill C-22 was legal and constitutional.

Senator Lynch-Staunton: Selective quotations.

Senator Kirby: Nevertheless, amendments were offered by the government in committee in a good-faith attempt to move the matter to a conclusion and to allow the policy of the government to be implemented.

However, we all know what happened during the length of time this bill was before the Legal and Constitutional Affairs committee. First, the Conservative majority on the committee, and then the Conservative majority in this chamber, passed amendments that would have gutted the bill. Those amendments were rejected by the House of Commons, and they returned the bill to this place.

Then, after several more months of sporadic hearings, seven members of the Legal and Constitutional Affairs committee took it upon themselves to bury the bill, refusing to bring it forward to the floor of this chamber for debate, discussion and a full vote.

That, honourable senators, was not a bright hour for this chamber or for the legislative process. Surely it should be this chamber as a whole that votes on bills. Committees should not be allowed to rob us of that role. One clearly must question a set of rules in any legislative body which allows seven members to decide whether the other 97 members will be allowed to debate and vote on an issue.

Much as I might like to, I do not want to visit recriminations on the past or dwell on the sad history of the way Bill C-22 was treated by Conservative senators, particularly in committee. The government's preference clearly is that this bill pass in its original form, as it was passed by the elected representatives in the other place, not just once but three times.

However, the government and the Liberal members of this chamber also want to move forward, or try to move forward, in a spirit of cooperation with senators opposite. Consequently, I am pleased to announce today that, when this bill goes to committee, the government members of the committee will, once again, be prepared to move a series of amendments that will demonstrate this government's willingness to seriously address the criticisms levelled against Bill C-22. We are willing to move these amendments if they are necessary to address the concerns of senators opposite. I believe that these amendments would enable the government to fulfil its election commitment to the Canadian people in a way that satisfies the constitutional concerns raised by the honourable senators opposite during the months of hearings on Bill C-22.

When he spoke against Bill C-22, Senator Lynch-Staunton was very clear that he and his colleagues were not trying to oppose the government's policy decision to cancel the Pearson airport agreements, even though he repeatedly stated, justifiably, that he and his colleagues would prefer a different policy decision. Senator Lynch-Staunton repeatedly made it clear that his sole concern was to ensure that the bill was constitutional.

Senator Lynch-Staunton: The rule of law.

Senator Kirby: Let me read to you from a statement Senator Lynch-Staunton made in this chamber a year and a half ago, on October 5, 1994. At that time, the Leader of the Opposition in the Senate said the following:

> The Senate, as has been repeatedly stated over the years, does not exist to obstruct and delay indefinitely. It must be conscious at all times of the will of the elected representatives. This is particularly true of government policy supported by a majority of commoners. In this case, however, it is not the policy that we challenge — cancellation of the Pearson airport agreements — but the principle which is being violated — denial of access to the courts. It is as simple as that.

Honourable senators, although this bill is back before us in its original form, if Conservative senators insist in committee, we are prepared to propose amendments that are a direct response to the legal and constitutional concerns raised by my colleagues opposite.

I am pleased to tell Senator Lynch-Staunton and all other members of this chamber that every one of the constitutional criticisms levelled against Bill C-22 will be addressed and satisfied by the amendments that the Liberal members of the committee are prepared to move in committee.

I am confident, therefore, that the honourable senators opposite will now be able to allow the bill to pass, clearly not with enthusiasm but nevertheless in conformity with the position that their leader has repeatedly taken, that in fact what is at stake is the constitutional issues only, and that the policy decision is in fact not at issue.

I propose now, if I may, to take you through the bill and the amendments which Liberal members of the Legal and Constitutional Affairs Committee are prepared to move, if these amendments are required to satisfy the concerns of Conservative senators.

In the same speech I quoted from a few minutes ago, his speech of October 5, 1994, Senator Lynch-Staunton detailed the concerns that he and his colleagues had with the original Bill C-22. Again, I quote, this time from page 861 of Senate Debates of October 5, 1994.

> Simply put, the denial of access to the courts, the declaration that contracts are not only cancelled but have never existed, and the absolute discretion given to the minister to determine what, if any, damages caused by the cancellation are owed to the aggrieved party, are provisions which no legislator has ever dared put before the Parliament of Canada. They go against one of the most fundamental principles on which this country was founded ...
>
> ... the rule of law...

I do not plan to debate again whether or not Senator Lynch-Staunton's strong words were justified, although I cannot resist pointing out that a number of highly respected legal scholars were very clear in testifying before the committee that they were not. However, that is not at issue any more. The amendments that Liberal members of the committee are prepared to move will address, point by point, each of these specific concerns that Senator Lynch-Staunton has repeatedly raised. Let me explain.

First, clauses 3, 4, and 5 of the bill, which declare the agreements not to have come into force, would be amended to declare that the amendments have no legal effect after December 15, 1993. December 15, 1993 was the date the federal government was supposed to, but did not, turn over possession of the property in accordance with the contracts. This will resolve one of Senator Lynch-Staunton's three concerns. The bill would no longer declare that the contracts never existed.

Next, clauses 7 and 8, which bar access to the courts, would be amended to allow legal proceedings to be instituted. This will resolve the second of Senator Lynch-Staunton's three concerns as stated in this chamber on October 5, 1994, and as quoted by me a few minutes ago.

I am pleased to point out that these amendments would also completely answer the objection presented by Senator Lynch-Staunton last week in this chamber. His major argument against Bill C-28, when he introduced his original point of order two weeks ago, was that clause 3 declared the Pearson agreements never to have come into existence. He said that this would amount to an unprecedented annulment of a court judgment. Senator Lynch-Staunton's other objection was that the bill would deny access to the courts.

[Senator Kirby]

• (1440)

When speaking on his point of order in the Senate on April 30, 1996, Senator Lynch-Staunton said:

> 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.

These were the grounds Senator Lynch-Staunton presented yesterday for accusing the government of setting what he called "dangerous precedents." These were his grounds for protesting against this chamber's proceeding with second reading of the bill. Needless to say, I do not agree with Senator Lynch-Staunton's analysis. That is not surprising, having participated with him in many of the hearings of the Pearson airport inquiry last summer. Neither, of course, do I agree with his conclusions.

However, having presented these concerns to the chamber, I know that Senator Lynch-Staunton will be the first to acknowledge that both of his objections will be dealt with by the two amendments I have proposed thus far. I am actually pleased he took the opportunity to restate his concerns during his presentation on his point of order, because it gave me an opportunity to assure him and this chamber that the amendments the Liberal members of the committee will move in committee will deal with and assuage Senator Lynch-Staunton's concerns.

Finally, honourable senators, regarding clauses 9 and 10 of Bill C-28, the old Bill C-22, which bar all compensation and give the minister sole discretion to make such payments as he considers appropriate, excluding payments for lost profits and lobbying fees, the Liberal members of the committee will be prepared to move an amendment which will effectively remove these clauses. This will resolve the third and last of Senator Lynch-Staunton's original objections.

It has been well known that the government is opposed, as a matter of policy, to paying anything for certain heads of damages in this dispute, notably lost profits and lobbying fees. It has been very clear throughout that the government's policy is that the consortium should only be allowed to recover its out-of-pocket disbursements and expenditures that can be proven, other than lobbying fees.

We could debate this policy decision by the government at length. Many of you heard me speak in February about some of the anticipated profits under this deal and the lobbying fees that we learned about during last summer's Pearson airport inquiry. However, I would rather not engage in this debate, at least not now. As Senator Lynch-Staunton said very articulately, the objections his party raised to Bill C-22 were not about policy matters but only — and I emphasize, honourable senators, only — about constitutional questions. He said that this chamber should properly defer to the other place on matters of policy.

In fact, it was Senator Lynch-Staunton who proposed a solution to the problem during one of the committee meetings that took place with respect to Bill C-22. Let me read to honourable senators an excerpt from the committee transcript of Thursday, November 17, 1994, at page 14:17:

> **Senator Lynch-Staunton:** The government certainly has a right to be concerned about damages being awarded in any case in which it is the defender. Can the courts be instructed, when claims of this nature are made, to assess them within certain stated guidelines which can be incorporated on that point? I say that because in the bill the claimants are told that no amount will be payable for any loss of profit or any fee paid for lobbying activities, and only out-of-pocket expenses will be considered. Without agreeing that these limitations are proper, is it appropriate for an act to include such conditions for the court to follow in an assessment of a claim?

Professor Ken Norman of the College of Law of the University of Saskatchewan replied to Senator Lynch-Staunton's question as follows:

> **Mr. Norman:** Yes....If the legislative branch wishes to provide the terms or the frame within which there shall be an independent adjudication, it is entitled to do so....Here, Bill C-22 could certainly specify what the criteria should be for determination....This is what I am arguing for....I think Parliament can limit and define what is appropriate and what is not to be considered.

Indeed, honourable senators, every one of the witnesses who testified before the Legal and Constitutional Affairs Committee, on both sides of the constitutionality issue, was absolutely clear that it is perfectly proper for Parliament to legislate criteria to be applied by a court in awarding damages.

Parliament could set a monetary cap on damages — indeed, some witnesses even said Parliament could set a monetary cap as low as $1 — or Parliament could legislate heads of damages that can and cannot be recovered, such as barring recovery for lost profits and lobbying fees.

That, honourable senators, is what the amendments that I have indicated could be moved in committee would do, and they will be moved if honourable senators opposite insist that it be so. Such amendments would not set any monetary cap on damages, but would simply stipulate those heads of damages that may or may not be awarded in a court proceeding. In particular, they would make it clear that no award of damages be made for lost profits or lobbying fees.

Most, but not all, of the amendments I have just outlined were tabled in the Legal and Constitutional Affairs Committee many months ago. While they satisfied most witnesses who appeared before the committee criticizing Bill C-22, one witness in particular remained dissatisfied and continued to raise objections to the bill. Professor Patrick Monahan of Osgoode Hall Law School was frank and honest in stating to the committee that he had been retained several months earlier by the Pearson consortium to advise them in connection with Bill C-22.

Please, honourable senators, be clear, I am not making this observation in order to attack or in any way undermine Professor Monahan. Indeed, I commend his honesty and his frankness. I just want to be sure that I match it and fully present Professor Monahan's views to you, because, as you will see in a moment, we have seriously taken his views into account.

Professor Monahan appeared three times before the Legal and Constitutional Affairs Committee. By his third appearance, even he was satisfied that almost all his objections had been satisfactorily addressed by amendments offered to the bill in committee. Professor Monahan had only two constitutional objections to the bill at the time of his third appearance. Both of his objections related to criteria to be applied by a court in awarding damages. These criteria have been set out in amendments to Bill C-22 which had been proposed in committee shortly before Professor Monahan testified for the third time.

Under these amendments, Bill C-22 would have limited awards of damages to claims that had been submitted before June 30, 1994. This was a cut-off date imposed as a part of the settlement process which had begun in January 1994. It was a date known to all parties involved in the Pearson airport project who had been given about six months to prepare and submit their claims to Mr. Robert Wright, who was the government's adjudicator at the time.

The Minister of Justice testified before the Legal and Constitutional Affairs Committee that this date was retained in Bill C-22 both to respect the process carried out by Mr. Wright and also as a point of reference by which the government could determine the rough order of magnitude of the claims. Obviously, determining the rough order of magnitude of the claims is an important factor in these days when the federal government is struggling to get its financial house in order and is having to cut back severely on funding to various important government programs.

Senator Lynch-Staunton: Well, stop going after Mulroney, then.

Senator Kirby: These were good, legitimate, and perfectly legal and constitutional limitations. Nevertheless, Professor Monahan objected strenuously to the June 30 cut-off date, saying it was arbitrary and unconstitutional. It seems to me, based on my history in this chamber and my general understanding of the legislative process, that many statutes regularly set limits which from certain perspectives might be viewed as arbitrary.

• (1450)

I do not intend to engage in this debate, because another amendment which Liberal members of the Legal and Constitutional Affairs Committee are prepared to move in committee will effectively eliminate the June 30 date, and in fact there will not be any cut-off date at all. Therefore Professor Monahan's objection would be satisfied. In fact, under the amendments that the government is prepared to support in committee, there will be no cut-off date for anyone wishing to advance a claim.

