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Tuesday, June 18, 1996

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Tuesday, June 18, 1996

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw your attention to a distinguished parliamentary delegation from Romania in our gallery. The delegation is led by Professor Oliviu Gherman, the President of the Senate, accompanied by Madam Gherman, Senator Cancescu, Senator Secara, Senator Popa and Senator Sava, and His Excellency the Chargé d'Affaires for Romania. We welcome you to the Senate of Canada.

SENATOR'S STATEMENT

ONTARIO

RESULTS OF BY-ELECTION IN HAMILTON EAST— CONGRATULATIONS TO SHEILA COPPS

Hon. Lorna Milne: Honourable senators, I should like to draw the attention of the Senate to the results of the by-election in Hamilton East last night.

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: Excellent results, I agree: 70 per cent to 50 per cent!

Senator Milne: Ms Copps won the election handily, taking over 46 per cent of the popular vote in a race with 13 candidates. Many will point to her 67 per cent majority in 1993, but it is important to keep in mind that the results in 1984 and 1988 were 38 per cent and 49 per cent respectively. Indeed, it is relatively rare in Canada for a candidate to take 50 per cent of the vote; most get into office with numbers in the high 30s or the low 40s, as we all well know. I congratulate Sheila Copps on the confidence her electorate has expressed in her.

• (1410)

Let me also take this opportunity to give a brief analysis of the results. I only have unofficial numbers, but I think they will bear out my perspective. Ever since the arrival of the Reform Party, commentators have engaged in a new math. Like medieval alchemists examining the entrails to produce a powerful mystical number, pundits like to add the popular votes for the Reform and the Conservative candidates. This exercise is most often performed to demonstrate that Liberals should have been defeated at the polls, and that it was only a split on the right that allowed the Liberal candidate to walk up the middle.

The implication is that small "l" liberalism has been soundly trounced by the electors. The conclusion drawn is that the formula for success in the next general election is to appeal to the right and to adopt right-wing policies. On the face of it, I find this analysis weak. Witness the Reform Party which, despite its recent convention boost, came a distant fourth in the poll, and whose candidate will lose his deposit.

However, for the sake of argument, let us accept the methodology of these doomsayers. Why is it that I have never heard those same commentators perform the same augury with those votes cast for the Liberals and the NDP? I think this exercise would demonstrate that the majority of Canadians in almost every riding are liberal in their thinking,

Some Hon. Senators: Hear, hear!

An Hon. Senator: Say it again; they did not hear you!

Senator Milne: Let us examine Hamilton East at this point. The preliminary numbers I have here indicate that the vote broke down as follows: Liberal, 46 per cent; NDP, 26 per cent; Conservative, 14 per cent; and Reform, 10 per cent. If we formulate that mystical number which the commentators use to demonstrate Canadians' desire for right-wing policy, we find that 24 per cent of the riding voted for this option. On the other hand, if we respond to that analysis in kind by combining the centre-left vote, we see that 72 per cent of the people supported more left-wing candidates. By any standard, this is an overwhelming majority. In our first-past-the-post system, it is an unassailable peak.

Honourable senators, liberalism is alive and well in Canada. Canadians are liberal people. Do not believe —

The Hon. the Speaker: Honourable Senator Milne —

Senator Milne: — the soothsayers who would tell you otherwise.

Hon. Philippe Deane Gigantès: Honourable senators, this is a non-partisan statement. I am delighted that the Conservative candidate beat the Reform candidate. I would say to my colleagues opposite, you are a lot more palatable and digestible than they are, and I am glad this happened.

ROUTINE PROCEEDINGS

ADJOURNMENT

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

> That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, June 19, 1996, at one thirty o'clock in the afternoon.

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

Hon. Senators: Agreed.

Motion agreed to.

CRIMINAL CODE

BILL TO AMEND—FIRST READING

Hon. Louis J. Roberge presented Bill S-10, to amend the Criminal Code (criminal organization).

Bill read first time.

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

On motion of Senator Roberge, bill placed on the Orders of the Day for second reading on Thursday next, June 20, 1996.

NORTH ATLANTIC ASSEMBLY

FIRST REPORT OF CANADIAN NATO PARLIAMENTARY ASSOCIATION TABLED

Hon. Bill Rompkey: Honourable senators, I have the honour to table the first report of the Canadian NATO Parliamentary Association, which represented Canada at the Third Annual Political Committee Visit of the North Atlantic Assembly of NATO Parliamentarians, held in Moscow, on April 9-12, 1996.

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

THIRTY-SEVENTH ANNUAL MEETING HELD IN ALASKA—REPORT OF CANADIAN SECTION TABLED

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table the report of the Canadian delegation of the Canada-United States Interparliamentary Group's thirty-seventh annual meeting, held in Alaska from May 10 to 13, 1996.

NORTH ATLANTIC ASSEMBLY

SECOND REPORT OF CANADIAN NATO PARLIAMENTARY ASSOCIATION TABLED

Hon. Bill Rompkey: Honourable senators, pursuant to Standing Order 34(1), I have the honour to table, in both official languages, the second report of the Canadian NATO Parliamentary Association, which represented Canada at the 1996 spring session of the North Atlantic Assembly of NATO Parliamentarians, held in Athens, Greece on May 16-20, 1996.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF SENATE

Hon. John B. Stewart, with leave of the Senate and notwithstanding rule 58(1)(*a*), moved:

> That the Standing Senate Committee on Foreign Affairs have power to sit at 4:00 p.m. today, Tuesday, June 18, 1996, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

PRIVILEGES, STANDING RULES AND ORDERS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF SENATE

Hon. B. Alasdair Graham (Deputy Leader of the Government), with leave of the Senate and notwithstanding rule 58(1)(*a*), moved:

> That the Standing Committee on Privileges, Standing Rules and Orders have power to sit at 4:00 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

QUESTION PERIOD

FISHERIES AND OCEANS

RECOVERY OF MARITIME FISHING PORTS—
REQUEST FOR PARTICULARS OF REPORT OF CONSULTANT—
GOVERNMENT POSITION

Hon. Orville H. Phillips: Honourable senators, media reports yesterday indicated that the government hired Professor Savoie of the Canadian Institute for Research on Regional Development. Professor Savoie, as honourable senators know, is a professor at the University of Moncton. He has been closely associated with ACOA since its inception. Professor Savoie's report is quoted in the media as saying that certain fishing ports in the Maritimes are hopeless and should be abandoned. This report was delivered over a year ago, and the government has kept it quiet; buried and silent for over a year. Why was that?

• (1420)

Senator Berntson: Very curious.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I will be quite frank; I do not know to which report my friend is referring, but I will make inquiries about it.

Senator Phillips: The honourable leader seems to be very much like certain members of the Royal Family, who likewise do not read the newspapers. I asked her months ago for a copy of the memorandum of understanding on the so-called harmonization deal. I have not yet received that from her, but since I did manage to obtain it on the Internet, she can forget about that request.

However, I would request that arrangements be made today to deliver copies of Professor Savoie's report to honourable senators, because I think it might have a very important bearing on Bill C-12. It is essential that we have that report in order to deal properly with Bill C-12.

I would also ask if it is the policy of this government not only to abandon certain specified fishing ports in Atlantic Canada, but also whether it is the government's intention to abandon the whole Atlantic area?

Senator Fairbairn: Honourable senators, to the last part of Senator Phillips' question, the answer is, "Absolutely not." In fact, this government has been very committed to Atlantic Canada and the difficulties that have arisen there in recent years regarding the fishery. That is why we have a TAGS program, and that is why we have a great number of other work-related measures which are taking some effect in Atlantic Canada. The government is extremely committed to that area of the country.

I have been quite candid in saying that I am not aware of the media reports or the actual report to which he refers. He might want to send me a copy. However, I will do whatever I can to answer his request.

REPORT ON GOVERNMENT INITIATIVE—
IMPACT IN ATLANTIC CANADA—GOVERNMENT POLICY

Hon. J. Michael Forrestall: Honourable senators, the report referred to by Senator Phillips is very critical, and its implications crucial to part-time fishers in Atlantic Canada. Just last week we heard about the plight of part-time fishermen, particularly shell-fishermen, in West Prince, Prince Edward Island, near Alberton. They cannot work in the winter. Their work involves long, hard days and is what you would describe as seasonal.

My question is supplementary in this sense: When the minister has obtained copies of this report, would she make them available to us so that we might see that it gets at least partial distribution before we are forced to deal with the Employment Insurance bill?

Second, would she also determine the attitude of the government respecting the following: How many of these policy recommendations made by Professor Savoie are indeed being considered by the government, actively or otherwise? Is the government contemplating, as the final answer, the "dwindling away" of rural and remote fishing communities to the point where they no longer continue to exist, and the encouragement, on the other hand, of the seasonal fisher folk to move to other parts of Canada to find sustainable employment? Is that the policy?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I will first try to find that report and then provide any information I can concerning it. Obviously, I am reluctant to respond to questions based on the report when I, myself, am not familiar with it.

However, as I said to Senator Phillips, the policy of the federal government over the last few years has been to be as supportive as possible of Atlantic Canada and the people of that region who have been most severely impacted by the problems in the fishery.

As far as policies which do otherwise, in general terms I would say that the government has no such policies. In terms of specifics, I cannot answer those questions.

Senator Forrestall: The Employment Insurance bill will be before us either today or tomorrow for debate, so we have limited time to deal with this critical matter. Does the minister not have some concern about the competency of her staff, or other government staff within that great maze out there, with respect to this type of report? We have all known about the subject-matter of this study and that the report was coming about. Why can we not have the best information that is available? I understand that that report cost $128,000.

I do not think it is good enough for the minister to give us the same answer, day in and day out. On some matters, of course, she cannot keep abreast; we recognize that. However, the Employment Insurance bill is not some passing fad. This is not some small bill which will be considered, passed and forgotten the day after tomorrow. This bill affects the lives of thousands of people. Surely the Leader of the Government in the Senate could be better informed in this regard. Surely the Minister of Fisheries and Oceans, or the minister responsible for ACOA, could have seen to it that this report was made available to the minister's staff, in order that she herself might have been properly briefed in this matter and prepared to respond to legitimate questions from Island senators and other senators from Atlantic Canada.

Senator Fairbairn: Honourable senators, I endeavour to the very best of my ability to respond to issues in this chamber during Question Period. As my honourable friend will know, I must rely on a great many sources from all around the government to bring matters to my attention, and they, too, have their responsibilities. I think they do a pretty good job, and so does my staff. I will do everything I can to get further information on this matter for my honourable friend.