I said a few minutes ago that, when he appeared before the committee for a third and last time, Professor Monahan had two constitutional objectives. One was the date, which Liberal committee members are prepared to address and eliminate. Professor Monahan's other remaining constitutional objection related to the clause in the amended Bill C-22 which would have barred group awards of non-compensatory, aggravated, exemplary and punitive damages.

Professor Monahan's basis for this objection was his concern that the clause would effectively deprive a plaintiff in a defamation action from obtaining any relief. Indeed, let me quote to you from Professor Monahan's testimony on May 23, 1995 before the Standing Senate Committee on Legal and Constitutional Affairs:

> All —

— the plaintiff —

> — can get is out-of-pocket expenses.... In a claim for damages and defamation suit the claim generally includes a large amount for aggravated damages or general damages. Therefore, although you can bring a claim for defamation —

That is, under the proposed amendment —

> ...you cannot recover anything.
>
> It is true that you can clear your name. You can get a judgment to say you were defamed. That is not trivial. That is significant. However, you cannot be compensated by the courts in the way that our courts would compensate someone for defamation.
>
> On the defamation point, because of the combination of the cut-off date, which still exists, and the ban on exemplary or aggravated damages, it does not seem to me that there is real room for a claim on defamation.

Honourable senators, with respect to his second point on outlawing or preventing awards for non-compensatory, aggravated, exemplary and punitive damages, Professor Monahan implied that the amendment meant that plaintiffs could not receive any award. That is clearly not accurate. The proposed ban against awards of non-compensatory, punitive, exemplary or aggravated damages does not in any way prevent a plaintiff from recovering damages in a defamation suit.

In fact, honourable senators, in the way our courts normally work, someone gets compensated for defamation not by punitive, aggravated or exemplary damages but by general damages. Honourable senators, nothing in the amendments that were moved before the Legal and Constitutional Affairs Committee will bar a plaintiff from seeking general damages.

Just to verify this point, honourable senators, I took a look at some damage awards for defamation actions which have been awarded by the courts over the past five years. Out of 25 cases in which damage awards were made, every single one gave an award for general damages. I repeat, honourable senators: General damages are still allowed under the amendments which were moved before the Legal and Constitutional Affairs Committee one year ago.

I could not find a single defamation case where a plaintiff recovered aggravated damages or punitive damages or exemplary damages without also receiving general damages and, in most cases, substantial general damages. In fact, in the vast majority of cases, the plaintiff only received general damages. Awards for aggravated, punitive or exemplary damages are highly exceptional. They are absolutely not the norm.

I also think that honourable senators should note that the amount of general damages can be quite high. Again, referring to the sample I took of 25 successful defamation cases over the last five years, the amounts awarded under general damages range from a low of $2,000 to a high of $300,000. The $300,000 number is not a particularly exceptional number. There are several awards ranging from $40,000 to $100,000, to highlight just a few.

Therefore there is absolutely no basis for Professor Monahan's claim that by allowing recovery for general damages only, a plaintiff will be deprived of meaningful compensation. Indeed, honourable senators, Professor Monahan acknowledged this exact point. To quote his exact words:

> ...a claim for damages and defamation...generally includes a large amount for aggravated damages or general damages.

Thus Professor Monahan, even though he goes on in his testimony to focus solely on the ban on aggravated damages, clearly acknowledges in his testimony that most defamation suits in which damages are awarded — again in his words — "generally include a large amount for general damages."

Indeed, I have just given you a sample of 25 cases over the last five years which proves that, on that particular point, Professor Monahan was absolutely correct.

Thus, honourable senators, with the amendments which I have indicated that Liberal senators are prepared to move in committee, individuals will be able to sue for defamation, and they will be able to claim general damages. As I have described, courts have handed down awards of general damages over the last few years running into the hundreds of thousands of dollars.

Finally, Professor Monahan also indicated that he was troubled by the combined effect of the June 30 date with the bar on exemplary and aggravated damages. Under the amendments that the government is willing to accept and the Liberal senators are willing to move in committee, that cut-off date will be gone and plaintiffs will be able to receive general damages.

Professor Monahan was very clear when he testified that the rest of Bill C-22, as it had been amended in committee, or as amendments had been proposed by the government in committee, would be constitutional once his objections to the June 30 cut-off date and the ban on exemplary and aggravated damages were resolved. Indeed, Professor Monahan said explicitly in his appearance on May 23, 1995, before the Legal and Constitutional Affairs Committee, "The government can impose limits on recovery." This is an important point, because I

know the high regard in which Professor Monahan is held, particularly by honourable senators opposite, and particularly by those who are in opposition to Bill C-22. Therefore, just to reinforce this point, I should like to read to you a short exchange between Senator Lynch-Staunton and Professor Monahan during Professor Monahan's third appearance before the committee:

> **Senator Lynch-Staunton:** You would be satisfied, from a constitutional point of view, if sub-clause (*e*) were dropped?

That is the ban on awards for non-compensatory, punitive, exemplary or aggravated damages.

> Would you also be satisfied if the June 30 date were dropped but the rest remained, that is, if the conditions and the types of allowable claims remained?
>
> **Mr. Monahan:** Yes.
>
> **Senator Lynch-Staunton:** It is the date which preoccupies you, not the conditions imposed on the claimants.
>
> **Mr. Monahan:** That is right. If the date and the ban on punitive, exemplary damages, et cetera, were removed, I would say the bill would be constitutional.

Let me just repeat that, honourable senators, because I have indicated that Liberal members of the Legal and Constitutional Affairs Committee are prepared to move amendments that would deal with these two points. Professor Monahan, who has been painted by the other side as their leading expert on this issue, stated:

> ...If the date and the ban on punitive, exemplary damages...were removed, I would say the bill would be constitutional.

Therefore, honourable senators, I am confident that the amendments which we are prepared to move in committee, if senators opposite insist, will resolve every one of the issues raised by Professor Monahan and that even he would agree that the bill, with these amendments, would be constitutional.

One final issue was raised by some of the members opposite. That issue concerned a proposed amendment that would have required that legal expenses incurred during the Pearson airport agreement negotiations be taxed according to the standard Ontario procedure. This is, of course, a normal provision, included to ensure that the legal fees claimed are proper and appropriate in the circumstances. Nevertheless, in one more effort to do what we can to appease the concerns of the other side, Liberal members of the Legal and Constitutional Affairs Committee, in an effort to expedite the passage of this bill and meet the concerns expressed by Conservative senators, are prepared to move an amendment to the bill that would eliminate this requirement.

• (1500)

Honourable senators, we are prepared to move amendments that will satisfactorily resolve every single one of the constitutional concerns raised by the witnesses and by honourable senators opposite. While the government does not agree with all the objections raised — far from it — the fact is that, with the set of amendments we are prepared to accept, we would have a bill that addresses and satisfies the objections of Conservative senators and all their expert witnesses.

I know that the honourable senators opposite will never agree with the policy behind this bill. They have made that abundantly clear during the months it was before Senator Beaudoin's committee, and subsequently during discussions here over points of order. I also had a lot of first-hand experience understanding their personal points of view during the months of the Pearson Airport Inquiry. However, as Senator Lynch-Staunton has reminded this chamber repeatedly, the policy behind the bill is not the issue. Constitutionality is the only issue of concern to Senator Lynch-Staunton.

Moreover, government policy on this matter very clearly enjoys the support of a majority of the elected representatives in the other place. Indeed, I cannot resist making the observation, as recent polls show, that the government continues to enjoy the overwhelming support of the Canadian, Ontario and Toronto publics. To quote Senator Lynch-Staunton, the Senate "does not exist to obstruct and delay indefinitely," a policy which has been supported by members of the other place and overwhelmingly supported by the Canadian public. Surely the time has come for parliamentary traditions to be respected in this case.

Honourable senators, my biggest objection to the Pearson airport agreement was that it was signed, without a termination clause, in the middle of an election campaign by a government which knew that it was about to be defeated.

Senator Lynch-Staunton: Wrong!

Senator Kirby: During the inquiry, we heard testimony that there is a practice in Canada that should have restrained the Conservative government from signing the Pearson airport agreements during the election.

Senator Lynch-Staunton: Wrong again!

Senator Kirby: The Clerk of the Privy Council testified that Canadian governments observe a general rule of conduct to act with caution during an election period.

Senator Lynch-Staunton: Correct.

Senator Kirby: The Clerk of the Privy Council, in testifying before the Special Senate Committee on the Pearson Airport Agreements chaired by Senator MacDonald, listed a number of factors that had to be taken into account to understand exactly what is meant by acting with caution. She listed the following factors: First: Is it a transaction that will bind future governments?

Senator Lynch-Staunton: It was done.

Senator Kirby: Are there alternatives? Are there urgencies?

Senator Lynch-Staunton: Yes.

Senator Kirby: Is there an obligation to act? Is there a controversy?

Clearly, honourable senators, none of these five tests were applied in this case. The first test was: Will the transaction bind future governments? You bet it did. The Pearson airport agreements were to bind future governments for 57 years.

Senator Lynch-Staunton: At the end of August!

Senator Kirby: The second test: Was there an alternative? Again, the answer is "yes." Clearly, honourable senators, the government could have waited for three weeks to see whether or not they would be the government following the election.

The third test is: Were there urgencies? Clearly, the answer to that is "no." The consortium was not even scheduled to take possession of Pearson until after the election. There was no reason whatsoever why the government could not have waited 21 more days before signing the agreement. The problem was that they knew they would not be the government after 21 days, which is precisely why they signed it.

Senator Lynch-Staunton: Rewriting history.

Senator Kirby: The fourth test put forth by the Clerk of the Privy Council is: Was there an obligation to act? Clearly, again, the evidence before the Pearson airport inquiry was that there was not. The Clerk of the Privy Council said very explicitly that Prime Minister Campbell did not have to order the signing of those contracts.

Senator Lynch-Staunton: She did not authorize the signing.

Senator Kirby: The Clerk went on to say that, if the Prime Minister had said that she wanted to delay the signing until after the election, that could and, indeed, would have been done.

Senator Lynch-Staunton: Yes, at a cost of how much?

Senator Kirby: Clearly, there was no obligation to act.

The final question put forward by the Clerk of the Privy Council is: Was there controversy? What a question to ask at this stage of the game! I do not think there is anyone in this chamber or in the entire Province of Ontario who would disagree with the statement that the issue of the Pearson airport agreements was certainly very controversial at the time they were signed.

Senator Lynch-Staunton: And it is today.

Senator Kirby: When you look at those five tests, it is very clear that the government violated long-standing Canadian governmental and political practices when it proceeded to sign the Pearson airport agreements 21 days before an election that it knew it would lose.

The Hon. the Speaker: Honourable Senator Kirby, I am sorry to advise you that the 45-minute time period has expired.

Senator Kirby: I have four minutes left.

The Hon. the Speaker: Is leave granted?

Senator Lynch-Staunton: Only if there are facts, not that balderdash.

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted. Please proceed.

Senator Kirby: I strongly believe that this long-standing practice makes sense. There are certain things that should not be done during an election period. In Australia, which also has a British parliamentary system with the same roots and many of the same practices we have, there is an explicit, written "caretaker convention" that requires the government to avoid implementing major contracts or undertakings during a caretaker period following a dissolution of Parliament.

Why should the people of Canada be subjected to a lower standard of conduct by their government than the people of Australia? The answer, honourable senators, is that Canadians should not be, and, until the Pearson airport agreements were signed in the middle of an election campaign, Canadians had not been subjected to such a lower standard.

Professor John Wilson, a highly respected professor of political science, testified before the Pearson airport inquiry committee as follows:

> To say that Prime Minister Campbell's decision was a constitutionally inappropriate exercise of power is, in my view, to put it mildly, but in the context of our customs and those of other parliamentary systems it, in my view, is also enough to justify whatever steps have been taken to terminate the agreement.

Senator Lynch-Staunton: Like the fixed link? Why did you cancel that?

Senator Kirby: The steps required to terminate the agreement, honourable senators, are, of course, originally Bill C-22 and now the current bill, Bill C-28. It would be a very sad day for our parliamentary democracy if this flouting of our traditions, which gave rise to Bill C-22 in the first place and now continues to give rise to Bill C-28, were compounded by members of this chamber opposite overstepping their bounds and refusing to accept the policy decisions of the elected representatives in the other place and refusing to accept that the electorate has spoken.