THE ATLANTIC GROUNDFISH STRATEGY—
COMMENTS OF CONSULTANT—GOVERNMENT POSITION

Hon. Brenda M. Robertson: Honourable senators, if I may paraphrase, the leader mentioned the TAGS program as being a good endeavour. While you are seeking further information for us, be advised that Dr. Savoie alluded to the TAGS program in rather less positive terminology, shall we say, than that used by the minister.

I would like to have an evaluation of the TAGS program by the Department of Fisheries and Oceans, or whoever is responsible for it. There must be an appendix or some reference in relation to Dr. Savoie's reasons for making those negative comments on TAGS. I should like to know what they are.

• (1430)

Hon. Joyce Fairbairn (Leader of the Government): I will add that to my inquiries, honourable senators.

ELECTIONS CANADA

LIMITATION ON ELECTION ADVERTISING DECISION
OF ALBERTA COURT OF APPEAL—POSSIBILITY OF APPEAL
TO SUPREME COURT OF CANADA—GOVERNMENT POSITION

Hon. Jack Austin: Honourable senators, my question to the minister relates to legislation which was passed when the Mulroney government was in power limiting election advertising. As the minister will know, an Alberta Court of Appeal decision earlier this month found that legislation "unreasonably unconstitutional."

Is the Government of Canada considering an appeal of that Alberta Court of Appeal decision to the Supreme Court of Canada? Will the government take into account the possibility that, if left as it now stands, this Alberta Court of Appeal decision might be considered a precedent to find legislation passed by the Province of Quebec with respect to its referendum laws similarly unreasonably unconstitutional?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, the Minister of Justice is studying the decision of the Alberta court to which my honourable friend refers. I would need to seek information from him on the questions posed.

LITERACY

HARMONIZATION OF PROVINCIAL SALES TAXES
WITH GOODS AND SERVICES TAX—IMPACT ON COST
OF READING MATERIAL—GOVERNMENT POSITION

Hon. Mabel M. DeWare: Honourable senators, as the Leader of the Government in the Senate is aware, illiteracy levels in Atlantic Canada are, on average, 20 per cent higher than they are nationally. Is the minister aware that the Don't Tax Books Coalition believes that the government has broken a promise to rid books of the GST? Does the minister, who has special responsibility for literacy, believe that the increased cost of books is a barrier to improving literacy levels, and does she stand by her party's commitment, expressed so passionately at Liberal Party conventions and in Liberal Party propaganda sheets, that books should not be taxed?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I am aware of the vigorous demonstration which was conducted in Nova Scotia over the weekend by the coalition which is making its views known, as are others across the country.

Of course the government has a major concern about literacy in this country, which is why it took action almost immediately after the election to fulfil a number of commitments it made respecting funding for literacy. It went beyond that and established not only a special ministerial responsibility but it also has recently opened an Office of Learning Technology, which will be working in association with the National Literacy Secretariat.

On a number of occasions, I have mentioned in this house that the imposition of the GST on books is a cause of disappointment to me. However, the move to try to effect the changes that have been agreed to in the memorandum of understanding with the three provinces in Atlantic Canada in terms of harmonization of taxes is centred on the GST base. I am sure there will be vigorous discussion across the country and in Parliament on this issue.

Senator DeWare: Honourable senators, has the government commissioned any studies to be done in those targeted areas?

Senator Fairbairn: Honourable senators, to my knowledge, no national studies have been done. However, the Canadian government is the lead government among OECD countries in this area. It produced the first-ever international survey on adult literacy, comparing this country with several other partners in the OECD family. That general study was released last December. In the course of the production of the study, specific surveys on a variety of issues were conducted in the regions of Canada and among special groups. The results of those surveys will begin to be published in the fall. I will keep my honourable friend informed as those results come in.

METROPOLITAN TORONTO

REDEVELOPMENT OF LANDS PREVIOUSLY KNOWN AS CFB DOWNSVIEW—ROLE OF DEFENCE MINISTER—GOVERNMENT POSITION

Hon. Richard J. Doyle: Honourable senators, my question is directed to the Leader of the Government in the Senate. Late last year, the President of the Treasury Board and the Minister of National Defence outlined, for your benefit and mine, the government's plans for the redevelopment of one of the choicest chunks of real estate in urban Canada.

The Leader of the Government in the Senate will remember questions I framed on behalf of Toronto constituents concerned about conflicting versions of what might eventually become of the lands previously committed to CFB Downsview.

We now presume that the government has proceeded through the Downsview Lands Committee — with its exclusive membership of Liberals from the House of Commons — which has determined classifications for use, and has employed the Canada Lands Company, under contract to the Department of National Defence, to manage participation in the project.

My first question has to do with the selection of the Minister of National Defence as the government's final arbiter in what we would presume to be an entirely civilian enterprise.

We on this side might recognize the wisdom of holding these lands in perpetuity and in trust, but why should it be held in the care of the Minister of Defence, who is so busy elsewhere trying to salvage other trusts left in his care? Why has that minister been chosen to handle a project which is almost totally civilian in character?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I will speak to the President of the Treasury Board and get a full answer for my honourable friend. The Minister of National Defence is a member of Parliament from the City of Toronto and he has certain responsibilities in that area. I will obtain a more complete answer than that for my honourable friend.

REASON FOR HASTE IN IMPLEMENTING PROJECT—GOVERNMENT POSITION

Hon. Richard J. Doyle: Honourable senators, when we solicited information, we were told that the Canada Lands Company issued formal requests for proposals of interest in redevelopment projects on April 15 of this year with June 26 as the final response date, July 31 as the cut-off date for internal review, and August 31 as the date of announcements of final purchases.

• (1440)

My supplementary question is this: Why, after a dreadfully slow start, has such a tight schedule been set for what will be one of the major redevelopments of Toronto land in what remains of this century?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I agree with my honourable friend that this is an extremely important project. I am sure the government will wish to plan, in consultation with many others, the outcome of it with great care. I will add my honourable friend's supplementary question to my list of questions that I will pass on to my colleague.

Senator Doyle: Honourable senators, considering that this undertaking was launched and will be observed by a committee of Liberal members of the House of Commons from the area, with their obvious partisan concerns, are the country's best interests well served by having the selection of land use winners while Parliament is not in session and there is no one to answer our questions?

Senator Fairbairn: Honourable senators, I will ensure that that question, too, is transmitted along with the others.

ANSWERS TO ORDER PAPER QUESTIONS TABLED

NATIONAL DEFENCE—VEHICLES PURCHASED—REQUEST FOR DETAILS

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 14 on the Order Paper—by Senator Kenny.

NATIONAL DEFENCE—VEHICLES OPERATED—REQUEST FOR DETAILS

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 32 on the Order Paper—by Senator Kenny.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, before I call Orders of the Day, I should like to introduce to you the two pages from the House of Commons who have been selected to participate in the exchange program with us this week.

[*Translation*]

Colette Lavallée, who comes from Edmonton, Alberta, is studying communications at the Faculty of Arts of the University of Ottawa. Welcome to the Senate, Colette.

[*English*]

Martin Thompson is from Aurora, Ontario. His studies are in psychology at the University of Ottawa. He is presently in the Social Sciences Faculty at that university. I do not know if being a page in either house helps in the study of psychology, but perhaps it does. Welcome to the Senate.

ORDERS OF THE DAY

BUDGET IMPLEMENTATION BILL, 1996

THIRD READING

Hon. B. Alasdair Graham (Deputy Leader of the Government) moved the third reading of Bill C-31, to implement certain provisions of the budget tabled in Parliament on March 6, 1996.

Hon. David Tkachuk: Honourable senators, we have studied Bill C-31 in committee. It is definitely a bit of an omnibus bill. The most fascinating part of its description is on the question of the transfer of funds to the Maritime provinces to make up for the harmonized tax that will be instituted by the government.

During our committee stage, Barry Campbell, Parliamentary Secretary to the Minister of Finance, appeared before us. As chairman of the committee, I asked him about the GST and harmonization since the allocation of the $1 billion to the three Atlantic provinces was part of the bill. It is called "adjustment assistance to provinces to facilitate their participation in an integrated value-added tax system." I think honourable senators might be interested in the testimony that resulted.

The parliamentary secretary was accompanied, of course, by officials. One of them was Samy Watson, who is the General Director of Tax Policy Branch, Department of Finance. I asked:

> Why did the government have such momentum to attain a harmonization in the three Atlantic provinces? Why did they do it in the first place? Were the Atlantic provinces asking for it?
>
> **Mr. Watson:** There are a number of points to that, Mr. Chairman. In the last two and one-half years, the government has been involved in negotiations on a multilateral level, on a bilateral level and on a regional level. Yes, those provinces were the most interested in achieving harmonization for the economic reasons.

This was a policy that was put into effect immediately after the election, a policy which has been negotiated for the last two and one-half years, and well before the House of Commons and Senate committees were sent to consult the Canadian public on what kind of tax they wanted.

After I asked what the economic reasons were, Mr. Watson continued:

> World tariffs are coming down. The world economy is becoming more global. One of the big determinants in terms of trade and exports right now is price because you do not have a lot of tariffs. When you have a retail sales tax, you have what is called tax cascading, a kind of poetic term. The usual example used is that you have a log, which is sold, upon which there is tax. It is then sold to a mill and the mill will turn it into logs and their tax will be at that level as well. Those logs go into furniture. That tax is embedded in the price of each good. By the time that good reaches the consumer, it has many levels of tax already embedded in it.
>
> What a value-added tax does is remove those levels of tax so that the tax is only at the final level. That is where many industrialized countries in the world are at....
>
> You are more competitive in terms of both imported goods versus domestic goods here in Canada. Canada also becomes more competitive in terms of world markets. That is the reason they are interested in it.

I hope that honourable senators across the aisle listen to that because that is as good an argument for the GST as any honourable senator will hear.

Mr. Campbell, however, said:

> I want to reiterate that an offer to consider harmonizing was made to all provinces.

He then went on to clarify that answer.

Under further questioning, Mr. Campbell further explained the position of the government. I asked:

> The driving force of the argument to harmonize is the competitiveness which was applied here. The manufacturers sales tax, which was removed when the GST first came into effect, did exactly what the three Atlantic provinces now want done with their own tax. Is that right?
>
> **Mr. Watson:** Yes, if I understand you correctly. The retail sales taxes which now exist are very similar to the manufacturers sales tax that was replaced by the GST.
>
> **The Chairman:** All the input costs were buried under that tax. When you sent out a manufactured product, that was a disadvantage to the manufacturer in exporting. The three Atlantic provinces wanted the advantage of the GST by harmonizing for the same reasons.
>
> **Mr. Watson:** Yes, they are identical reasons. The only other reasons you can add to it are two. The first is administrative savings —

With respect to the second, I do not want to put words in his mouth.

> These two taxes will operate as one tax. From a business perspective, these businesses would only have to deal with one tax collector.

I then asked:

> From an academic and an economic argument, although maybe not a political argument, there is no question that a value-added tax has tremendous advantage over taxing up the line from, say, the manufacturers tax as the federal GST was.
>
> **Mr. Watson:** That is right.
>
> **Senator De Bané:** From the point of view of the producer, not of the consumer.
>
> **The Chairman:** Let us talk about that. I just asked that question. This is a change in policy of the federal government toward the GST.
>
> In other words, you have invited the provinces to benefit from the advantages of a value-added tax over a manufacturers sales tax or tax points. Is that not a change in policy from the Liberal government's policy when the GST was being instituted by the Conservative government?
>
> **Mr. Campbell:** I did not bring my Red Book as a prop here but, having knocked on thousands of doors during the 1993 election, I was very clear in quoting that we were going to address the GST; that we had to replicate or replace the revenues; and we would do so with something that generated equivalent revenues, was easier to administer and allows for simpler compliance.

• (1450)

There is no question that Mr. Campbell is, metaphorically, leaping from log to log in some fast-moving water with some dexterity here.

> **The Chairman:** Mr. Wilson's policy was exactly that, was it not?
>
> **Mr. Campbell:** With respect to achieving harmonization?
>
> **The Chairman:** Exactly.
>
> **Mr. Campbell:** But he did not achieve it.
>
> **The Chairman:** I am asking whether it was his policy to harmonize the sales tax across the country?
>
> **Mr. Campbell:** I believe, at the time, he tried to achieve harmonization but was unsuccessful.

I wanted all honourable senators to hear this testimony because I was quite surprised by the candour of Mr. Campbell after trying to slip through discussions about the Red Book that the Liberal government referred to throughout the election of 1993 and despite the resignation of Sheila Copps. Notwithstanding what happened in Hamilton with Sheila Copps, the Liberal government is still not telling the truth about what they said during the election of 1993.

Although the voters of Hamilton East may not have gotten the point, I believe that the Canadian people do know what promises were made during the last election campaign.

Hon. Roch Bolduc: Honourable senators, I will limit my remarks on Bill C-31 to three points. The first will deal with those clauses which suspend binding arbitration as an option for settling labour disputes in the federal public service.

The current wage freeze on public servants expires shortly, and existing wage contracts are up for renegotiation. With workers looking for raises after several years of salary freezes while the government continues to struggle with its debt and deficit, the potential for conflict is real as labour and management sit down at the bargaining table.

Contracts are usually settled by one of two routes. The first is negotiation, which sometimes leads to a strike. The second is binding arbitration, where a third party settles the matter in dispute.

I would like to see the binding arbitration route used as much as possible. It provides a way to settle disputes without putting both the public and public servants through the anxiety of a possible strike followed by the disruption of a strike. No one wins when there is a strike — not the public servants who lose their salaries, and not the public who cannot access the services they require.

However, this bill suspends binding arbitration as an option for the next three years, with only limited exceptions. We are told that this is because the government does not want to give control of wages to non-accountable third parties, yet exceptions are made for employees of the Canadian Security Intelligence Service and employees of Parliament, as they cannot strike.

Arbitrators must, under the terms of this bill, limit their raises to those given to public servants. I do not see why the same guidelines cannot be issued for all public servants wanting to settle their contracts through arbitration. As long as there are guidelines to protect the minister's budget, what is the problem?

Honourable senators, Steve Hindle of the Professional Institute of the Public Service said:

> The removal of this option...will cause unnecessary confrontation and undermine balance and fairness in the collective bargaining system.
>
> ...the bill implies that a partnership cannot be trusted to work if both sides have equal rights before a third party.

> It insinuates without proof that collective bargaining under the existing Public Service Staff Relations Act and fiscal responsibility cannot co-exist. It says the government only believes in partnership and in collective bargaining where it can ensure that the rules of the game are stacked against the other side.

Mr. Hindle went on to say:

> The record of public service arbitral awards provides no evidence that it is an undisciplined process which fails to take into account the fiscal conditions of the government.

Honourable senators, can anyone on the government side produce a shred of evidence to dispute Mr. Hindle's claim that arbitrators do take into account the fiscal condition of the government?

We heard similar testimony from Mr. Bill Krause of the Social Science Employees' Association who told us that the government was:

> ...seeking to restructure the collective bargaining environment to be needlessly confrontational at the expense of government employees and service to the public.

For my part, I must wonder if the government's real goal is to provoke a strike so that it can appear tough when it legislates an already demoralized public service back to work. I, for one, do not think we should be telling skilled professionals that the only way to reach a settlement is to travel a path that could end in a strike. It is, no pun intended, simply not professional.

I would remind the senators opposite of the differences between the promises their colleagues made to the public service before the last election and what has, in fact, transpired. After saying that they were committed to collective bargaining, they made both collective bargaining and arbitration irrelevant for two years. They said that changes to the work force adjustment program would best be made through negotiation, then they unilaterally changed that last year, and they now propose to change that again with the passage of this bill.

They promised a whistle-blowing law to protect those who expose wrongdoing, but they have not acted to fulfil that promise. They promised to designate a Commons committee to look into public service issues and report annually, but have failed to do so.

In concluding my remarks on this part of the bill, I would urge the government to consider those clauses that eliminate binding arbitration as an option. It is both unnecessary and undesirable.

[*Translation*]

I also wish to say a word on the Canada social transfer for health and social issues. A rather major change will occur in the percentages of equal rights per capita. For example, in Canada — as shown on the chart given to us by the minister — the current situation is the following: 106 per cent for Newfoundland, 110 per cent for Quebec, 92 per cent for Alberta, and 96 per cent for Ontario. Based on the new distribution, the percentages for the years 2002 and 2003 will be approximately 103 per cent for Newfoundland — I am only mentioning a few provinces — 105 per cent for Quebec, 98 per cent for Ontario, and 96 per cent for Alberta.

I do not want to make partisan remarks. I know it is difficult to come up with a calculation formula, but I simply note that the percentage for my province will diminish.

In concluding, I object strongly to the form, if not the content of this legislation. This bill arrives here two or three days before the end of the session, as usual, and is the equivalent of an omnibus bill. It seeks to amend eight different acts relating to the provision of public services.

The National Transportation Act will be amended, along with the Unemployment Insurance Act, the Canada Health Act, the Old Age Security Act, the Canada Assistance Plan, the Radiocommunication Act, the Canada Student Loans Act and, finally, the goods and services tax. One bill will amend all these acts.

Senator Prud'homme: An omnibus bill.

Senator Bolduc: This is a very bad way of doing things. I am asking officials of the justice department to wake up and to make an effort to draft several bills amending several acts. It is acceptable, for example, to have a package for the public service. However, this bill is like Heinz with its 57 varieties.

[*English*]

Hon. John G. Bryden: Would the honourable senator entertain a question?

Senator Bolduc: Certainly.

Senator Bryden: On the question of arbitration in the public service and the fiscal responsibility of the government, is the honourable senator aware that in interest arbitrations, which is what these would be, one of the criteria that an arbitrator is not permitted to take into account is the employer's ability to pay?

[*Translation*]

Senator Bolduc: I cannot answer this question, Senator Bryden. For 20 years, the act has included parameters that make arbitration compulsory. I do not see any problem.

[*English*]

Senator Bryden: By way of supplementary, is the honourable senator aware that the bill leaves the ability to go to arbitration at the option of the bargaining agent? The history of collective bargaining in the public service from 1967 until very recently

shows that strong, large and effective unions choose negotiations, conciliation and the right to strike, and small unions choose the route of compulsory binding arbitration. Doing that allows and almost requires an arbitrator — not just a public sector arbitrator, but any compulsory situation of arbitration — to choose the result that is won by the strongest union and apply it to the smallest unions.

Senator Bolduc: I would agree with the honourable senator if we were in the industrial sectors or an industry such as tobacco, but that is not the case here. We are talking about postal employees who have peculiar functions and clerical employees or junior administrators in the government, as well as the professional people such as engineers, architects, accountants and so on. I do not see a problem at all.

Senator Bryden: Honourable senator, do you know why it is that private-sector employers recommend that public-sector employers go to binding arbitration, yet private-sector employers will fight very hard to ensure they are not required by law to do the same thing?

Senator Bolduc: In the private sector, it is very logical. It is good that they have the right to strike because there are pressures on both sides. Costs are a factor, as are profits or losses. However, in the public sector, we do not have the same criteria at all. It is strictly based on what I would call "un rapport de force". It is just plain silly to do that in the public service.

When it happened in Quebec in 1964, I was against it. I gave advice to the government, and I said I was against it. The labour leader at that time, Mr. Marchand, said "Give us the right to strike, and we will be very reasonable." Parliament gave them the right to strike, and five weeks or maybe two months later, the nurses at Ste. Justine Hospital in Montreal went out on strike. The next year, 1965, we had a general strike of all the nurses in Montreal.

Senator Bryden: There are no competing forces in the public sector, but having worked in that sector in labour for a very long time —

Senator Bolduc: I did, too.

Senator Bryden: — many people consider that sector to be a whole basket that is always full and always refillable by the taxpayer.

The Hon. the Speaker: It was moved by the Honourable Senator Graham, seconded by the Honourable Senator Rompkey, that the bill be read the third time now.

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

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

STANDARDS COUNCIL OF CANADA ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-4, to amend the Standards Council of Canada Act.

Bill read first time.

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

On motion of Senator Graham, with leave of the Senate and notwithstanding rule 57(1)(*f*), bill placed on Orders of the Day for second reading at the next sitting of the Senate.

PEARSON INTERNATIONAL AIRPORT AGREEMENTS BILL

MOTION FOR ALLOTMENT OF TIME FOR DEBATE ADOPTED ON DIVISION

Hon. B. Alasdair Graham (Deputy Leader of the Government), pursuant to notice of Thursday, June 13, 1996, moved:

> That, pursuant to the provisions of rule 39 and in relation to Bill C-28, an Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport, not more than a single period of a further six hours of debate be allotted to the consideration of the said bill at both the report and third stages;
>
> That, when the debate comes to an end or when the time provided for the debate has expired, as the case may be, the Speaker shall interrupt, if required, any proceeding then before the Senate and put forthwith and successively every question necessary to dispose of the report stage and third reading of the said bill; and
>
> That any recorded vote on the said question or questions shall be taken in accordance with the provisions of rule 39(4).

He said: Honourable senators, I am moving this motion and urging its adoption so that the Senate can move to a final decision on Bill C-28.

In debating the motion, I sincerely hope that no one on the other side will allege that the government or members on this side of the chamber are acting with unseemly haste or without allowing proper opportunity to debate and examine the bill.