I might also note parenthetically that the Conservative majority, in their majority report following the Pearson airport inquiry, were unable to refute the testimony of Professor Wilson. Indeed, they made no attempt to do so. In their majority report, they simply rejected Professor Wilson's stinging criticism, saying that, "On reflection, we do not find Professor Wilson's arguments persuasive." They did not find his arguments persuasive because they disagreed with the basic position they took.

Indeed, in their majority report, the Conservative majority preferred to rely on the testimony of the other two political scientists who testified on this issue. Even these experts condemned the actions of the Campbell government in signing the agreements during the election. Professor Andrew Heard of Simon Fraser University said:

> It's not in keeping with past political practice and it's I think an issue that certainly raises the question of whether it was prudent or not.

Senator Lynch-Staunton: But it is legal.

Senator Kirby: We never said it was not legal. Professor J.R. Mallory of McGill University described the signing as "bizarre and imprudent."

The bottom line, honourable senators, is that the Pearson airport agreements very clearly should not have been signed during an election campaign.

Senator Lynch-Staunton: And they were not.

Senator Kirby: This chamber now has an obligation to allow the government to undo that action. We all know how important this will be.

Senator Lynch-Staunton has enjoyed making speeches for the last two years saying that we on this side were exaggerating the size of the claims against this government that would be brought by the consortium. That is when we thought that the claims would be around $400 million. We now have quotes from the lawyer for the consortium saying that his clients put their damages at somewhere between $523 million and $662 million. Clearly, this group wants all the profits it can squeeze out of their cancelled 57-year lease, even though those contracts lasted only 57 days.

• (1510)

Honourable senators, Bill C-28 is an important bill. There were serious concerns expressed by Senator Lynch-Staunton and his colleagues over provisions in Bill C-22, but those concerns were clearly limited to the constitutionality of the bill.

Senator Lynch-Staunton: They still are.

Senator Kirby: Almost two years ago, on July 4, 1994, when Bill C-22 was being studied in committee, Senator Lynch-Staunton said the following:

> I want to say at the outset that our interest in this bill is as the committee chairman has stated. It has nothing to do with compensation itself. We are completely indifferent to whether or not the claimants are entitled to compensation, the amount of compensation, or on what it is based. That is their problem. Our problem is understanding the constitutionality of this bill or some of its clauses about which we still have doubts.

That was not the only time Senator Lynch-Staunton made the assertion that, in fact, members opposite are completely indifferent to whether or not the claimants are entitled to compensation, the amount of compensation, or on what the compensation is based. Again and again over the past two years, Senator Lynch-Staunton has assured this chamber and the members of the Legal and Constitutional Affairs Committee that he and his party were not at all interested in the consortium's claim to compensation. He has repeatedly stated that his only concern at all times was to ensure that the bill was constitutional.

Let me read to you from another statement which Senator Lynch-Staunton made in this chamber on October 5, 1994:

> Can anyone in this chamber, in the other place, or anywhere else for that matter, find one shred of evidence that the Senate's stand on Bill C-22 is prompted by financial interests of the parties prejudiced by it? How many times must I state that we have no interest in the outcome of the claims, any claims? How many times must I say that we do not support them or condemn them; that we are unaware of and indifferent to their validity; and that we have no stake, either personal or political, in how any claim is assessed? Only an unbiased hearing before a third party can determine fairly what, if anything, is owed following cancellation of the agreements.

With the amendments that I have indicated today, Liberal members of the Legal and Constitutional Affairs Committee are prepared to bring forward in committee the constitutional objections which Senator Lynch-Staunton has repeatedly said are absolutely his only concern. All of the constitutional objections which Senator Lynch-Staunton and his party's experts have raised before the committee in these previous hearings will have been addressed.

Honourable senators, I hope it is clear from my remarks here today that the government is prepared to go to great lengths to meet, absolutely, completely and thoroughly, the concerns which have been raised by Senator Lynch-Staunton and his colleagues. I am confident, therefore, that because he is a man of his word, Senator Lynch-Staunton and his colleagues will not now experience a sudden transformation and develop new, compelling concerns about issues on which, up until now, at least, they have been completely indifferent.

I am confident, therefore, that the Legal and Constitutional Affairs Committee should be able to study the bill and report it back to this chamber without delay so that the government can finally fulfil the commitment to the Canadian people, which it made during the last election campaign, and move forward with the development of Pearson airport.

Some Hon. Senators: Hear, hear!

Hon. Noël A. Kinsella: Would Senator Kirby entertain some questions?

Senator Kirby: I would be glad to.

Senator Kinsella: First and foremost, senator, is it your intention to provide this chamber with a copy of these amendments to which you have been alluding?

Senator Kirby: No, it is not. I indicated that the government would obviously prefer to proceed with Bill C-28 in its present form. I have indicated what the intent of the amendments would be. When the committee meets, if in fact it is the wish of the committee to have amendments introduced right away, I am sure the committee would be prepared to do so.

Senator Kinsella: Would the senator explain to this house his theory on parliamentary procedure? At second reading, we are to make a determination as to the acceptance or rejection of the bill in principle. Throughout the honourable senator's speech, he has talked about amendments. How are we to examine this bill and the principle behind the amendments, to which his entire second reading speech has been devoted, if we do not have a copy of those amendments?

Senator Kirby: Second reading deals with the principle of the bill. I thought, frankly, that I had used a rather "Dick and Jane" type of language when explaining the principle behind the

amendments to ensure that everyone in the chamber would understand them. Therefore, I find it difficult to accept the notion that you do not understand what the principle of the amended bill would be.

Clearly, and in very simple language, I explained the principle behind the amendments. As you know, we would be debating in this chamber the principle of the bill, not the technical wording of the amendments.

Senator Kinsella: I do not think it is a question of obtuseness or lack of obtuseness. Clearly, we are faced with a mockery of our two Houses of Parliament. We are given a bill which, to use Senator MacEachen's language, has nothing to do with Bill C-22 because the slate was wiped clean. Senator Kirby rises, does not speak about Bill C-28 solely, but talks about another kind of bill which will be built upon Bill C-28. This is the whole point we attempted to raise in our second point of order: The House of Commons did not examine in principle, nor in detail, in substance, a government bill. We are being presented with a government bill. I wish Senator Kirby would explain to this chamber how this is not a mockery of our system.

Senator Kirby: Senator Kinsella, you obviously did not listen to what I said. I said repeatedly, and so that there is no confusion I will attempt to say it very slowly, that the government would clearly prefer to have Bill C-28 passed in its current form. Point one, full stop. That is the government's clear preference.

I indicated, however, that in order to meet some of the concerns which you and a number of your colleagues opposite raised repeatedly during the last set of committee hearings, and if you insist on continuing to raise those concerns in committee, then, in an effort to be agreeable and to reach a solution to this problem, we are, under those circumstances, prepared to introduce amendments. I have not said that we will introduce amendments; I said, categorically, that we would introduce them if you insisted on them.

Senator Lynch-Staunton: Where are they?

Senator Kirby: Therefore, the bill before the house is the bill the government would like to have passed. We have said that we will deal with your concerns, if they still are your concerns.

I must say, having listened to some of the comments on the points of order and having read Senator Lynch-Staunton's affidavit in the court case in Toronto, I have personal doubts about whether or not you are attempting to broaden your points of concern, but we will find out about that in committee. The bill before the house is exactly the bill the government would like to have passed. In an attempt to be as reasonable and accommodating and cooperative as I always am, I tried to offer you solutions to appease your concerns. If you do not want them, that is fine with us.

Hon. Finlay MacDonald: Honourable senators, I, too, have a few questions for Senator Kirby. I think that we should, first of all, on this side, thank him for his uncharacteristic generosity in suggesting that we might have amendments to Bill C-28, if we behave ourselves.

Senator Kirby: Senator, just so we are clear, the last thing in the world I would expect you to do is behave yourself. That was not a criterion. There is no behavioral condition on my offer. If there was, I would understand your scepticism, knowing how difficult it would be for you to do so. There was no behavioral condition whatsoever on my offer.

Senator MacDonald: I stopped counting after 12 references to the fact that the committee to which Bill C-28 is to be referred will restrict itself to constitutional matters, which was the basis of your amendments. The honourable senator quoted endlessly, and tirelessly, the remarks of our leader.

• (1520)

Senator Kirby: I understand why that would make you tired.

Senator MacDonald: The honourable senator lives in hope. Both sides of this chamber are tired of this. If senators on both sides were to think about it, they would recognize that this is a Draconian bill, the likes of which has never been heard of before. It is without precedent, unless one considers what happened with the expropriation of properties held by Japanese people during World War II. The honourable senator is a young man, and one thing that is hard to fight is energy. Goodness knows he has put it before us. I should like to ask just a couple of quick questions.

Where did the idea of a cancellation clause come from in respect of a deal such as the one involving the Pearson airport agreements? Where did the idea that this would bind a government for 57 years come from ?

Senator Kirby: Honourable senators, I think I can summarize the essence of the problem. I do not want to revisit the discussions and the debate the honourable senator and I had during the committee. Indeed, in an attempt to be conciliatory, I said, right up front, that I did not want to do that. If the honourable senator wants to re-engage in that kind of discussion, then I am happy to do so.

The fact of the matter is there was no cancellation clause, and it was a 57-year contract. I expect that what I will be told is that it could be cancelled, but with huge penalties. However, as we heard last summer, large contracts such as this one normally contain a cancellation clause.

My next point is to make clear the issue of constitutionality. I agree with Senator MacDonald; the number of times I quoted Senator Lynch-Staunton were as boring to me as they were to the honourable senator. However, I wanted to make a point. The point that needs to be made is that, when the bill was before the Legal and Constitutional Affairs Committee, the only objections raised by members opposite were of a constitutional nature. In attempting to be conciliatory, I said that we were prepared to meet the concerns raised by members opposite when the bill was before the committee. I limited my comments to constitutional issues because they were the only issues that concerned honourable senators opposite.

If, suddenly, senators opposite are concerned about the amount of compensation, then that is a total change in the position they have taken since day one. I was attempting to deal with the specific issues which were of concern to Conservative senators, not only during the hearings held by the Legal and Constitutional Affairs Committee but also those that were expressed in the hearings of the special committee last summer.

Senator MacDonald: Honourable senators, I do not want to prolong this matter any further by asking more questions. However, it is tremendously tempting to do so because there are so many things that have been said with which I do not agree.

I return to the issue of energy. If it is the aim of senators opposite to put a judge in charge of his own cause, then say so.

Senator Kirby: I am not sure to whom the honourable senator refers when he says "judge." This bill does not do that. There is still the right to go to court and sue for damages. There is still the right to collect general damages, which are always awarded by the courts in successful defamation cases. I do not understand the problem of senators opposite. We have met the issues that Senator Lynch-Staunton has always said were his concerns.

Senator MacDonald: Honourable senators, I have already complimented Senator Kirby on his generosity in these suggested amendments. We have not had a chance to examine them yet. I do not know what the honourable senator has left for himself. I do not know if he has given everything away.

Senator Kirby: I tried to give everything away, to allow us to cancel the airport agreements and get on with the development of Pearson airport.

Senator MacDonald: Senator Kirby knows there is nothing to stop them. That point has been made. The announcements have been made by the minister. The Pearson airport matter is going on. It is 20 years late, but it is going on. Nothing in this house is stopping that. Why are there these red herrings, then? When we see these amendments we will see what is left for the plaintiffs when they have their day in court.

Since this is not a litigious country and the courts are not noted for awarding big damages, I could have told the honourable senator that this matter could have been settled two or three months ago for roughly $175 million.

Senator Bryden: It really is a matter of money, is that what you are saying, Senator MacDonald?

Senator MacDonald: No.

Senator Bryden: If you have no interest in money, then how come you now think it can be settled for $175 million?

Senator MacDonald: It was not only a matter of money.

Senator Atkins: Stand up and ask your question.

Senator Kirby: The honourable senator and I part company on one simple issue. Under the circumstances, it would be completely wrong, indeed irresponsible, of any government to give $175 million to people under these circumstances. Not only would it border on being morally wrong, it would be blatantly wrong and unfair to the Canadian taxpayer that this bill is trying to protect.

Senator Forrestall: You gave $1 billion away on a helicopter deal. What are you talking about?

Senator Lynch-Staunton: Honourable senators, I should like some clarification on exactly what is expected of us during second reading debate on this bill. All we have before us is a text in which is repeated, word for word, what was in Bill C-22. As far as I am concerned, this is all that my colleagues and I can debate.