I wish to remind all honourable senators of a remark made by Senator Nolin on May 28 of this year when he was speaking to second reading of Bill C-28. At page 438 of the *Debates of the Senate*, he said:

> ... we have been considering this bill for two and a half years already.

Though in actual fact it is two years that we have had this issue before us, two years is still a substantial period of time in the life of any legislative chamber.

Senator Berntson: And you still have not got it fixed.

Senator Graham: When Senator Nolin spoke about considering the bill for two and a half years, he was acknowledging what we all know — that Bill C-22 of the last session and Bill C-28 of this session are identical.

Senator Berntson: Senator MacEachen said it was a clean slate, that it started all over again.

Senator Graham: As Senator Lynch-Staunton said when he spoke on second reading on May 27, 1996:

> Bill C-28 contains, word for word, what was in Bill C-22 ...
>
> We have identical bills dealing with the same agreements —

Senator Lynch-Staunton: What about the agreements?

Senator Graham: — signed during the same election campaign designed to transfer control of the same airport to the same group of people.

Since Bill C-22 was brought forward by the government early in 1994, there have been some new developments. Nothing ever remains static, of course.

Senator Lynch-Staunton: Like the MacDonald committee report.

Senator Graham: T1T2 Limited Partnership and 2922797 Canada Incorporated sued the federal government for breach of contract. The court subsequently found that the contract had, in fact, been breached by the government, and what is now taking place in court is a trial to determine what damages, if any, should be paid.

Senator Lynch-Staunton: It is about time.

Senator Graham: The plaintiffs are seeking more than $600 million in damages for expenses incurred and lost profits.

Senator Berntson: And you do not trust the judge to be reasonable.

Senator Graham: These are the major developments that have occurred since Bill C-22 was originally introduced.

Last week, in committee, it was suggested by Senator Lynch-Staunton that these intervening events so changed the context in which these bills operate that it would not be proper for Parliament to proceed with Bill C-28 at this time. He said:

• (1510)

> Passing legislation affecting a trial already in progress is the part I find very difficult to accept.

He compared it to a sporting event:

> ...the game has been going on for some time. One of the teams is unhappy with the rules and is going to ask the referee to change the rules to its advantage.

Senator Berntson: The referee has the same colour shirt.

Senator Graham: I want to assure Senator Lynch-Staunton that, as a matter of fact, the chronology was really the reverse. As a matter of constitutional law, there was not a problem. Patrick Monahan of Osgoode Hall Law School also did his best to dispel Senator Lynch-Staunton's concerns.

Senator Lynch-Staunton: Since when do you quote an authority whom you have rejected for two years?

Senator Graham: Professor Monahan stated:

> On balance I would be inclined to agree with the minister's view on that because, if it were the case that Parliament could not enact legislation dealing with a matter which was before the courts, or the subject of a trial, then if someone did not like a particular government proposal which was before the House of Commons or the Senate, they could simply run off to court, commence a legal action and then say, "You cannot legislate on this because it is the subject of a court proceeding."

Senator Lynch-Staunton: Quote the whole thing now.

Senator Graham: Professor Monahan also pointed out:

> To be fair to the government, the bill was tabled in the House of Commons significantly before the court action began.

Senator Lynch-Staunton: That is right.

Senator Berntson: Otherwise there would be no court action.

Senator Graham:

> The court action has been working its way through the courts. The legislation preceded the institution of legislation...

He continues:

> On balance, my view would be — and I am simply here to offer you my view — that the court would not say that that violated the Constitution.

Senator Lynch-Staunton: That is a partial quote.

Senator Graham: It is clear from the testimony of Professor Monahan that the intervening events I have described did not materially change the situation before us or Parliament's authority to proceed with this legislation. So when Senator Nolin says, "We have been considering this bill for two and a half years already," as a practical matter he is absolutely correct, though he did slightly exaggerate — unintentionally, I am sure — the length of time that we have had the Pearson bill before us.

In my opinion, two years of consideration should be long enough for any legislative body anywhere in the world to come to grips with any issue that comes before it.

Senator Lynch-Staunton: That is the Liberal view.

Senator Graham: Honourable senators, we are members of a legislative body which was created to deal with legislation. We call ourselves legislators — not judges or commissioners or consultants or advisers. Our primary role is to examine and then to either accept, amend or reject legislation. No measure, save an amendment to the Constitution itself, can become the law of the land without our express approval. This power, which is enshrined in the Constitution, gives us enormous authority but it also carries with it enormous responsibility.

If we refuse to pronounce on a measure that is brought before us, if we claim that two years of debate, two years of hearings, of testimony and examination is not sufficient for us to be able to reach a final decision, what does that say about our ability to carry out that responsibility?

Honourable senators, it is my view that Bill C-28, with or without amendments, merits approval by the Senate. However, in speaking to this motion, I am not arguing the merits of the bill at this time; rather, I am arguing in favour of a process that will allow us finally, after two years, to discharge our responsibilities. In urging all honourable senators to support this motion, I am not asking for your support on the legislation itself at this time but rather for your agreement that all of us should have an opportunity to, once and for all, express our views on the amendments that have been recommended by our committee and on the bill itself.

So, honourable senators, there is a term undoubtedly borrowed from parliamentary procedure that has become part of the popular lexicon for those who have experienced some unfortunate episode in their personal lives; that term is "closure." People want closure so that they can move on with their lives.

In that same context, I believe the Senate needs closure on Pearson so that, one way or another, whatever the final result, the Senate will be able to move forward unencumbered to deal with the challenges and responsibilities that lie ahead.

Hon. Finlay MacDonald: Honourable senators, would Senator Graham permit one question?

Senator Graham: Oh, yes.

Senator MacDonald: Honourable senators, that was a very good exposition of that which is before us. However, just so we know what we are talking about, could the honourable senator, since he has made reference to it, give us a rough breakdown of the damages sought by the plaintiff?

Senator Graham: Unfortunately, I cannot.

Senator Forrestall: Irrelevant.

Hon. Orville H. Phillips: Honourable senators, I thought it rather appropriate that Senator Graham should finish by saying that when people have had unfortunate experiences in their lives, they want to have closure and move on.

Honourable senators, I can recall a few incidents in which Senator Graham participated. Obviously, he has had some form of psychological treatment since those incidents, because he has closed his mind and moved on. I am not so sure I did not prefer the other mind.

Perhaps the incident which I find most parallels the present legislation is the debate on Bill C-22, the drug patent act. Honourable senators will recall that the government supporters were very much the minority in this chamber at that time. We were often reminded that we were the minority and the Grits, the opposition, were the majority and that the chamber belonged to the opposition — perhaps because they thought the chamber automatically belonged to the Grits, I am not sure. However, we often received that admonition.

I would like honourable senators to recall the history of Bill C-22. My honourable friend Senator Bonnell was very much in opposition to that bill. Of course, there was a travelling committee. In those days, that was mandatory. It seems to have gone out of fashion today. In any event, the committee reported to the Senate with amendments, and the bill went back to the House of Commons. The message came back from that place that the amendments were not acceptable. New amendments were drafted, and back to the House went the bill again.

• (1520)

The bill then returned to the Senate for the second time, and we heard dissertation after dissertation from people such as Senators Frith, MacEachen, Graham and Fairbairn. They all reminded us of the power of the Senate. They did not mention responsibility, but emphasized the power of the Senate. Hour after hour, I sat in my place and listened to them virtually holler for a joint meeting between the two Houses in order to to solve the dispute.

Senator Graham added his voice to that argument. However, if he made any suggestion today about holding a joint meeting of the two Houses in order to solve this matter, although I listened attentively, I missed it.

The next great opposition demonstration was on the GST debate. I know that the Grits would like to have closure on that subject. I find it rather strange that so many of those who were such active demonstrators in that debate have now been promoted to other worlds. I think of former Senator Roméo LeBlanc, Senator Frith and Senator Fairbairn. I can recall sitting here through one of Senator Fairbairn's eight-and-a-half-hour speeches when she was attempting to make it to the Guinness Book of Records. Somehow or other, that was not obstruction; that was the power of the Senate.

There are others who are in different positions today than they were on those occasions. I often wonder how much of this was a pay-off for the GST debate. I have no objection to anyone being paid off for duty to a party. I suppose that most of us got here that way. However, I find it offensive that anyone should be paid off for such a scandalous episode as the GST debate.

The opposition has questioned the behaviour of the government in relation to the Pearson airport debate. Honourable senators, our behaviour was respectable and parliamentary. No one rang bells, danced in the corridors, or blew whistles. We adhered to the rules. When Parliament acts within the rules, closure should be considered very carefully.

The fact that someone in the other place is telling the Senate to pass this legislation by the end of the week does not justify this action today. Sometimes I think that we on this side should behave a little more like the Grits did when they were in the opposition, then perhaps we would get more respect.

I do not think it is necessary for me to review why the rules were changed. Those changes have previously been explained to the Senate. When the rule changes proposed by the Conservatives were brought into force, the same people who acted so objectionably on Bill C-22, and so disgustingly during the GST debate, criticized those rules. Senator MacEachen said that, while Russia was changing to a democracy, Canada was becoming a dictatorship. Even Senator Haidasz got into the act, although it is very unusual for him to get into an argument of that nature. He could not have been very effective, however, because he has not convinced his colleagues on that side. Obviously, they did not listen to him.

Why have the Grits gone through such a change? Why has there been such a reversal in their policy? I can understand them adopting Conservative policy. They adopted the GST and are nurturing it. They want to change and improve it. In fact, the Minister of Finance feeds the GST more often than I fertilize my roses. However, it is time for them to think about what their policy is to be.

The Hon. the Speaker: Senator Phillips, I regret to interrupt you, but your 10-minute time period has expired. Under our rules, only 10 minutes are allotted on this debate.

Senator Phillips: Thank you, Your Honour. I was under the impression that I had 15 minutes. I should like to ask for permission to conclude.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Senator Phillips: My colleague Senator Grimard recently sent me a list of items about the Senate. One which I particularly like is that the Senate is the saucer in which the hot legislation from the House of Commons is poured and allowed to cool.

I ask honourable senators to allow this legislation to cool in the Senate saucer.

• (1530)

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

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour of the motion, please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion, please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen.

The Hon. the Speaker: Honourable senators, the Whips have agreed that the bells shall ring for one hour. The vote will be held at 4:30 p.m.