Senator Kirby has said, "Once we go to committee, we will gut this bill to meet all your objections. Not only will we accept the amendments which the government has presented twice, we will even meet your objections regarding damages and the deadline." In effect, if what he is saying is that our objections will be met by the amendments, then what we are being asked to discuss during second reading debate and what the government has in mind are two totally different pieces of legislation.

In all fairness to both sides of this house, I ask Senator Kirby to give us the amendments, at least in draft form, so that we can get on a little faster with this bill and help the committee come to a judgment by discussing the amendments here in this chamber. It is all very well to reread his text over the weekend and to pick out the key points of the amendments. However, until we see the text which confirms what the honourable senator is telling us, we are limited to the bill itself.

We in the Senate of Canada are told, repeatedly, that we must respect the will of the people. It is unheard of that this bill, which has been confirmed by the House of Commons for the third time, is coming over here to be revised drastically without consultations with members of the other place. All we have heard Senator Kirby say is, "My colleagues on the committee and my colleagues on this side are willing to satisfy your objections." We have yet to hear him say, "The Minister of Justice is in agreement, as is the Minister of Transport and my colleagues in the House of Commons."

This process is treating the elected representatives with the utmost disdain. We are being told to dismiss their will. We are being told, "We will change the bill to meet your objections." What we will end up with, however, is something completely different from what they sent us, and the elected representatives were never even consulted. How can the honourable senator expect us to participate in such an action?

To get back to my original objection, how can we discuss a bill when we are told ahead of time, "What you have in front of you is nothing like what we intend to end up with"?

• (1530)

Senator Kirby: Honourable senators, I apologize if the Leader of the Opposition is confused. It may very well be that in my comments I referred to what Liberal senators are prepared to move in committee, but on at least three or four occasions I explicitly said "the government" so there would be no ambiguity. The amendments Liberal senators are prepared to move in committee are government amendments that have the support of government. Therefore, with regard to the honourable senator's first question as to whether they have the support of the Minister of Justice and the Minister of Transport, and whether they will, in effect, be government amendments, I can say, just so there is no ambiguity, absolutely, they will be.

The honourable senator commented on the wording of the amendments. Several of the amendments, with the exception of the last two concerns I talked about, which were designed to meet the concerns expressed by Professor Monahan, were introduced in Senator Beaudoin's committee a long time ago, something like a year ago. I am sure the honourable senator has the effective wording for those.

Senator Lynch-Staunton: Honourable senators, we now have confirmation of what I have been saying, that the House of Commons has not been consulted. We are told that these are government amendments. Forget what the House of Commons passed only two or three weeks ago, for the third time. Instead, we will take another avenue, the unelected avenue, to impose our amendments, and then we will send them back to the House and have them ratified automatically, without the members having had an opportunity to debate them originally — a complete reversal of how this Parliament should work.

Senator Kirby: I am sorry, could we be clear, honourable senators? If the bill is amended in committee and passed here as amended, the bill must go back to the other place. We know that. The issue is whether there are amendments to be passed. Therefore, Senator Lynch-Staunton's second concern is clearly a smokescreen. In reality, when and if the amendments are be passed by the Senate, the members in the House of Commons will have an opportunity to deal with the amended bill. That happens all the time. The logic of Senator Lynch-Staunton's position is that we could never, ever introduce any amendment to any bill in this chamber, since that amendment was not passed by the House of Commons. That is obviously an outrageous position, and one which is not true, neither historically nor factually.

Senator Lynch-Staunton: Honourable senators, can Senator Kirby cite one example where a government bill had been passed by the House of Commons and, upon introduction at second reading in the Senate, its sponsor has said, "Ignore what the bill says, because I can tell you now that once you go to committee, we will tailor a bill totally different from the one that the House has passed"? Neither members nor senators have even seen the amendments, or been extended the courtesy, "We have heard your objections and we will certainly listen to them in committee so the sooner we go to committee the better." No. Right away, even before the committee has heard the first witness, we are told, "All these amendments are lined up waiting for you to pass." Well, let us see the amendments. The government cannot have it both ways: Promise us that something may happen and have us debate on texts that we do not have in front of us. Where are the texts? The honourable senator's entire presentation is questionable.

Senator Kirby: Honourable senators, the honourable senator is missing the point, and, while I am not surprised, I am getting frustrated. What I said is that we will introduce those amendments if the Conservatives on the Legal and Constitutional Affairs Committee insist. Let us see in committee what amendments the honourable senator and his colleagues decide to insist on, and then we will deal with that problem, in committee. What I was trying to do in my remarks was to indicate two things. We would prefer to pass Bill C-28 in its current form but, in an effort to be reasonable and to get the issue dealt with fairly quickly, we are prepared to modify and amend the bill along the lines that I described, if in fact the honourable senator's side insists on getting those amendments. Why would we introduce them at second reading when we prefer the bill as it is? Those amendments are being offered once the bill gets to committee in an attempt to be reasonable. The simple thing to do, if honourable senators opposite want to see the amendments, is to send the bill to committee.

Senator MacDonald: Honourable senators, I believe the Honourable Senator Kirby is placing himself in the position of the chairperson of the Legal and Constitutional Affairs Committee by suggesting there is a time limit on the hearings of that committee. Is the honourable senator suggesting that the witnesses to be brought before this committee will be restricted to those with constitutional expertise, as in the case of the last group of hearings when the committee was chaired by Senator Beaudoin? Is that what the honourable senator is suggesting?

Senator Kirby: Honourable senators, just so we are clear, I have said absolutely nothing about the procedure or the process by which the Legal and Constitutional Affairs Committee will conduct its business. Senator Carstairs is the chairperson of the committee. I am not on the steering committee. How they handle their business is their business. All I was trying to say is that, on the basis of two years of discussion before the committee when it was chaired by Senator Beaudoin, a limited range of issues was raised by Conservative senators. In our usual attempt to be reasonable and magnanimous, we on this side are prepared to try to meet those concerns.

I was trying to assuage a lot of the concerns of honourable senators opposite, but it seems I have only upset them. I can only presume that it is because we are prepared to meet the concerns they have expressed. Therefore, they are left with one of two options. Honourable senators opposite can decide either to strike out on entirely new ground — and the honourable senator's comment on the $175 million makes me think that you may well decide to strike out in a new direction, and we will finally get to the real issue, which is the level of compensation — or they can say, "Son of a gun, the Liberals, in their usual, smart way, have dealt with our concerns, so we ought to let the bill pass." That is really their position. I am curious to see whether Senator Lynch-Staunton really meant what he said when he told us repeatedly that he had a limited number of issues, or whether all of a sudden a whole bunch of new issues will arise.

Senator MacDonald: Honourable senators, I have one last question for Senator Kirby. Going back to the constitutional issue which occupied our time for weeks and weeks, we talked about the rule of law. In the past three days, the rule of law has become the flavour of the month, and we are still on the same issue.

[*Translation*]

Hon. Gérald-A. Beaudoin: I have a question for Senator Kirby. We are now at the second reading stage, and we are looking at the principle of the bill. We know this bill by heart. We studied it for a year and half and we are familiar with all the witnesses. Only one of them told us it was not against the rule of law. All the rest of the witnesses said that the bill was against the rule of law. If you really want to accept certain amendments, I cannot understand why you are not prepared to reveal them at this point, because they could influence our vote. You say we are voting on the principle of the bill, but we have always wanted changes in this bill. If you want some cooperation, could you not at least indicate what amendments will be proposed?

[*English*]

Senator Kirby: Honourable senators, we are going in a circle. I think we have been down this route before. What I have said is that the government would prefer the bill in its current form. What I have also said is that, in order to meet specific concerns

of senators opposite — and I do not know whether they will be the same concerns as were expressed with regard to Bill C-22 — the government is prepared to back Liberal senators on the committee who move amendments to deal with those concerns. However, first we have to get the bill into committee to understand whether the concerns are the same now as they were when the bill was before the committee so ably chaired by the honourable senator, or whether those concerns have changed.

Senator MacDonald's comment on the $175 million, and some of the comments made in raising the three points of order over the past two weeks, have left me confused as to whether the concerns will be the same as the ones that we have tried to meet in saying that we will accept certain amendments. I find myself puzzled as to what are the real concerns of the Conservative opposition. In my view, the only way to flush those out into the open is to put the bill into committee and let the committee members deal with them.

Senator Lynch-Staunton: Honourable senators, I object. Senator Kirby has a clever, smarmy way of casting doubt—

Senator Gigantès: Is that a parliamentary word?

Senator Lynch-Staunton: It certainly is, and I am glad the honourable senator was awake to hear it.

Senator Kirby has a smarmy way of casting doubt on the motivations of senators opposite when it suits him.

• (1540)

Because figures on compensation have been mentioned, he assumes, suddenly, that someone is concerned about the level of compensation. That was never the concern.

Let me repeat, I hope for the last time: Whatever the nature of the damages, whatever the amount claimed, whatever the validity of the claims, whatever the arguments to support them, let the consortium take care of itself when it comes to supporting those claims. Our concern is that every Canadian citizen who has a dispute and who wants to get satisfaction and remedy should be allowed to do so before a third party.

Our main objection to this bill — and it is exactly the same objection that we made to exactly the same bill which was originally called "Bill C-22" — is that it does not allow innocent citizens the right to go before a court of law to argue their plea.

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: It is not a question of whether they win or lose. It is not a question of the level of damages or the amount. It is not even a question of the government's ability to satisfy whatever damages may or may not be awarded. It is a question of the rule of law and the right to go before the courts.

Do not ever accuse us again, either directly or indirectly, or even in a smarmy way, of being concerned with the claims of the consortium. We are concerned with the right to make those claims.

Senator Kirby: Honourable senators, I would apologize to Senator Lynch-Staunton if I made that implication, but I believe he misinterpreted my comments. I thought I was very clear in my speech by saying repeatedly that the only issues raised by Senator Lynch-Staunton were constitutional and legal questions of the type which he has just identified. I was very clear in my speech that those were the only issues of concern to the other side, and the only issues that have been targeted by the amendments that we are prepared to move in committee.

I did not raise the question of money. Senator MacDonald raised it, and I responded to Senator MacDonald's comments. If, in so doing, I implied a change in motive on your part, I apologize. That was not my intention. I was trying to be crystal-clear in saying that the honourable senator and his colleagues expressed a very limited range of legal and/or constitutional issues before the committee. I believe the amendments I have described deal with every single one of those objections. I hope, therefore, that this bill can be handled expeditiously.

I do not believe the honourable senator has expressed concern about the compensation issue. Indeed I did not raise it in my remarks until Senator MacDonald made the comment about $175 million.

The Hon. the Acting Speaker: Honourable senators, Senator Kirby has finished his speech. A senator to my left asked if Senator Kirby would agree to answer some questions and he has done so.

This is not a time for debate on this issue. Our procedures should remain at least relatively consistent.

On motion of Senator Stratton, debate adjourned.

[*Translation*]

CANADA TRANSPORTATION BILL

THIRD READING—MOTION IN AMENDMENT—DEBATE ADJOURNED

Hon. Lise Bacon moved third reading of Bill C-14, to continue the National Transportation Agency as the Canadian Transportation Agency, to consolidate and revise the National Transportation Act, 1987 and the Railway Act and to amend or repeal other Acts as a consequence.

She said: Honourable senators, there are two aspects of Bill C-14 that I would like to highlight today: the significant consensus for this bill and the need to focus upon the viability of the rail industry in the future.

[*English*]

On the theme of consensus, I find it quite remarkable that a bill of this length, some 278 clauses in total, has achieved so much acceptance. After hearing from parties who wanted to comment on the bill to the Standing Senate Committee on Transportation and Communications, it quickly became clear that criticism was only being offered on two clauses. The criticism came from both sides of the question: Some said that we had gone too far, much too far; and others said that we had not come nearly far enough.

The two disputed clauses are tied to a single subject-matter, that is, the manner of arriving at key regulatory decisions dealing with railways under the bill.

[*Translation*]

This does not mean that the other issues raised in this bill are not important, far from it!

When I spoke at second reading, I pointed out that this bill was intended to replace the National Transportation Act, 1987, the Passenger Tickets Act, the Government Railways Act, and essentially all of the Railway Act.

It was intended to streamline and shorten the current rail line rationalization process to make it more commercially oriented and less controversial, thus making it easier to sell or lease surplus lines to new operators.