• (1630)

Motion agreed to on the following division:

YEAS

THE HONOURABLE SENATORS

Adams	Lewis
Anderson	Losier-Cool
Austin	Lucier
Bacon	MacEachen
Bonnell	Maheu
Bosa	Marchand
Bryden	Milne
Carstairs	Pearson
Cools	Petten
Corbin	Poulin
Davey	Prud'homme
De Bané	Riel
Fairbairn	Rizzuto
Forest	Robichaud
Gauthier	Rompkey
Gigantès	Roux
Grafstein	Sparrow
Graham	Stanbury
Haidasz	Stewart
Hays	Stollery
Hébert	Taylor
Hervieux-Payette	Watt
Kirby	Wood
Landry	Pitfield—48

NAYS

THE HONOURABLE SENATORS

Andreychuk	Keon
Atkins	Kinsella
Beaudoin	Lavoie-Roux
Berntson	LeBreton
Bolduc	Lynch-Staunton
Carney	MacDonald (*Halifax*)
Cochrane	Murray
Cogger	Nolin
Cohen	Oliver
DeWare	Ottenheimer
Doody	Phillips
Doyle	Roberge
Forrestall	Roberston
Grimard	Rossiter
Jessiman	Spivak
Johnson	Stratton
Kelleher	Tkachuk—34

ABSTENTIONS

THE HONOURABLE SENATORS

Nil.

CONSIDERATION OF REPORT OF COMMITTEE—
MOTION IN AMENDMENT—VOTE DEFERRED

Leave having been given to proceed to Reports of Committees, Item No. 1:

On the Order:

> Resuming the debate on the motion of the Honourable Senator Carstairs, seconded by the Honourable Senator Gauthier, for the adoption of the ninth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-28, An Act respecting certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport, with amendments and observations), presented in the Senate on June 10, 1996.

Hon. Sharon Carstairs Honourable senators, in moving the adoption of this report, I should like to make a few comments outlining the amendments to Bill C-8, the Controlled Drugs and Substances bill, and draw your attention to the recommendations that your committee felt compelled to attach to this report.

Many of the amendments are technical amendments to correct drafting errors, renumbering errors, to bring the French and English texts in line with each other, and to make consequential amendments to other acts.

Honourable senators, although I do not wish to impose on the time of the chamber by reviewing each of these technical amendments, I should like to highlight certain amendments —

The Hon. the Speaker: Honourable Senator Carstairs, if I may interrupt, I believe the motion that was called was the first motion on the Order Paper under "Reports of Committees," which has to do with Bill C-28.

Senator Prud'homme: It was not corrected.

The Hon. the Speaker: I believe the honourable senator is speaking to Bill C-8.

• (1640)

The order called by the Officer at the Table is the resumption of the debate on the ninth report of the Standing Senate Committee on Legal and Constitutional Affairs, Bill C-28, which I understand was adjourned by the opposition. It would be the Honourable Senator Lynch-Staunton who should speak.

Hon. John Lynch-Staunton (Leader of the Opposition): Yes. I yield to Senator Carstairs.

The Hon. the Speaker: If no one wishes to speak, the question before the Senate is the adoption of the report on Bill C-28. Is it your pleasure, honourable senators, to adopt the report?

Hon. Lowell Murray: No, no.

Some Hon. Senators: No.

Some Hon. Senators: Agreed.

Hon. Noël A. Kinsella: I rise on a point of order.

Senator Lynch-Staunton: I objected to leave being given for the report to be discussed last week because we wanted to have it analyzed and considered, and we have done so. We should now like to hear the chairman defend and explain the report. It is a government report and a government proposal. It is not for us to initiate the debate. It is up to the government to initiate the debate, and we will respond accordingly.

The Hon. the Speaker: Does a government member wish to speak on the item? If not, I will hear any honourable senator who wishes to speak now on this item.

Senator Lynch-Staunton: If not, we will adjourn the debate.

Senator Graham: Honourable senators, Senator Carstairs spoke on the report stage last Thursday.

Senator Austin: That is right.

Senator Graham: The adjournment was taken by Senator Lynch-Staunton.

Senator Bonnell: Third reading!

The Hon. the Speaker: If no other senator wishes to speak, are you ready for the question?

Some Hon. Senators: Yes.

Senator Kinsella: I have something to say.

I think the Deputy Leader of the Government has correctly outlined the sequence of the debate on this order, and I believe that we have the adjournment of the debate on this side, which we will pick up in due course, in the fullness of time.

Senator Bonnell: You have six hours in which to speak!

Senator Kinsella: As the Honourable Senator Bonnell is correct to point out, we have six hours in which to speak.

Senator Gigantès: Five hours and 55 minutes now!

Senator Kinsella: We are dealing with the report on Bill C-28.

Senator Lynch-Staunton: There has been some confusion, and I apologize for adding to it. I thought that the resumption of the debate on the motion respecting Bill C-28 had been called, and that Senator Carstairs had started to speak to it. I then realized that Bill C-8, which had been adjourned in my name, had been called. Since this confusion has arisen, I would ask the Speaker where exactly are we? I am ready to proceed on Bill C-28 whenever the opportunity arises.

The Hon. the Speaker: The motion before the Senate is indeed the adoption of the report on Bill C-28. At the request of the Honourable Senator Graham, the Deputy Leader of the Government, we proceeded to that item as being the first item under "Reports of Committees."

Senator Carstairs, who rose to speak, spoke to the next item on the Order Paper.

Senator Doody: Make sure it is on the record.

The Hon. the Speaker: I therefore interrupted the honourable senator to point out that we should be dealing with the order which was called.

Honourable senators, I am now prepared to hear anyone who wishes to speak to Bill C-28.

Senator Lynch-Staunton: Again, my apologies to you, Your Honour, and to colleagues for not having followed the proceedings as carefully as I should have.

Senator Berntson: It is quite confusing.

Senator Lynch-Staunton: There are still many who wonder at our persistence in resisting this legislation by every means possible, short of voting against it.

It is, some have said, as if we are obsessed with the Pearson bill, and have lost sight of its purpose. Those who say that, however, soon change their minds when it is explained what the true purpose of the bill is, and what is behind our objections to it.

Bill C-28 is a sort of perverted form of political revenge, a continuation of an election campaign which emphasized the slandering of the record of nine years of Conservative government and those who were members of it, in particular Brian Mulroney.

Smug with how distortions and half-truths contributed to a convincing election victory, the wizards in the Liberal back room see no reason not to continue the smear campaign while in office, especially as this may help disguise the fact that all major Liberal legislation to date is an extension of that initiated by Conservatives, while hopefully making Canadians forget that the Red Book, so proudly waved during the 1993 campaign, is now lying at the top of the junk-heap of unfulfilled Liberal promises.

Bill C-22 was supposed to be "quick-and-dirty," but it did not work out that way — on the contrary, and ironically, thanks to Conservative senators, they who had been expected to object the least to Bill C-22. After all, was it not their party which had concluded what was described then as the biggest rip-off in Canadian history? They were the first to object vigorously to the unprecedented denial of a fundamental right contained in Bill C-22. This is the issue that has preoccupied us from the very beginning — not the cancellation of the contracts, not the amount of damages claimed, but the denial to innocent Canadians of the right to make those claims in front of a third party.

The government maintains that its amendments meet these and other objections, at least on legal and constitutional grounds. Perhaps they do, but even the government is unhappy with them. No later than May 15 last, two years after Bill C-22 was given first reading in the house, Senator Kirby, a sponsor of the bill, said:

> I indicated that the government would obviously prefer to proceed with Bill C-28 in its present form.

To emphasize this, a little later on he added:

> 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.

Here we have confirmation that the government does not believe in its own amendments, that it still favours a denial of the rule of law — the declaration that not only are the Pearson agreements cancelled, they are declared never to have existed, and that only claims allowed by the government will be assessed by the government, awarded or not at the total discretion of the government, on terms set by the government.

If resisting such Draconian legislation is a result of obsessive behaviour, then I am pleased to plead guilty. In fact, it is a campaign to protect innocent Canadians from having fundamental rights taken away by an arrogant government convinced that there is still political capital to be gained in perpetuating the reasons put forward to justify the bill when it was first introduced two years ago.

These reasons may have met with some success in early 1994, but today they have all been demonstrated to be gross fabrication.

Where, for instance, is the Nixon report? Long gone into the shredder, the MacDonald committee having allowed its authors to put it there with their own testimony. Where are the lost profits? Two independent experts hired by the Minister of Justice, after months of thorough, professional assessment of the Pearson agreements, came to the same conclusion independently of each other, that the rate of return, repeatedly called "overly generous" by the government, would have resulted in losses of about $180 million during the 37-year life of the contract.

Where are the millions of dollars in lobbying fees — $30 million according to yesterday's *The Toronto Star*? Sworn testimony before the MacDonald committee shows that $1 million was spent on lobbyists over a four-year period. And so it goes.

There is simply no longer need for a Bill C-22 or a Bill C-28, but if the government persists, it is because it is a victim of an obsession of its own — that of maligning and penalizing anyone if such cruelty might lead to the scoring of a few electoral points.

The story has been told before but it needs repeating so that all senators will appreciate exactly what it is they are being asked to vote for and how the wrong decision would allow Parliament to go where no Parliament has ever been asked to go before.

• (1650)

Bill C-22 is the result of a report by Robert Nixon, a Chrétien loyalist, in which he concluded that the government had no choice but to cancel the Pearson agreements as everything about them was flawed; the selection and award process, the conditions of the agreements, including the rate of return leading to excessive profits, the political connections of individuals awarded the contract and activities of lobbyists. In 14 pages, and in less than one month, Mr. Nixon convinced the government that legislation to cancel the agreements, which took years to be concluded, was the only alternative.

The timing for the government was ideal. During the election it had succeeded, through innuendo and unsubstantiated allegations, to convince many Canadians that an already unpopular government had signed an agreement days before the election to allow its supporters a reaping of untold profits at taxpayers' expense.

The Nixon report conveniently gave legitimacy, or rather, as it turns out, a Liberal version of legitimacy, to the election rhetoric, and Bill C-22, denying access to the courts, allowing the Minister of Transport absolute discretion in assessing claims of his own choosing, on top of declaring that the contracts were not only cancelled but in fact had never even existed, was introduced to widespread approval as it was considered proper retribution to those who dared attempt the biggest rip-off in Canadian history, as the former Minister of Transport described it.

All three recognized parties in the House had a field day in lambasting the Mulroney and Campbell governments as each tried to outdo the other in vilifying anyone associated with the Pearson agreements. The concerns over the impact of the contents of the bill were dismissed as insignificant. It was the political capital each party could garner which counted, and this could easily be done at the expense of a political party which had suffered a major defeat, as bullies usually only pick on those weaker than themselves.

Once the House had had its sport, it was expected that the Senate would rubber-stamp its decision, particularly the majority made up of Conservative senators who certainly would let the bill pass without a murmur, especially as it was the result of contracts, we were told, which were one of the major contributors to the steep decline of its political fortunes.