It was intended to maintain rights and protections for shippers using railways, that would ensure adequate levels of service at competitive prices.

It was to balance and better delineate the role and powers of government in relation to those of the regulatory body, renamed the Canadian Transportation Agency.

It was to mark a shift toward greater reliance on general business laws, such as the Canada Business Corporations Act and the Competition Act.

It was to complete the deregulation of the domestic air sector by removing the residual regulation in the north.

The bill was to introduce a minimum financial requirement for new air carriers, prohibit the sale of tickets without a licence and free from regulation the following sectors: motor vehicle transport, northern marine resupply services, commodity pipelines as well as mergers and acquisitions.

Obviously, these are issues of considerable importance. The mere fact that the stakeholders in the transportation industry generally agreed on such a large number of issues confirms, honourable senators, the fact that this bill deserves our support.

[*English*]

• (1550)

My second point today, honourable colleagues, deals with why we must emphasize rail industry viability at this time. In testimony last week before our Standing Senate Committee on Transportation and Communications, the Minister of Transport put the issue very plainly by reminding us of how the bitterly cold spells of this past winter disrupted our transportation system. When the rail signalling systems stop functioning, when rails crack from the cold, when trucks freeze up, and when highways are closed by snow, service is disrupted and goods do not move on time or do not move at all.

We Canadians pay a steep price, due to our climate, but we also know that any disruptions we face from the weather are only temporary and will soon be over. Things will quickly return to normal.

[*Translation*]

Honourable senators, the minister went on to say that recovery would be as uncertain as it would be slow if we were to maintain policies that impair the viability of the rail industry.

This does not necessarily refer to any given policy or to the policies of a certain government. We must ask ourselves the following question: Are we imposing on railway companies more barriers or pressure than on their competitors? Are we, either by accident or with the best of intentions, throwing the system out of balance to such an extent that rail transportation no longer constitutes a reasonable investment?

Unless the rail industry attracts investors and lenders, funding dries up and the system slows down.

All this does not happen overnight or at the same time everywhere, but sooner or later, it does happen and service becomes unreliable.

[*English*]

An investment-starved railway system has shortcomings which will not disappear with the melting snows. Once in disrepair, the renewal of such a huge infrastructure will require major financial expenditures and it will be a long time before acceptable operations can be restored. The adverse consequences for Canada's export trade and balance of payments should be obvious to everyone.

[*Translation*]

Some may think this is a pessimistic scenario and that this could not happen in Canada. Let me simply say that the situation occurred recently. Unsolved problems do not disappear on their own: they only get worse.

[*English*]

I refer, of course, to our regulatory policies on grain transportation. Throughout the 1960s and 1970s, stakeholders clung firmly to their right to an uneconomical grain freight rate. Whatever else can be said in hindsight, clearly this was the wrong policy for continued investment in the track and rolling stock required to transport grain to its export markets. Nevertheless, successive governments held tenaciously to the wrong price policy, namely, the Crow rate for grain, and refused to provide the railways with offsetting economic relief. Investment languished and then dried up altogether. Car fleets and prairie lines fell into disrepair.

In the early 1980s, export sales by the Canadian Wheat Board were disrupted. To repair the damage from these inappropriate policies, the government, first, set a new, regulated rail rate for grain which is carried over in Part III of Bill C-14; second, at a cost of over $1.5 billion, rebuilt most of the prairie lines and replaced the rail car fleet, the same car fleet we are now selling; and, third, paid out billions of dollars in subsidies under the Western Grain Transportation Act which has now been scrapped.

[*Translation*]

Honourable senators, I do not mention this example to criticize past decisions. The past is the past. However, this example makes us understand the economic risks of excessive regulatory activities such as we had before.

This is why Bill C-14 is based on the principle that trade negotiations tend to bring about appropriate changes, at the right place and at the right time, whereas regulatory activities tend to create distortions and to delay necessary adjustments. We should rely less on regulatory policies.

During the debate on this bill, it was pointed out on several occasions that the best protection for Canadian shippers is to have a sound rail system.

[*English*]

This means that we must have a rail system that has the confidence of investors and lenders. One that, financially speaking, can raise and spend the hundreds of millions required every year just to maintain its track, locomotives and rolling stock, and that can attract additional investment to address the new demands and new priorities of Canada's shippers who are the vital partners of our railways.

[*Translation*]

At the beginning of my speech, I said I would discuss two issues: the consensus on this bill and the need to ensure the rail industry is viable.

As for the first point, those who took part in the process can all be proud, since only two issues remain unsettled in a bill that has 278 clauses.

[*English*]

Concerning the second point, it may be true that rail has less of a place in our economy as we are about to close the twentieth century than it did in the first decades of the century, but efficient, reliable rail transport remains critical for Canada's bulk commodity exports to reach their world markets. Tens of thousands of Canadian jobs depend on our maintaining the right kind of train service in the right places. It is essential that we place a priority on rail industry viability and that we retain as much track in shortline railway operations in Canada as is economically justified.

[*Translation*]

Honourable senators, we can move ahead and feel certain that Canada will be well served by the numerous excellent features of this bill and by the safeguards that it maintains, where necessary. The government continues to strive to establish good policies to promote economic growth and to create jobs for Canadians.

This bill is the appropriate framework to adapt Canada's transportation network to the 21st century, and I strongly recommend that my colleagues support it.

[*English*]

Hon. Mira Spivak: Honourable senators will not be surprised to learn that I have a slightly different view of the consensus and the importance of two particular clauses of this bill.

Once again, Western Canadians have looked to Ottawa, to the centre of power, to represent their interests. Astonishingly, they have found no champions for their cause, not David Anderson, the Minister of Transport; and not Stan Keyes, the former chairperson of the House of Commons Transport Committee, who said in his testimony before the Senate committee that if western companies lost rail transport, then they could change the location of their companies "to another region or another country, albeit at some cost" — an easy thing to do, of course, for grain producers or forestry companies. Honourable senators, I have every admiration and respect for Stan Keyes, but I do not think he has ever had any manure on his boots. Western members of the Liberal caucus, whatever their private feelings, did not break ranks to support virtually every producer and shipper group in Western Canada in their attempts to amend Bill C-14 in the House of Commons. Even here in the Senate, where is Bud Olson when we really need him?

• (1600)

Western Canada is a region that has always been vitally concerned about rail transport. The railways opened the west to settlement. Rail continues to provide the vital link between producers in the prairies — between the wheat pools that gather up more than 30 million tonnes of grains and oilseeds for export — and their international markets. Whatever happens to this country's rail system is bound to have a profound and immediate impact in the west. Western Canadian export resource commodity shippers account for over 30 per cent of national GDP and 700,000 direct and indirect jobs. Ninety per cent of these commodities are exported, 50 million tonnes worth $19 billion annually.

Honourable senators, Bill C-14 proposes to change the rail system through further deregulation. The goal is to make rail transport, as Senator Bacon rightfully pointed out, more competitive and more efficient, to revitalize and renew "the flagging viability of the Canadian railway industry through improved capital investment and returns." Producers and shippers of goods from Western Canada support that position. They, more than anyone, are aware of the importance of the railway system to the western economy, and of transportation costs which can be as much as 50 per cent of the price of their products. Bill C-14 contains many provisions to allow railways to become more efficient — for example, the provision to allow railways to sell and abandon unprofitable rail lines more easily — but other measures to assist this process were not addressed in the legislation.

As Mr. Ritchie, head of the CP Rail System, told the Standing Senate Committee on Transport and Communications, "Major shortcomings in policy have not been addressed...which lie outside the ambit of transport legislation — yet they have as profound an impact on railway costs and competitiveness as transport policy itself." Mr. Ritchie went on to name two major shortcomings of policy reform, the first being the substantial taxation disadvantage Canadian railways face in relation to trucking and U.S. railroads, both in input taxes and tax depreciation of new investment.

Canadian railways pay a 75-per-cent greater portion of their revenue in taxes than either U.S. railroads or truckers in Canada or the U.S. I found this difficult to believe until I was shown the actual figures.

The second shortcoming mentioned was "the imbalance between the private sector financing of rail infrastructure and public sector financing of highways that has artificially shifted freight from railway corridors to public highways." The latter point has been made many times in hearings before the transport committee by myself, by other senators, and by representatives appearing before the committee.

Railway property taxes are levied on railway rights-of-way and are reflected in the road costs that must be recovered in railway freight rates. By contrast, highway corridors are tax exempt. Fuel taxes are, supposedly, a form of road cost-recovery, yet they are not dedicated to highway use. Thus, railway taxes are in effect subsidizing the competing highway system and the trucking industry, while railways receive no subsidy for their investment necessary for rails and roadbeds. In addition, high fuel and property taxes, as compared to the U.S., increase railway costs. Lastly, railway capital cost allowances are much less favourable in Canada than in the United States — a deterrent to investment — and these allowances are slower for the railway industry than for other industry sectors.

The logical question to be asked is this: Is the solution to assist financing through public policy or to have private sector financing of highways? The question has not been addressed in Canada. In the U.S., significant public funds are spent on railway infrastructure. However, if the goals of competitive equity and enhanced railway capital investment are to be achieved, the issue of taxation and tax depreciation rules governing such investment must be addressed, as has been recommended by a number of organizations such as the National Transportation Review Commission and the Organization for Western Economic Cooperation. However, the feeling exists among shippers and producers that, from the government perspective, railway efficiency is being sought at the expense of shippers' interests and more particularly, perhaps, producers' interests, because there is a difference between shippers and producers.

As the committee heard from many organizations representing these groups and from the transportation ministers of Alberta, Saskatchewan and Manitoba, Bill C-14 would tip the current balance of interest between producers, shippers and railways to the benefit of railways and to the detriment of those who produce and ship the commodities. It would tip the balance chiefly through clauses not found in the National Transportation Act of 1987. These are subclauses 27(2) and (3) and clause 112 of the proposed Canada Transportation Act. These clauses have great potential to harm the well-being of shippers and producers in the prairies and, thus, the economy of the west.

Before dealing with these clauses, it is important to note other changes which producers, in particular, feel diminish the checks and balances which modified railway power in the shipment of prairie commodities. The changes have to do with the loss of the Western Grain Transportation Act.

Under this legislation, producers had assurance that railways would pass on gains in efficiency to the producer, something that is not certain in Bill C-14 after 1999. The WGTA also included performance guarantees for railway service, a good system for rail car allocation, and a requirement for producer input into such vital fora as the Senior Grains Transportation Advisory Committee. All this is bound to increase producers' costs as it already has in Manitoba.

The WGTA subsidized 50 per cent of producers' costs in Manitoba and, with the loss of this legislation, these costs for grain growers in Manitoba have doubled, although freight rates have not gone up. However, freight rates will rise by 7.2 per cent as of August 1, 1996. While branch line abandonment will decrease costs for the railways, it will also increase producers' costs, particularly for those who have to truck grain further. With the repeal of the WGTA, grain shippers were promised that they would have full access to the shipper protection provisions of the 1987 legislation.

Honourable senators, producer and shipper organizations were concerned about these two vital clauses. There was consensus about the remainder of the bill. They feel that these clauses would render the promised shipper protection provisions virtually useless. It was felt that these clauses would invite costly and lengthy legal wrangling between shippers and railways; in other words, they will create more problems than they will solve.

The current law recognizes the very real situation of producers and shippers on the prairies who are captive to railways. The Canadian prairie region is a land-locked production base. Trucking is not a viable option for both economic and physical reasons. Current truck rates are much higher than rail rates. Even if rates were competitive, as Prairie Pools Inc. told the transport committee, to truck the same exports to the port of Vancouver as now move by rail would mean that one supertruck would roll down Hastings Street in Vancouver every 2 minutes, 24 hours a day, 365 days a year — one truck per stop light.

The current law recognizes that many producers and shippers are served by only one railway and that they are vulnerable. If a shipper tries to reach an agreement with another railway, in a completely deregulated regime the first company can try to discourage lost business by setting high interswitching rates to move goods a short distance to its competing railway; or, it could set a high competitive line rate in cases where goods must be transported some distance to the second railway. The current law recognizes the disadvantages of the position of producers and shippers and provides relief through appeals to the National Transportation Agency.

• (1610)

Bill C-14 would change all that through subclauses 27(2) and (3). The renamed Canada Transportation Agency would be required to act only in circumstances where the shipper would suffer "substantial commercial harm." That change is significant. It creates another layer of legal arguments around an application for relief. It invites litigation over whether the new test has been satisfied. It also invites different rulings for different shippers. Depending on the size of the shipment and relation to overall business and the current state of the shipper's business, a high rate set by a railway might constitute "substantial commercial harm" or it might not.

The point is that these clauses impose a new, subjective threshold each and every time a shipper seeks redress from the agency, and most important, the threshold seeks to limit the discretion of the agency to commercial viability interests on a case-by-case basis. This is inconsistent with national transportation policy in clause 5 of the bill, which requires a balancing of commercial viability and national economic interests with the need to provide transport services for the nation. In the case of Western Canada, adequate and effective transportation services are vital because of the dependence of that region on exports of bulk commodities which must be shipped by rail.

Bill C-14 would also require that rates and services set by the agency be "commercially fair and reasonable to all parties." Again, it requires the agencies to make rulings based on very subjective judgment. In combination with subclause 27(2), it creates a two-part test and again invites litigation. Bill C-14 already requires that any ruling on interswitching or competitive line rates at a minimum be compensatory to the railways. That should be sufficient protection for the railways. Clauses 27(2) and (3) and clause 112, in the opinion of those who appeared before us, should be deleted.

The current law has worked well. Since 1987, shipper protection provisions have been provided as a matter of right. There have been very few rulings required by the National Transportation Agency. The right to a ruling has promoted a healthy situation of direct, commercial negotiations between shippers and railways. Compare that to the previous 20-year history in which shipper protection was determined by subjective tests of "unfair disadvantage" and "undue obstacle." There were up to 15 cases challenging the working of that arrangement, and litigation in many cases lasted up to five years.

The aim of everyone in this chamber should be to pass legislation that encourages a more competitive and efficient railway system. These clauses are a disincentive to competition between railways and encourage costly legal battles between shippers and railways. In the end, only the lawyers will win.

Let me quote from a document from the University of Manitoba Transport Institute on economic reasons why the Senate should amend Bill C-14, the proposed Canada Transportation Act, by deleting two flawed procedural provisions limiting competition. That document was written by one of the economists from the Transport Economics and Regulatory Council who, in 1994, assessed the international competitiveness of Western Canadian transportation of bulk commodity exports for the Department of Western Economic Diversification.

> Tens of thousands of lost jobs (at least 25,000 jobs mostly in Alberta and B.C.) and a lack of effective rail competition will result in the export trade of western Canadian bulk resource commodities from two flawed procedural provisions in Section 27(2), (3) and 112 of Bill C-14.

He continues:

> Maintaining Canada's current positive trade balance depends on the export trade of bulk resource commodities like lumber, woodpulp, newsprint, potash, coal, sulphur and grain. These commodities are primarily produced and exported from Western Canada by rail....
>
> Canada's positive trade balance now more than ever depends primarily on its capacity to export its bulk resources particularly given the restructuring taking place in the manufacturing sector as a result of freer trade and increased global competition.

Honourable senators, we cannot afford to return to pre-1987. Surely it is the duty of the Senate to exercise its constitutional right to correct flaws in legislation which otherwise is supported, in order to respond to the perceived needs of a region which has always depended so entirely on transportation as the lifeblood of its economy. These perceived needs are not just a minority view; they are the view of almost all of the producers and shippers in Western Canada, as well as the governments of that region. It is incumbent upon us to take a bill which is generally supported and remove from it two flawed procedural clauses.

MOTION IN AMENDMENT

Hon. Mira Spivak: Therefore, honourable senators, I move, seconded by Senator Forrestall:

> That Bill C-14 be not now read the third time but that it be amended,
>
> (*a*) in clause 27, on page 11, by
>
> (i) deleting lines 1 to 25 and lines 29 and 30, and
>
> (ii) renumbering subclause (4) as subclause (2) and any cross-references thereto accordingly; and
>
> (*b*) in clause 112, on page 50, by
>
> (i) deleting the heading preceding clause 112,
>
> (ii) deleting lines 8 to 11, and
>
> (iii) renumbering subclauses 113 to 278 as subclauses 112 to 277 and any cross-references thereto accordingly.

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Honourable senators, after consultation with my colleague Senator Graham, and in the spirit of cooperation, and in our ongoing effort to manage the flow of business through this chamber, in view of the fact that there are a number of amendments which will be offered at third reading, and in view of our desire to accommodate all of those amendments getting on the record and the flow of the business, it would be more convenient for most, I understand, to conduct all necessary votes tomorrow when this item is called under Government Business. If that is procedurally correct, I would move adjournment of the debate on this amendment and debate could continue on the main motion so that other amendments may be put.

The Hon. the Speaker: Honourable senators, there are some procedural problems here. The first item is that I must see the amendment. Under our rules, any substantial amendment to a bill reported by a committee requires one day's notice. With leave, of course, we are free to do anything that we wish, but I have not seen the amendment. I have no way of judging if it is substantial or not substantial. If leave is granted, I can put the amendment to the house.

The second problem is that, once an amendment is moved, the bill itself is no longer before the Senate. The only item before the Senate is the amendment. We can have amendments to the amendment. Again, with leave, we can correct that.

I would need assurance that there is agreement in the Senate and that leave is granted for such a procedure. Is leave granted on both the one day's notice and the cumulative amendments?

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, there has been discussion, as Senator Berntson outlined. There has been agreement that those who want to speak with a view to amendments may speak today. There is also agreement that we would deal with all of these amendments as the first order of business tomorrow. Of course, we would deal with the amendments first, and then come back to the main motion. That is our understanding.

Hon. Eymard G. Corbin: Is it possible to have the amendments tabled today?

Senator Berntson: Yes, indeed.

Senator Graham: They will all be tabled.

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

Hon. Senators: Agreed.

The Hon. the Speaker: I will read the amendment. It is moved by the Honourable Senator Spivak, seconded by the Honourable Senator Forrestall:

> That Bill C-14 be not now read a third time but that it be amended,
>
> (*a*) in clause 27, on page 11, by
>
> (i) deleting lines 1 to 25 and lines 29 and 30, and
>
> (ii) renumbering subclause (4) as subclause (2) and any cross-references thereto accordingly; and
>
> (*b*) in clause 112, on page 50, by
>
> (i) deleting the heading preceding clause 112,
>
> (ii) deleting lines 8 to 11, and
>
> (iii) renumbering subclauses 113 to 278 as subclauses 112 to 277 and any cross-references thereto accordingly.

• (1620)

It has been moved by the Honourable Senator Berntson that the debate be adjourned until the next sitting of the Senate.

Senator Berntson: Honourable senators, just so it is clear, I am adjourning the debate on the amendment. The debate on the main motion will continue.

The Hon. the Speaker: With leave then, honourable senators, debate continues on the main motion.

[The Hon. the Speaker]

Hon. Mabel M. DeWare: Honourable senators, I should like to speak to Bill C-14, which, we feel, has a major omission in the bill that reflects on Atlantic Canada, in particular, the province of New Brunswick. I refer to section 134(6)(*c*) of the existing National Transportation Act, which designates the Canadian Pacific line from Saint John to Quebec as a route wholly within Canada for the purpose of the competitive line rates, or the CLRs. This section of the NTA has been dropped in Bill C-14.

There are serious concerns that the wording of Bill C-14 is not clear enough to protect shippers in the maritimes from the captive position they would be in if CN were the only railway operating wholly within Canada between the maritime provinces and Quebec.

The provisions of Bill C-14 which deal with the issue of competitive line rates are found in clauses 129 to 136. These CLR provisions are basically the same as those contained in the existing National Transportation Act, 1987. The purpose of the CLRs is to protect the shippers against potential monopolistic prices by a railway which has an exclusive position with respect to a particular shipper.

Honourable senators, without the CLR provisions a railway could threaten to charge unreasonably high rates for the exclusive portion of a route served by the railway. In virtually all parts of Canada, other than the maritime provinces, there are alternative rail lines wholly within Canada over which the shipper may ship goods.

For over 100 years, CP Rail operated a line of railway from Montreal, Quebec to Saint John, New Brunswick. The line went through the Eastern Townships of Quebec, across the State of Maine and re-entered New Brunswick at McAdam. From there, it went down to Saint John with a spur line to St. Stephen.

Maritime shippers wishing to ship their goods to Quebec and beyond have the option of shipping through Moncton on the CN line or through Saint John via shortlines which now operate along the former CP line. Following an order by the NTA, CP abandoned a portion of its line between Lennoxville and Saint John effective midnight, December 31, 1994. Four days later, on January 4, 1995, the line was bought by several shortline operators.

These companies bought the line with the assumption that the competitive line rate provisions would still apply. Under Bill C-14, the CLR provisions concerning the CP line have been eliminated. There seems to be no logical reason why such reactivated lines should be excluded from access to the CLR provisions.

The potential loss of domestic traffic on the former CP line would make it less viable. It is difficult to imagine how it could survive. The maritime provinces cannot afford to lose any more lines. We have taken disproportionate cuts in the last three budgets. We have lost our regional freight rate assistance program which enabled us to get our products to market at a competitive price. The inability of shippers to get these competitive line rates will only make an already bad situation worse.

The only thing that has to be added to this clause are the words "wholly within Canada." It is imperative that we amend Bill C-14 in that regard.

MOTION IN AMENDMENT

Hon. Mabel M. DeWare: Therefore, I move, seconded by Senator Bolduc:

> That the Bill be not now read the third time but that it be amended at clause 129, by adding after line 36, on page 59, the following:
>
> (3) For the purposes of sections 129 to 136, the former Canadian Pacific line through Maine shall be deemed to be a route wholly within Canada, and any carrier serving any portion of the line between Saint John (New Brunswick) and Montreal (Quebec) shall be deemed to be a connecting carrier and any place where the line of a railway company connects with such connecting carrier shall be deemed to be an interchange.

The Hon. the Speaker: Honourable senators, is it your pleasure to adopt the motion in amendment?

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Honourable senators, I move the adjournment of the debate on the amendment, in accordance with the logic previously put on the record.

The Hon. the Speaker: Honourable senators, the debate on the main motion will continue.

Hon. Noël A. Kinsella: Honourable senators, clause 171 of Bill C-14 contains a provision found in the predecessor act, which provision provides that the agency and the Canadian Human Rights Commission shall do certain things. I raised this matter with the minister when he appeared before the committee in order to ascertain whether there had been a change in government policy relative to the recognition of the primacy of the Canadian Human Rights Act, which has been recognized in a number of judgments and which heretofore has been the undisputable policy of the Government of Canada.

The difficulty with the wording of clause 171 is that it seems to contradict two important sections of the Canadian Human Rights Act. Section 27(1) of the Canadian Human Rights Act provides that the commission is responsible for the administration of the Canadian Human Rights Act. Section 66(1) of the Canadian Human Rights Act provides that the Crown and its agencies, including the transportation agency as provided for in Bill C-14, are bound by the provisions of the Canadian Human Rights Act.

Clause 171 of Bill C-14 states that the Canadian Human Rights Commission shall do certain things, requiring the Human Rights Commission to act in a certain way. That seems to me to invade the authority and the primacy of the Canadian Human Rights Act.

• (1630)

I have consulted with officials at the Canadian Human Rights Commission and they concurred in my analysis of this clause, notwithstanding it was a provision which was contained in the old act. We have an opportunity to correct it.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella: Therefore, I move that the bill be not now read a third time but that it be amended by deleting section 171 and replacing it with the following:

> The Agency shall coordinate its activities in relation to the transportation of persons with disabilities with the Canadian Human Rights Commission in order to foster complementary policies and practices and to avoid jurisdictional conflicts.

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Honourable senators, I move the adjournment of the debate on the motion in amendment by Senator Kinsella.

The Hon. the Speaker: Is it your pleasure, honourable senators, that debate on the motion in amendment by Senator Kinsella be adjourned?

Hon. Senators: Agreed.

The Hon. the Speaker: Therefore, as agreed, debate will continue on the main motion.

Hon. J. Michael Forrestall: Honourable senators, I rise, now that the work has all been done. As the song goes, "I will be back when the work is all done next fall."