I will spare senators a recital of the events which transpired after that up to the introduction of Bill C-28. My summarizing those surrounding the introduction of Bill C-22 is to remind colleagues of the political atmosphere at the time which was created by the Liberal government through insinuation and manipulation, thus allowing the general acceptance of proposed legislation, the likes of which, or anything approaching it, had never been put before Parliament before.

Now, two years after Bill C-22 was first made public, we have Bill C-28, word for word what was in Bill C-22. There, however, the similarity ends. Gone are the accusations of lining the pockets of friends, of taking them on one last trip to the trough, of one last snatch at the public purse, of an immoral deal, of a cesspool of intrigue and manipulation. Gone is any reference to the Nixon report, so embarrassingly to its authors and masters destroyed for its intellectual dishonesty and blind partisanship aimed at giving credibility to the PMO's gleefully spread calumny. Gone are the government's attempts to stay away from the courts following its pathetic arguments both in law and in logic, as even the government realized they were, when it decided not to seek leave to appeal to the Supreme Court. Gone, too, is the Minister of Transport, who would not find the time to appear before the Standing Senate Committee on Legal and Constitutional Affairs to defend Bill C-28. His predecessor salivated every time Bill C-22 was brought up. The current minister, sponsor of the bill, keeps silent, and wisely so, as it is impossible for him to use the same argumentation in favour of Bill C-28 as was used in favour of Bill C-22, so discredited has it become.

What do we have instead? Believe it or not, those sleazy Tories, whose only purpose in stalling Bill C-22 for two years was to help their friends reap a windfall at the expense of taxpayers, are now told that their objections are accepted for what they have been from the day they were first stated; so much so that the government has proposed amendments to meet, as the Minister of Justice stated before the Standing Committee on Legal and Constitutional Affairs last week, every one of the constitutional and legal issues raised by some honourable senators. To stress this, he said at the end of his formal presentation:

> I suggest that the changes we propose in the amendments that the government is prepared to support address each and every one of the legal and constitutional issues raised by honourable senators and the experts who have appeared before the committee.

How revealing that the Minister of Justice was sent to argue amendments to a colleague's bill, not because the domain of legality and constitutionality is his responsibility, but because the government did not want the policy behind Bill C-28 to be discussed, unlike the debate surrounding Bill C-22 when legality and constitutionality were totally ignored in favour of policy.

The chairman of the committee set the tone at the first meeting on Bill C-28 by insisting that the focus of the hearings should be on the legal and constitutional issues surrounding the bill. The Justice Minister was, in his own words, taken aback when the question of compensation was being discussed, although he had, inadvertently I assume, brought up the subject himself first. Yes, quite a contrast were the hearings on Bill C-22.

Then, it was all bombast by the government. Today, it is running for cover, trying to hide the true purpose of Bill C-28 behind amendments it does not even believe in. I suppose we should be grateful for any crumbs the government throws our way these days, particularly after being subjected to its vile language and vulgar allusions month after month. Somehow, however, I have difficulty in accepting that concerns from this side have caused this extraordinary change of heart which is highly suspect, as I pointed out earlier, based on Senator Kirby's own words.

I, for one, would be more receptive to the government's reasoning if concerns expressed by many of us on other matters had been treated with other than contempt and ridicule. I am thinking of our objections to Bill C-69, which the government wanted passed so it could escape its constitutional obligation of initiating and completing redistribution as soon after the last decennial census as possible. I am thinking of the Prime Minister supporting the view that naturalized citizens have less freedom of speech than native-born citizens. I am thinking of the Minister of Foreign Affairs and the Minister of Fisheries saying in this very place that, no matter how the International Court in the Hague might rule, should Canada seize fishing vessels outside the 200-mile limit, any decision by it would be ignored by this country. I am thinking of the government member from Hamilton East who, through her unprincipled behaviour, has sullied the reputation of all elected members of Parliament. I am thinking of how the government hindered Conservative efforts and favoured its supporters during the Pearson inquiry of last summer. I am thinking of how the Somalia inquiry is facing the same sort of stonewalling. I am thinking of the government's abandonment and public condemnation of human rights violations. I am thinking of the impropriety of a senior official of the Department of Justice meeting privately with the Chief Justice of the Federal Court to complain about the pace of a case. I am, of course, thinking of the letter sent on Justice Department letterhead and signed by one of its senior counsel to a foreign government accusing Canadians of criminal activity when no such charges had been laid in their own country.

These and other concerns have been raised repeatedly by senators and have usually been dismissed, neglected and brushed off. They are raised with alarm because they are not isolated incidents and a pattern has developed over the past two and one-half years; a disdain for the rule of law, for the presumption of innocence, for constitutional obligations, for compassion for the weak and persecuted. Bill C-28 falls into this category.

The fact is that the government's amendments are not prompted by any concerns of ours; they are required by events which have transpired since Bill C-22 was introduced. Our concerns have been constant since then and the government could have addressed them months ago. It does so now because to have Parliament approve Bill C-28 unamended would repudiate two court judgments which it has already accepted and put an end to a trial in which it has accepted to be a defendant.

In addition, it has admitted to breaching contracts; the same contracts Bill C-28 declares not only null and void but contracts which never existed in the first place. Now it must admit, at least to itself, that every leading constitutional expert, with few if any exceptions, have, without qualification, condemned Bill C-28 as unconstitutional. That alone justifies amendments. The recognition of the contracts and the participation in the court case make it much more urgent that amendments be included in the bill.

• (1700)

These are the real concerns that trouble the government. Citing ours is simply an awkward attempt to camouflage the government's quandary, a quandary solely of its own making.

During clause-by-clause study by the committee, we made it clear that we were not in favour of the amendments at this time. I stress the words "at this time." Since it would be nigh impossible to make Bill C-28 more unacceptable than it already is, any amendments could only bring improvement. I would be the first to recognize that the amendments proposed by the government go some way toward meeting the many objections which are all too familiar to those who have been following the debate.

Had these amendments been proposed on another occasion, I dare say that many on this side would have had serious reservations about the advisability of rejecting them. It is obvious that cancelling the contracts was not in the public interest. Had this not happened, over $300 million over two and one-half years would have been spent on the renovation of Terminals 1 and 2 and thousands of jobs created.

We have never challenged Parliament's right to cancel, but we certainly question the wisdom of doing so. Had the government attempted to renegotiate the contract first and subsequently failed, cancellation could have been argued as an inevitable business decision, but such renegotiation was never even envisaged. Certain features in the agreements which Mr. Nixon and the government find unacceptable actually exist in agreements with local airport authorities; yet, the government, to my knowledge, has never attempted to renegotiate these agreements, much less cancel them.

The decision to cancel the Pearson agreements was a strictly partisan one. Condemning them during the election campaign may have garnered a few votes; cancelling them after the election will cost all Canadians hundreds of millions of dollars to upgrade Pearson airport, dollars which private enterprise at one time was willing to make available with absolutely no risk to the taxpayer.

As for the amendments, as I said, on another occasion they might have received qualified support, but not today. Why? Because to pass legislation, any legislation, which would have a direct bearing on a case in progress — especially a case in which the government is a defendant — is completely unacceptable. It is an unheard-of challenge to the independence of the judiciary. It is an intrusion in an ongoing court proceeding.

To use Senator Kirby's term, let me put it in Dick and Jane language. Think of a team, as a game is being played, unilaterally changing the rules to the disadvantage of its opponent. It is as simple as that.

Senator Graham, in his argument in favour of time allocation, found that Patrick Monahan, a witness whom the government had ridiculed, had suddenly become very valuable to support the government's case. The government has been ignoring constitutional preoccupations for two years and now, in another of its extraordinary turn-abouts, is relying on constitutional arguments exclusively to justify the amended bill, as Senator Kirby did earlier.

Unfortunately, quoting is one thing; quoting selectively is another. I should like to correct the impression given by Senator Graham's selective quotation from Mr. Monahan's presentation to the committee.

In his view, the question was not so much the constitutionality and the legality of legislating conditions which would affect an ongoing trial. Rather, there was a question of principle and propriety , a question of respect for the judiciary. Our debate on this matter must go beyond the narrow constitutional issues.

On the question of the propriety of Parliament's action, Professor Monahan stated the following:

> I do not happen to agree with limiting what courts may award. I do not think the courts should be prevented from carrying on in a normal way and awarding what they regard as appropriate damages.
>
> I think it is important to Canadian society that all individuals have an opportunity to bring action against a government. That is something which distinguishes Canada as a free society from many other societies in the world where courts are not permitted to act contrary to what government officials would like them to do. It is a precious value which we must guard. I am still uncomfortable with the limitations that are there.

That is the issue before us, not whether Bill C-28 is legal and constitutional but, rather, whether it is proper, whether it is right, whether it is fair, and whether it is to the benefit of our society. The answer is in Professor Monahan's words.

The Government of Canada is asking Parliament to pass legislation which is intended to set conditions so that a trial already in progress, in which the government is a defendant, can be conducted to the defendant's advantage.

We have heard testimony to the effect that Parliament can set conditions prior to the commencement of a trial. We have even heard that Parliament, if it is dissatisfied with a verdict, can alter that verdict. Parliamentary involvement before and after a trial is one thing; involvement during a trial would be unprecedented. To become involved at the request of, and on behalf of, one of the parties is unheard of and is simply not acceptable.

MOTION IN AMENDMENT

For these reasons, I move, seconded by Senator Oliver, that the following amendment be appended to the report:

> That the report be not now adopted but that it be referred back to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration and that the committee be instructed not to proceed with the said consideration until all court proceedings relating to certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport have been completed.

The Hon. the Speaker: Honourable Senator Lynch-Staunton, I refer you to rule 39(7), which reads:

> When an Order of the Day has been called, to which a specified period of time has been allocated for its consideration, the same shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

Pursuant to that rule, I cannot accept this motion which certainly falls under "other motions." It is not an amendment, but it is another motion.

Hon. Noël A. Kinsella: With respect, I think His Honour has misunderstood rule 39(7). The intent of that section is that no amendment may be made to the time line of our consideration. If we follow it literally, it refers to when an Order of the Day has been called.

The Order of the Day, which appears, at least on my scroll, at page 6, reads as follows:

> Resuming the debate on the motion of the Honourable Senator Carstairs...for the adoption of the Ninth Report of the Standing Senate Committee on Legal and Constitutional Affairs...

We are resuming debate. That is the order which was called. Rule 39(7) provides that no amendment may be made to that order and that we cannot alter the time line. It does not say that we cannot deal with the substance of the debate. Otherwise, why would we bother to have a debate? This amendment is on the substance of what we are debating, all of which must occur within the house order of six hours.

• (1710)

At the end of that six hours, all questions must be put to dispose of the matter. The fact that it is "all questions" also implies that there will be more than one question at the two stages. You will recall that this particular time allocation motion deals not with one stage but with both report stage and third reading. Therefore, "all questions" will include all of the substantive amendments that may be made at the report stage or at third reading stage.