It is a privilege and honour to participate in debate on this latest version of our National Transportation Act. I say that because for so many years I sat in an office adjoining one of the principal architects — and there have been many over the years — who brought transportation in Canada to the point where it is today. We could probably all agree that there has been substantial change in the last 10 to 20 years. We have moved, at long last, out of 19th century ideas of transportation and are now well ensconced in 20th century concepts. Passage of this bill will carry us into the next century and, as it now stands, should, by and large, serve us well. I say that notwithstanding the fears that have been expressed regarding the bill and which, in fact, have caused some of my colleagues to move amendments. The principal fear I refer to is the fear that the current financial situation of the railways is not very healthy.

Without entering into the debate which took place earlier, I would suggest that there is no doubt that that is the case. The principal railways in Canada have suffered some economic hard times and it is not solely cold weather that has caused the hardship. However, if you stack that factor up alongside capital cost allowances, I think you will find that the financial situation of the railways is linked much more closely to capital cost allowances.

If this is so — and I believe it to be quite so, as do people in the industry — it is welcome news to all of us that talks between the government and the railways with respect to capital allowances and other serious taxation matters are well advanced, active and ongoing, and that relief should come, hopefully, some time this year on three or four major fronts. The effect would be to alleviate the need for the clauses that we are discussing which

have caused some concern to western shippers, with justification, because they would affect their capacity to act, and to act freely.

Generally, the bill has received a narrow critique; narrow in the sense that the most vociferous witnesses who appeared before the committee dealt with these issues largely with clauses 27.2, 27.3 and 112 —

The Hon. the Speaker: Order! I would ask those who must have conversations to conduct those outside the chamber so we may proceed with the debate.

Senator Forrestall: Thank you, honourable senators.

I was dealing with the financial situation of the railways. I do not consider that the railways are, in fact, very hard-pressed.

That being said, the amendments are of particular concern to western Canadians. We, in Atlantic Canada, do not require such massive movement of freight to warrant this kind of concern. While it was quite true, five or eight years ago, that such amendments might have enhanced the trading value of the stock of the railways and allowed them to raise more capital, that is not true today. That is not necessary. Therefore, it is somewhat surprising to many of us that the government would act upon advice and information that is now several years old in importing into an otherwise very fine piece of legislation such controversial measures. I am pleased that one of my colleagues has seen fit to move some amendments to address these contentious issues.

The other amendments that have been put forward, upon which we will vote tomorrow, speak for themselves. They are, as Senator Kinsella has said, very modest amendments that I think would correct what was simply a technical writing oversight.

When we vote tomorrow, I trust that honourable senators will not decide to leave the doors closed and hold one continuous series of votes, because it is easy to lose sight of the actual issues on which we are voting.

Honourable senators, as I have said, we are pleased that the bill has finally come to us for consideration. It has undergone massive scrutiny from one end of this country to the other. Every conceivable person who might be affected or who has an interest in transport in Canada, whether it be ground transport, marine transport or whatever, has had an opportunity to be heard. They have had the courtesy of being heard, in person, by the review committee, and they have had an opportunity to make representations and, indeed, recommendations privately.

• (1640)

Here we are, in the spring of 1996, with a bill which will serve us well into the next millennium. I trust that, in 20 years' time, when we come to update this bill again, senators in this place will stand and say that this bill has served us well for all those years.

I hope honourable senators will take the opportunity, when the record is printed, to look closely at the amendments on the competitive line rates and on the wholly-within-Canada principle of the line from Saint John to Sherbrooke and on to Montreal. That is a simple matter. There is no need to take it out and put it back in. Why upset people? If something is working well, why do something without any apparent good reason that will upset people?

The Hon. the Speaker: Honourable senators, I want to confirm the agreement that all of the amendments will be addressed at the same time tomorrow.

Senator Berntson: Honourable senators, it is my understanding that this will be the first order of government business tomorrow, at which time all necessary questions will be put.

The Hon. the Speaker: I gather that that is with the agreement of honourable senators?

Hon. Senators: Agreed.

On motion of Senator Berntson, debate adjourned.

[*Translation*]

CANADIAN HUMAN RIGHTS ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Rose-Marie Losier-Cool moved second reading of Bill C-33, to amend the Canadian Human Rights Act.

She said: Honourable senators, I have the honour to speak at second reading stage of Bill C-33, to amend the Canadian Human Rights Act.

I am pleased that this amendment is finally before us. This issue has been discussed and debated long enough. It is high time action was taken.

This amendment will make it possible to fulfil a political promise to Canadians and to implement a policy adopted by the Liberal Party of Canada a long time ago. For almost 20 years, the Liberal Party has espoused the principle of prohibiting discrimination on the basis of sexual orientation. Now that we form the government, we are honouring our commitment.

[*English*]

Honourable senators, in 1985, the all-party Equality Rights Committee of the House of Commons recommended that this amendment be made. On two earlier occasions, the Senate has supported the principle of this amendment to add sexual orientation to the Canadian Human Rights Act. The most recent occasion was three weeks ago when we voted in favour of Bill S-2.

By making this amendment, we will also be giving effect to a fundamental principle and value in Canadian society, that individuals should be treated fairly. By making this amendment, we will be catching up with court decisions, with the Canadian Charter of Rights and Freedoms, and with the human rights legislation of most provinces. While sexual orientation has already been read into the law by the courts, Canadians should not have to turn to court decisions to find out the contents of the law. The law should be plain and there for everyone to see. The law should make it clear that discrimination on the basis of sexual orientation is wrong. This amendment will prohibit forms of discrimination. It will prohibit what we all agree is unjust, such as someone being fired from a job or denied service at a bank because they are gay or lesbian. This is simply a matter of fairness.

Honourable senators, this amendment applies only to employment and the provision of goods and services coming under federal jurisdiction. We are essentially talking here about the federal government and federally-regulated businesses, such as banks, railways, airlines and telecommunications companies. About 10 per cent of the Canadian workforce is covered by the Canadian Human Rights Act. The rest of the workforce comes under provincial jurisdiction.

[*Translation*]

With respect to provincial human rights legislation, it is important to note that eight provinces and territories representing 90 per cent of the Canadian population have already added sexual orientation to their human rights legislation. All we have to do is catch up with the provinces.

We are catching up not just with the provinces, but with the courts as well. The Supreme Court of Canada, under section 15 of the Canadian Human Rights Act, prohibits any discrimination on the basis of sexual orientation.

[*English*]

Honourable senators, if someone is facing discrimination on the basis of race or colour, whether black or white, they are protected by human rights legislation. If someone suffers discrimination on the ground of religion, be they Protestant, Catholic, Jewish, Muslim or otherwise, they are protected by human rights legislation.

Some have raised concerns about the impact of this legislation on adoption and marriage. I simply do not understand why people would think that this amendment would apply to that area. This is, after all, an amendment to the federal Human Rights Act. As I mentioned before, the Canadian Human Rights Act applies to employment and goods and services coming under federal law, which represents a small percentage of jurisdiction over human rights in Canada. It has nothing to do with and cannot override provincial legislation. Marriage comes under provincial legislation.

Maxwell Yalden, Chief Commissioner of the Canadian Human Rights Commission, said last month before the Senate committee:

> We are not talking about who is married and who is not married. That is none of the business of our commission.

That is correct. The Canadian Human Rights Act does not apply to marriage.

[*Translation*]

This modification does not affect marriage or the family in the least. Marriage, whether one entered into under the laws of a province or a common law relationship, and the family are the foundations of our society. Nothing can change that. We continue to support these institutions through our laws, our policies and our practices. That will not change.

The preamble to Bill C-33 is very clear on this. It is one of the features that set Bill S-2, recently passed by the Senate, apart from Bill C-33. The preamble acknowledges that the family is the foundation of Canadian society. This is, in my opinion, a worthwhile change.

[*English*]

Honourable senators, the principle of the bill is the same as Bill S-2. It is an effort to treat people fairly and to ensure that people do not suffer discrimination on the basis of sexual orientation. I think this bill deserves our support.

[*Translation*]

The choice, to me, is a simple one. We are providing protection against discrimination based on race, religion, gender and sexual orientation, or we are not.

The time has come to examine this issue, to say what the courts and most of the provincial and territorial legislative assemblies representing the majority of Canadians have already said.

Canadians know this. They do not accept, nor will they accept in future, prejudice or discrimination. We will not allow our colleagues, our friends, our parents, our sons and daughters, to be the victims of discrimination just because of their sexual orientation.

Honourable senators, I fully endorse this amendment. I invite you to do likewise.

Hon. Noël A. Kinsella: Honourable senators, I would like to endorse what Senator Losier-Cool has said. I support the long struggle against discrimination within our Canadian society. We have progressed one step at a time. This is just one more step in protecting the rights of a group that has suffered discrimination for many years.

[*English*]

• (1650)

Honourable senators, given that the Senate passed Bill S-2 a few weeks ago, and considering that Bill S-2 is far more extensive than Bill C-33 — it follows, *mutatis mutandis*, that Bill C-33 be adopted expeditiously by this house. The Senate, in adopting Bill S-2, has determined that discrimination in the matters of employment, accommodation and services falling under federal jurisdiction on the basis of sexual orientation should be explicitly proscribed by the Canadian Human Rights Act.

In adopting Bill S-2, the Senate has already determined that the evil of discrimination should be combatted not only by means of the complaint process provided for by the Canadian Human Rights Act, but also by means of proactive programs as well as the passive programs of complaint processing. That is why this chamber, in adopting Bill S-2, applied this new proscribed ground of discrimination to section 16 of the Canadian Human Rights Act. This is where we can find the difference between the House of Commons Bill C-33 and Senate Bill S-2.

Let me explain. Basically, two methods are employed by the anti-discrimination statutes across Canada which mandate the anti-discrimination agencies to deal with acts or alleged acts of discrimination. The first method — and this method is provided for in both Bill C-33 and Bill S-2 — is that the Human Rights Commission, as an anti-discrimination agency, can receive complaints and respond to complaints by Canadians in those areas covered by the Human Rights Act; namely, accommodation, services, and employment, which fall under federal jurisdiction.

We have already adjudicated and, therefore, are in agreement with the provision in Bill C-33 amending the Canadian Human Rights Act to allow the commission to investigate and adjudicate on allegations of discrimination on the basis of sexual orientation. In a sense, one might say that that method of combating discrimination is somewhat passive — that is, the commission waits to receive complaints.

This honourable house has also recognized a second method which is equally important, and perhaps even more important in some instances, in combating discrimination. Section 16 of the Canadians Human Rights Act provides that the Human Rights Commission may, in those areas where it has jurisdiction, deal with systemic discrimination, or institutional discrimination, or historical discrimination. When we adopted Bill S-2, we made the decision that the Human Rights Commission should be armed with that second method of combating discrimination, as well as having the authority to use the first method.

Fundamentally, that is the difference between the two bills. Bill S-2 is more comprehensive and extensive, with greater integrity, and places at the disposition of our national anti-discrimination agency this second method of combating discrimination. By not adopting the Senate bill, the House of Commons through its bill has, in a sense, left the door open to it being a discriminatory practice for anyone to set in place a proactive program or an affirmative program designed to prevent, eliminate or reduce disadvantages, such as systemic or historical discrimination suffered by any group of individuals because of their sexual orientation.

Senate Bill S-2 is far superior to House of Commons Bill C-33 because it covers section 16, the second method of combating discrimination. That alternative is available in the eight jurisdictions in the country that have sexual orientation contained in their lists of proscribed grounds of discrimination.

Let me make a further point in this regard, honourable senators. You will recall that section 15(1) of the Canadian Charter of Rights and Freedoms, our fundamental law, the equality rights provision, provides that:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Honourable senators will also recall that our courts have applied the principle of *ejusdem generis* to that list in section 15, and determined that sexual orientation is of the same *generis* as the other specific grounds that are mentioned.

That having been considered, section 15(2) of the Charter further clarifies by stating:

> Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of...

It goes on to specify that list of proscribed grounds.

The principle there is that the Constitution of Canada recognizes that special programs are necessary from time to time in order to deal with a disadvantage that is systemic, historical or institutional. Therefore, it follows that what we have done in the Senate is congruent with the principles contained in clauses 15(1) and 15(2).

• (1700)

What are we to do about that? One of my considerations was that perhaps Bill C-33 could be amended in the Senate by adding that clause 16 be provided for in the bill that we passed, Bill S-2. However, I would need to raise a point of order, or at least seek from His Honour the Speaker a ruling as to whether or not it would be in order for us to make such an amendment. Considering my batting average in being successful with points of order, I thought I would keep my own counsel, but I wish to share with colleagues my reasoning in not proposing an amendment to include clause 16 in the bill.

Honourable senators, at citation 579 of Beauchesne, we read:

> (1) An amendment setting forth a proposition dealing with a matter which is foreign to the proposition involved in the main motion is not relevant and cannot be moved.
>
> (2) An amendment may not raise a new question which can only be considered as a distinct motion after proper notice.

In taking my own counsel on this, I have concluded that to make such a motion would probably be out of order. Therefore, I shall not make such a motion; rather, I will seek to pursue the progress of Bill S-2 in the other place.

Honourable senators, let me conclude by once again reminding honourable senators how important it is for us to distinguish between human rights in general and combating discrimination in particular. Much of the debate that has transpired around Bill C-33 seems to confound or confuse the general issues of human rights and the particular strategies and programs of combating discrimination.

First and foremost, although we call the statutes enacted by provincial legislative assemblies and by Parliament "human rights acts," it may be a bit of a misnomer, but not too much. All human rights statutes in Canada are, in fact, anti-discrimination statutes. Their ancestors were the fair employment practices acts and the fair accommodation practices acts generally administered by labour ministries across the country. They drew their inspiration from the work of the ILO in years past.

Sometimes it is helpful to recognize that the human rights statutes — or more clearly, to use the Dick and Jane language of our colleague Senator Kirby, the anti-discrimination statutes, have been enacted to combat specific areas of discrimination — employment, accommodation and services. More particularly, they were enacted to combat discrimination where it affected particular groups of Canadians whose social disadvantage became so apparent that it required a political response by our legislatures and by Parliament. Hence, the introduction of the proscribed ground of discrimination, namely race, was in response to the racial discrimination permeating employment and other areas. This was not to give any kind of special right to persons who could be identified on the basis of the colour of their skin, or on the basis of their religion; rather, it was to combat the discrimination with which these citizens were confronted as an obstacle to enjoyment of their rights and equality. Anti-discrimination laws — which we call human rights acts across Canada — were specific efforts on the part of provinces and Parliament to remove the burden and the obstacles which had been placed upon individual groups of Canadians.

Honourable senators, you might categorize human rights in the general terms of civil and political rights, such as the right to life and the right to freedom of the press. Those kinds of rights are the classical freedoms, and in many ways can be seen as being self-executory. People will enjoy those rights if their freedom of expression or their freedom of movement is not interfered with. Generally, those rights were claimed in defence from intrusions by the state.

A second category of human rights are the economic, social and cultural rights, such as the right to education, the right to health and the right to work. Those rights require the intervention of society or the state. Those rights might be described as pragmatic rights. There is not much meaning to the right to education unless there is an organized educational system; there is not much meaning to the right to health if society does not take proactive and creative measures to give substance. Thus, we build a hospital system and a hospital network, et cetera. Many rights, particularly the economic, social and cultural rights, require the intervention of society and the state for those rights to be enjoyed.

A third category of rights are equality rights. In other words, all the rights in the first two categories are to be enjoyed equally, and individuals will not be excluded from the equal enjoyment of those rights because of the colour of their skin or the temple, synagogue or church which they attend. That is why we find in the 1948 Universal Declaration of Human Rights the articulation of the world standard, a world standard that was adopted by all of the countries of the world, notwithstanding the tremendous diversity of etiology and of political system.

The world community was able to come together and to declare the human rights standard that we find in the December 10, 1948 Universal Declaration of Human Rights, which begins with the recognition of the inherent and of the equal and inalienable rights of all members of the human family. Its second preambular paragraph reminds us that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of humankind. As well, it reminds us that the world community reaffirmed its faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women. It affirms, as a matter of human rights, the universal concept that everyone is entitled to all of the rights and freedoms set forth in the universal declaration without distinction of any kind.

• (1710)

Honourable senators, in 1948, the world community had no difficulty particularizing some of the categories of disadvantage, and so we find in article 2 that everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. It follows, as day the night, that, as society matures, we understand a little better in each period in the journey of life that certain categories of our brothers and sisters have been victimized. We might not have noticed it before. We have realized that, in the past, the kind of discrimination and the kind of disadvantage that has been experienced by men and women, members of families, because of their sexual orientation, has been, unfortunately, very often quite barbarous.

This amendment to the act attempts to right a wrong and to provide a vehicle, even though it is only half the vehicle. It is to be hoped that we will pass Bill C-33 and see Bill S-2 concluded so that we will have both vehicles.

On motion of Senator Cools, debate adjourned.

POST-SECONDARY EDUCATION

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Bonnell, calling the attention of the Senate to the serious state of post secondary education in Canada.—(*Honourable Senator Berntson*).

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Honourable senators, this order happens to be standing in my name, but I understand other senators wish to join in the debate. I will happily yield to Senator Milne.

Hon. Lorna Milne: Honourable senators, those people in this chamber who were fortunate enough to have had the opportunity to gain some form of higher education were indeed fortunate, for they were pretty well guaranteed a job when they graduated. In fact, companies often lined up to hire the graduates of the 1940s and the 1950s and, to a lesser extent, the 1960s.

Students of that time spent their college years narrowly focusing their fields of interest and expertise until they graduated in one particular field and expected, quite confidently, to spend the remainder of their working lives in one job in their chosen field. Obviously, this narrowing of interests did not apply to anyone in this chamber.

Today's students must plan their education on a two-tiered basis: one thrust aimed at focusing on a field where jobs will be available so that they can gain a toe-hold into the job market when they graduate; and the other thrust aimed at giving themselves as wide a body of knowledge and experience as possible so that they will be able to ride the winds of change

when their first job disappears, as it surely will, and they are forced to find another or to change the direction of their career entirely.

I agree wholeheartedly with Senator Bonnell's five points and areas of concern. In addition, I believe that Canadian universities must either increasingly offer their student bodies a broader, not a narrower, choice of fields of study — and this is being forced upon them by decreasing funding — or perhaps they should be lowering the barriers to allow a greater degree of mobility of students between universities. Furthermore, I believe that Canadian universities must increasingly offer cross-disciplinary degrees, even at the undergraduate level.

In 1955, my own province of Ontario had only seven degree-granting universities. The number would increase to nine if we included the two colleges whose degrees were granted by other institutions, such as my own, OAC. Since the report of the Massey-Levesque Commission on the Development of Arts, Letters and Sciences in 1957, the federal government has contributed financially to the development of post-secondary education in Canada. We can see the result. Today in Ontario there are 19 degree-granting universities and one affiliated institution, the Ontario College of Art.

I understand that universities in Ontario are currently spending 12 per cent less per student in real dollars than they were in 1977. At the same time, other recipients of provincial grants, such as hospitals and elementary and secondary schools, saw expenditures rise by 50 per cent on a per-client basis.

It is somewhat disconcerting to note that Ontario, one of the "have" provinces, lags behind some of the "have not" provinces. According to the Council of Ontario Universities, Ontario grants $1,100 less per student to universities than the average of the other nine provinces. From 1992-93 to 1996-97, operating grants from the Ontario government to its universities have declined by $460 million, or 23 per cent. Under the present provincial government, I rather suspect the amount spent on higher education will decrease even further and more quickly.

To add emphasis to Senator Bonnell's suggestion that students should be guaranteed mobility rights province to province, I would point out that increasing numbers of students are forced to continue to live at home while attending college or university, due not only to the escalating costs of their tuition but to the increased costs of living in residence and the decreasing percentage of dormitory or residence beds available to them.

I draw your attention to the fact that half of the space in Ontario university buildings is between 20 and 30 years old. Another 25 per cent of that space is over 30 years old. This situation represents a significant maintenance and replacement liability which will result in an even greater destabilization of university budgets and greater pressure on tuition levels. The Province of Ontario seems completely insensitive to this issue. Mike Harris cut capital grants to universities by a further 20 per cent in last week's budget.

When parents' jobs, or lack thereof, forces a family to move, a student who has not been able to get space or who cannot afford space in a residence must also move. Mobility rights are becoming essential in an ever-more mobile or transient population.

Mobility is one example of a non-financial issue that has considerable effect on accessability to education. We must examine the need for common requirements, the possibility of portability of course credits, and greater cooperation among universities.

There may be a role for a federal institution such as this one in fostering the development of such cooperation. We are certainly well constituted to look into the matter. Over the years, there have been many studies of post-secondary education in Canada. Our own National Finance Committee studied the federal role in financing education in 1987. Most recently, the Association of Canadian Universities and Colleges instituted the Smith Commission of Inquiry on Canadian University Education in 1991. I expect that it may be time for us to take another look at the situation. While our past exercise was mainly concerned with federal transfers to provinces, I think we might do good work by examining these other issues that are equally relevant.

• (1720)

Senator Bonnell has done us all a service by bringing forward this inquiry. I, for one, support the notion that we should be even more proactive. It would be both timely and appropriate to establish that time honoured institution of the Senate, the committee study.

Hon. Gerry St. Germain: Honourable senators, has the honourable senator considered whether as a nation we are being too generous in terms of allowing foreign students into the country, thereby jeopardizing opportunities for some of our young Canadians? I do not mean to become an isolationist in any way, shape or form from an education point of view because I am sure there are advantages to such exchanges.

I agree with the honourable senator on most matters, other than, of course, her remarks about Michael Harris. Would she comment, please?

Senator Milne: Honourable senators, I have not looked into this matter. However, it might very well be another course of inquiry that the committee, which I hope will be instituted, could look into.

Hon. John B. Stewart: Honourable senators, I, too, should like to ask a question of Senator Milne.

The honourable senator made reference to the 1987 report of the National Finance Committee on the financing of post-secondary education. Members of that committee were told, quite emphatically, that education was under the jurisdiction of the provincial governments and that, while the Government of Canada, as authorized by the Parliament of Canada, could transfer money to provincial governments, the decision as to what would be done with that money was entirely a matter for the provincial governments.

We found in one province that the amount of money transferred from Ottawa to that government constitued 113 per cent of the amount expended by that provincial government on post-secondary education.

Does the honourable senator, who comes from Ontario, have reason to believe that the provincial governments have changed their stand with regard to the question of jurisdiction? Would a new committee not be confronted by much the same attitude, that is, one which says, "You can send us as much money as you like, and we will be thankful, but we will spend it where we will. We will spend it on highways, if we like, or on welfare programs, if we like, but do not meddle in education which, under the Constitution Act, is a matter of provincial jurisdiction." Has there been a change in attitude since 1987?

Senator Milne: Honourable senators, I must admit that I do not know. When I was involved in education, any transfer moneys that came to the Province of Ontario vanished into the general pot. No one could follow them through to see if they were spent on post-secondary education. That is something I would like to find out as well.

Hon. Philippe Deane Gigantès: Honourable senators, I should like to ask a question of Senator Milne. Has the honourable senator encountered discussions about the advantages of having foreign students in Canadian universities? They bring to our universities perceptions of the world that are not ours, which thereby enlarge our understanding. If they are trained here and leave with a good memory of Canada, which most of them do, then they give us contacts in the rest of the world which are beneficial to the country.

Senator Milne: Honourable senators, I must admit to a certain amount of personal bias with respect to this question. My daughter married a foreign student who came to Canada, took post-graduate work here and who remained in Canada. He has been a contributing citizen to this country for 15 years now.

Hon. Nicholas W. Taylor: Honourable senators, I also have a question for Senator Milne which was sparked by Senator St. Germain's question. It is prompted by a study which was undertaken about three years ago by the Alberta legislature concerning foreign students and what other countries were doing with respect to them.

Senator St. Germain might be interested in some statistics that we derived from our study. England and Germany seem to bring in more foreign students than do other countries. They felt that the proper mix of foreign students to the regular student body should be around 5 per cent. They also used the argument that the best buyers of their expertise and products in a foreign country are those who were educated by them. Naturally, they are quite often in the higher echelons of both business and government.

The study also found that about 1.5 per cent of our student population is made up of foreign students. In Alberta, the figure is around 2 per cent.

Has the honourable senator considered the possibility of additional funding flowing from the national government to the universities that reach a foreign student quota of 4 per cent or 5 per cent? After all, our government would benefit immensely, as Senator Gigantès has said, from the additional commerce and everything that flows from it.

Senator Milne: I believe Senator Taylor has answered his own question. He has also given the committee another issue to look at.

On motion of Senator Berntson, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.

CONTENTS

Wednesday, May 15, 1996