The amendment proposed by Senator Lynch-Staunton is indeed in order and complies with the rules.

Hon. Lowell Murray: Honourable senators, the motion put forward by Senator Graham, namely the time allocation motion which was passed earlier and is in the standard form, allows for the possibility that amendments would be proposed. It reads:

> ... when the debate comes to an end or when the time provided for the debate has expired —

That is, the six hours.

> — the Speaker shall interrupt, if required, any proceeding then before the Senate and put forthwith and successively every question necessary to dispose of the report stage and third reading of the said Bill ...

It seems to me that the fact of passing a time allocation motion does not exclude the possibility of proposing an amendment to the report or to the report and third reading, provided always that the debate shall end within the six hours allowed for in the motion, and that the vote on any such amendments and on the main motion would take place after the six hours.

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I would think that the operative part of rule 39(7) is "and no amendment thereto." The rule deals with when an Order of the Day has been called to which a specified period of time has been allocated for its consideration. We have done that. That has been passed.

Then, as the rule relates to the sitting, it states:

> ... shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

The rule is quite clear to me, but I leave it to Your Honour to render judgment in that respect.

Hon. Eric Arthur Berntson (Deputy Leader of the Opposition): Honourable senators, to reinforce what my colleagues have already said, as I read page 45 of the *Rules of the Senate*, rule 39(7), it is clear that the phrase "no adjournment thereto" deals with what the motion presented by my colleague opposite is all about, namely, time allocation. The time allocation in this case was six hours unless otherwise directed. It is six hours because it was not otherwise directed.

This amendment in no way, shape or form deals with time or time allocation. It deals with the substance of the debate, the Pearson agreements, not with the time allocation. The time allocation was six hours, and it is six hours. We will vote in six hours or, by agreement, at 5:30 tomorrow, or, perhaps, by agreement, earlier.

Honourable senators, in my opinion, this amendment is clearly in order because it does nothing to alter the time allocation my friend spoke about when he introduced this motion. It has not changed a bit.

Senator Lynch-Staunton: Before a ruling is made, I should like to know what the point is of having a debate if, during the debate, senators are strictly limited to the item and have no opportunity to offer suggestions to improve it. We may as well end the debate right now. There is no point in having a debate on an item if that item cannot be subjected to contestation through an amendment.

The purpose of this is to ensure that the six hours, or whatever time is allocated to the debate, be respected. That is the order. However, there is nothing within that order that specifies that we cannot use parliamentary means to convince those in our audience that some change should be made to the motion or, in this case, the report, which is made within the order.

Senator Berntson: Let us vote. That is the ultimate solution.

Senator Lynch-Staunton: I ask Your Honour to respect that.

Senator Kinsella: There is a further consideration. I trust that the officers at the table have taken note of the time when the Speaker raised this observation, because this is detracting from the six hours that we have to debate the matter under the order that the majority has imposed upon us.

Hon. Donald H. Oliver: Honourable senators, I wish to add my comments to those of my leader, my whip, and my deputy leader.

On a clear reading of rule 39(7), the language "and no amendment" refers to a specific period of time which has been allocated. In effect, once a specific period of time has been allocated, it cannot be amended to make it longer or shorter. That is the whole purpose of the time allocation.

With deep respect, your previous ruling is incorrect because ordinary English would indicate that "and no amendment" refers to the time period.

Hon. Gerald R. Ottenheimer: Honourable senators, the second paragraph of the motion, as indicated in the Orders of the Day, reads:

> That, when the debate comes to an end or when the time provided for the debate has expired, as the case may be, the Speaker shall interrupt, if required, any proceeding then before the Senate and put forthwith and successively every question necessary to dispose of the report stage and third reading of the said Bill ...

I am not aware that there is or could be any question, apart from the main question, which it would be necessary to dispose of before the actual vote except an amendment.

Senator Kinsella: That invites it.

Senator Ottenheimer: I am not aware that there could be anything else except an amendment which would in fact fall within the category of being within "every question necessary to dispose of the report stage and third reading of the said Bill." As far as I am aware, if it does not mean an amendment, then it means nothing because nothing else correlates with the prompt, "question." Obviously, it does not mean someone getting up and asking an honourable senator, "May I pose a question?" It means a question for determination, that is, something to be voted upon. It envisions only the possibility of an amendment.

• (1720)

If I could put the same train of thought the other way, then, obviously an amendment is a question. I do not think there could be any other question, apart from an amendment, referred to in that order. Therefore, having passed this motion, the Senate endorsed, accepted, authenticated and legitimized that there could be a question necessary to be disposed of at the expiry of the six hours.

By affirming this motion, it appears to me that the Senate agreed that there could be a question to be disposed of before the main matter is disposed of at the end of the six hours. Regardless of rule 39(7), the Senate is master of its own procedures and in its vote the other day passed a motion authorizing the proposal and debate of an amendment or amendments as long as within six hours all questions necessary to dispose of the matter are put. That is how I read it.

Hon. Richard J. Stanbury: Honourable senators, I have great respect for my friends opposite. I may be misreading the Orders of the Day; however, as I understand it, we have just completed a vote on the Order Paper under "Motions." The result of that vote is that we are now involved in time allocation. However, the order that we are debating is not the old motion we have already passed, but item No. 1 under "Reports of Committees." That is:

> Resuming the debate on the motion of the Honourable Senator Carstairs —

Et cetera.

Rule 39(7) states:

> When an Order of the Day —

That is, Reports of Committees, No. 1.

> — has been called, —

There follows an almost parenthetical phrase:

> — to which a specified period of time has been allocated for its consideration,...

We have covered that. We have already allocated a period of time for its consideration. Leaving that parenthetic phrase out, the subsection reads:

> When an Order of the Day has been called,...the same shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

Surely, "the same" cannot modify anything except the subject of the sentence, which is the Order of the Day; and the Order of the Day is item No. 1, which Senator Carstairs introduced and to which Senator Lynch-Staunton responded.

I have great difficulty in seeing how in the world you can be talking about anything except the Order of the Day and:

> — the same shall not be adjourned and no amendment thereto, —

That is the Order of the Day.

> — nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

I fail to see even a shadow of justification for the objection.

Senator Ottenheimer: If Senator Stanbury's analysis of rule 39(7) is correct, then I maintain that the motion passed by the Senate was a motion somewhat different from that specifically provided for in rule 39(7). The Senate exercised its right to pass a motion somewhat different from that envisaged by rule 39(7), that is, a motion which would have the same effect in terms of allocating time for the final vote to be called, that being six hours, but which envisioned, contrary to the senator's interpretation of 39(7), that there be no amendment, in fact contemplated the possibility of an amendment by referring to:

> — put forthwith and successively every question necessary to dispose of the report stage and third reading of the said Bill;

There is also the possibility that the motion with respect to which notice was given by the Deputy Leader of the Government, and which was passed by the Senate, is a motion not identical with what is envisioned by rule 39(7), but a refinement thereof which did and does in fact provide for the possibility of an amendment, as long as the time allocation of six hours is respected.

The Hon. the Speaker: Is there any other honourable senator who wishes to speak?

Senator Kinsella: Honourable senators, as we have debated this issue, other items have arisen. I should like to have a chance to comment.

First and foremost, the rule that we are looking at speaks to the Order of the Day. That is what is modified by rule 39(7). I agree with Senator Stanbury that the Order of the Day we are at right now is Reports of Committees, item No. 1, which reads:

> Resuming the debate on the motion of the Honourable Senator Carstairs...

It deals with the report of the Standing Senate Committee on Legal and Constitutional Affairs.

The operative word in that first sentence is "debate." I quickly turned to the index of our rules to see whether or not I could find a definition of "debate." I failed to find it in the index of our rules, with which I find it difficult to work. Therefore, I have gone to a dictionary and am only up to the word "decant." I shall not search further.

We need some time to define "debate" because that is the key. My unresearched sense of what "debate" means is an exchange, and in the context of the "debate" or exchange we improve upon the subject-matter by giving new meanings, new thrusts or new orientations to the words. Otherwise there is no purpose in having a debate.

The process of concretizing an advancement on the measure with which we are dealing is through making motions and, in this instance, motions in amendment.

• (1730)

Amendment is an integral part of parliamentary debate on subject-matters before Parliament, and this is certainly a debate within Parliament on a subject-matter. As Senator Ottenheimer pointed out, the language of the rules implies that amendments are envisaged and must be dealt with. The government is protected in terms of its time allocation by the order which states that at the end of six hours all questions shall be put. To me, it is very clear and quite simple. I think we will be in great difficulty if we move hastily in setting a precedent, not only to limit the time of debate, but also to limit the content of debate. I think it would be very dangerous to do so precipitously or at least without careful thought. We are not anxious to adjourn for a couple of days to do that but, if the government can find comfort in that it knows there will be a vote to dispose of everything dealing with this matter tomorrow, by unanimous consent, we could agree that, notwithstanding the rules — or whatever language you wish to use — we should move forward. Otherwise, I think we have a serious problem.

Hon. P. Derek Lewis: Honourable senators, the motion on which we voted was pursuant to the provisions of rule 39, which provides for the disposal of the Order of the Day. The rule specifies that it must be disposed of and how that is to be done. For the past half hour we have been discussing that question. However, I believe we must go a little further.

Honourable senators, what is the nature of the proposed amendment? The proposed amendment is that the report be not now adopted and that it be referred back to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration. That is completely and utterly contrary to the provisions of rule 39. Rule 39 provides that the order of the day be disposed of. Even if there were merit to the arguments put forth by the other side, this is a complete contradiction to what is required under rule 39 — namely, to dispose of the Order of the Day.

Senator Ottenheimer: With respect, honourable senators, my compatriot has made an additional point in that the substance of the amendment, if passed, would be contrary to the time allocation and be disposed of within six hours. With respect, I suggest that the six-hour requirement means that what is before the Senate must be disposed of within six hours, but it has no influence on the nature or wording of what is to be disposed of, if such amendment is in order. It requires disposition within the time period, but it would not control the nature or effect of an amendment if an amendment is in order and if it is disposed of within six hours.

These are interesting points of view, honourable senators, and none of us is infallible.

Senator Lynch-Staunton: Honourable senators, this may not help the Speaker in his ruling, but it will certainly help us understand exactly how the government is stifling debate and not even allowing a motion in amendment to be raised, let us assume, at a more appropriate time.

Senator Carstairs, as chairman, gave her introduction.

The Hon. the Speaker: Honourable Senator Lynch-Staunton, did I hear you say that the government is stifling debate?

Senator Lynch-Staunton: Yes.

The Hon. the Speaker: I want to assure you that my comments are not inspired by the government. The validity of your comment is my concern.

Senator Lynch-Staunton: I am not pointing a finger at you, Your Honour. I would point out that, until now, we have not had an opportunity to present an amendment. The government's ability to stifle debate has forced us to present the amendment at this time, whether it is appropriate or not.

Senator Murray: Who proposed the amendment earlier?

Senator Lynch-Staunton: Senator Carstairs made her presentation on June 13. After hearing her, I quite properly adjourned the debate — a normal procedure — to give the main responder time to analyze the arguments and hopefully come up with an appropriate response. The first opportunity I had to do so was today, but immediately after Senator Carstairs had spoken, the Deputy Leader of the Government rose and moved time allocation. He did not even have the courtesy to allow debate to begin. If that is not a gross abuse and exaggerated use of time allocation, what is?

Honourable senators, time allocation is to be imposed at a time when it is obvious that debate has dragged on endlessly for the purposes of filibustering and delaying a vote. We did not even have an opportunity to initiate that type of proceeding. Time allocation was brought forward even before the debate started, so we had no opportunity to move an amendment.

Now we are told that the rules specify that we cannot introduce an amendment at this stage. What kind of debate is this that, in discussing an item, we in the opposition or anyone in this chamber cannot move to improve the item or modify it? This has never been done before. It was not even done during the worst of the GST debate.

Honourable senators, when I moved time allocation on the patent bill, I recall that a number of amendments were put forward during the time allocation period.

It was agreed, out of courtesy by this side, that we would suspend the rules to ensure there was no misunderstanding when amendments were introduced during the six or eight hours of debate. I urge you to read the debates. I am not saying that we did not have a long argumentation on the interpretation of the rule which has been cited. I am saying that, at that time, we showed courtesy to the opposition. In case there was any misunderstanding, at least amendments could be brought forth. However, we have not had a chance introduce any amendments. I hope that will be taken into consideration, otherwise we will be paralysed in terms of fulfilling the role of the opposition. We will be paralysed by this government which refuses to entertain any changes it believes unsuitable for debate.

Senator Lewis: Honourable senators, I note that last Thursday, June 13, when the report was considered and Senator Carstairs spoke, Senator Lynch-Staunton adjourned the debate.

Senator Lynch-Staunton: That is correct.

Senator Lewis: He could have spoken at that time.

Senator Lynch-Staunton: That is correct.

Senator Lewis: However, he did not. The Deputy Leader of the Government then proceeded with his motion for time allocation. However, my honourable friend had time at that stage to continue if he so wished.

• (1740)

Senator Lynch-Staunton: Honourable senators, it is traditional in this place that when an item is called, the proposer makes his or her presentation. The main responder then asks for an adjournment for time to reflect on the presentation and answer at the earliest opportunity. That opportunity has been stifled by the government's action in imposing time allocation.

Hon. Orville H. Phillips: Honourable senators, I would suggest that the government have a look at the motion. They drafted it. The motion, in the second paragraph, says:

> ...the Speaker shall interrupt, if required, any proceeding then before the Senate...

It does not say "the proceeding"; it says "any proceeding," which would clearly imply that there could be more than one proceeding to be voted on. It then goes on to say:

> ...and successively, every question...

There again, it does not say "the question"; it says "every question," which again clearly implies that there can be more than one question at the end of a six-hour debate.

In the final sentence, the motion says:

> That any recorded vote on the said question or questions shall be taken in accordance with the provisions of rule 39(4).

Here we have a plural, "questions." That must imply that there can be amendments made. If not, why would the motion not state, "shall put the said question?" Why go on with this "or questions" in the plural?

I submit that the motion itself permits the amendments. If amendments were made, they can be voted on successively. I think the motion clearly implies that the opposition has a right to make amendments, or raise any other motion they would wish to raise.

The Hon. the Speaker: Honourable senators, I thank all of those who participated in the question. It shows how difficult the interpretation of the rules is.

I point out to you once again that I did not write the rules; my role is to interpret them.

Senator Haidasz: The rules are illegal, anyway.

The Hon. the Speaker: Let us deal first with the question of time allocation, or time. That matter was settled. There was a decision made by the Senate on a recorded vote, so the question of time is completely out of consideration now. We are limited to six hours by the decision of the Senate.

We come then strictly to what is before the Senate at the moment. The only question before the Senate at the moment is the adoption of the report. That will be followed by third reading. The immediate question is the adoption of the report.

Let us not discuss time. Let us simply discuss whether or not the report should be adopted.

The question of debate has arisen. Debate does not necessarily necessitate or preclude amendments. We could have debates — and very frequently we do have debates — with no amendments. To say debate can only be undertaken by way of amendment is, in my view, not correct. You can have debate with or without introducing amendments.

Let us come, then, to the question specifically before us. The motion setting up the time allocation can be moved at any time. Rule 39(1) provides that "at any time while the Senate is sitting," it can be done. That can be done when there are a series of amendments before the Senate to a certain item. That, in my opinion, is why the motion provides that we proceed to vote on "all matters before the Senate," because there may be amendments that have already been proposed. It so happens that this time there are none, but there could well be some at the time the Deputy Leader of the Government rises to move time allocation. The wording of the motion that we passed does not affect whether or not we must have amendments. If there were any amendments, however, we would need to deal with them.

I come back to the rule as it is written:

> When an Order of the Day has been called —

The "Order of the Day" that has been called in this case is the adoption of the report. That is an Order of the Day on which the Senate has already decided that there will be a specified period of time allocated to debate. The part of the rule that then comes into play is:

> — the same shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard...

It seems to me that I have no alternative under those circumstances, because this is an "other motion" and cannot be moved at this time.

However, Senator Kinsella may have suggested a way out of this dilemma. There is now a limit of six hours of debate on this order. This motion, whether it is carried or not carried at the end of the six hours, will have to be voted on, along with all the others. Therefore, regardless of what motions or amendments are before us, we have a six-hour time limit on the whole debate on this order.

We are presently checking precedents. There is some thought that this situation may have occurred before. Will honourable senators give me five minutes so that we can check precedents? I would like that opportunity as well to speak to the leadership on both sides to see whether or not we can resolve this matter in a simple way, rather than have a protracted debate and ill will between the two sides.

Is it your pleasure, honourable senators, that we adjourn during pleasure for five minutes?

Hon. Senators: Agreed.

The Senate adjourned during pleasure.

• (1800)

The Hon. the Speaker: Honourable senators, the sitting is resumed. Honourable senators, I have met with the two deputy leaders and we have arrived at an agreement. First, I want to make it clear that this is not a precedent. No precedent is involved.

We have agreed to accept the amendment and proceed concurrently with debate on the amendment and on the main motion. At the end of the six hours, or at whatever time is agreed by both sides, the vote will be held.

Is that agreeable?

Hon. Senators: Agreed.

The Hon. the Speaker: We will put the amendment and proceed with the debate. I repeat, there is no precedent created.

It is moved by the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Berntson:

> That the report be not now adopted but that it be referred back to the Standing Senate Committee on Legal and Constitutional Affairs for further consideration and that the committee be instructed not to proceed with the said consideration until all court proceedings relating to certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport have been completed.

I know some of you are wondering about the clock. Under time allocation, the clock is not seen; debate continues.

Hon. Marcel Prud'homme: On a point of clarification, Your Honour, if you do not see the clock, is there a specific time tomorrow for the vote? If we continue on and on today, the six hours may expire and the vote may come at any time tomorrow.

To be frank, that does not accommodate several senators. Some of us were of the opinion that the vote would be held at 5:30 tomorrow. If you say the vote will be at 5:30 "or earlier," as the case may be, I should like to know.

Senator Berntson: Which way are they voting so I know which way to argue?

The Hon. the Speaker: Honourable senators, the time of the vote is not in my hands unless the debate goes six hours. The end of six hours could fall before midnight tonight, which is our time of adjournment. It will certainly take place, I can assure you, before midnight when the table tells me that the six hours has expired. If there is an agreement other than that, I am not aware of it. For that, I must deal with the leadership.

Senator Berntson: Honourable senators, the rules dictate that if there is a call for a standing vote after six o'clock, it is automatically deferred until 5:30 the following day. We put on the record last Thursday something to the effect that when the motion was moved for time allocation, the vote would take place at 5:30 on Wednesday or earlier if agreed upon by the whips.

Senator Graham: Referring to Hansard, after I gave my time allocation motion, Senator Berntson indeed stated:

> The understanding we have is that the vote necessary to dispose of Bill C-28 would take place at 5:30 p.m. on Wednesday.

Senator Murray interjected at that point:

> If the closure motion passes.
>
> **Senator Berntson:** Yes, if the closure motion passes, of course.
>
> However, getting back to the 5:30 p.m. vote, that time could be altered to an earlier time, subject to the agreement of the Whips.
>
> **Senator Graham:** The Deputy Leader's interpretation is absolutely correct.

All of the votes will be taken at 5:30 tomorrow unless an earlier time is agreed. We assure all honourable senators that there will be sufficient consultation on all sides so that honourable senators who wish to vote will be accommodated.

Senator Prud'homme: I am glad I raised the question because there we go again. There are agreements here and there and everything seems fine. However, had I not raised the issue as a solo here and for the two other independents — perhaps they have more knowledge than me of what is going on in this instance — then mistakes could be made simply due to a lack of communication. I am leaving now because I could not see someone who was your guest on Monday, the Crown prince. He is now in Montreal and I will see him there tomorrow. Now, at least, I know that I can take my responsibility either to stay there or come back for the vote.

I wanted to know what time the vote would take place so I would not abuse the rules of the house. I am only one, I know, but often these agreements are made between house leaders. I want you to know, Your Honour, that I feel I am not being included. At least now I have some direction. I will act accordingly and I thank you.

Senator Kinsella: Could we have an indication as to how much time has elapsed in the six hours of debate?

The Hon. the Speaker: One hour has elapsed, the Table advises me.

Hon. John G. Bryden: Honourable senators, as we begin this last phase of Bill C-28, I should like to place on the record certain statements and facts which I believe justify the passage of the legislation with the amendments that have been recommended in the report before us.

When Bill C-22 first came to the Senate in June of 1994, it was referred quickly to the Legal and Constitutional Affairs Committee. As soon as the hearings began, members opposite emphasized that they had no interest in opposing the policy decision made by the government to cancel the Pearson agreements. On July 5, 1994, Senator Murray stated:

> I want to repeat for the record that we have never questioned for a moment the fact that the government has a mandate, and has the political authority to cancel these contracts.

On the same day, Senator Lynch-Staunton stated:

> We are not here to argue for the reinstatement of the Pearson Agreements or for compensation to the affected parties...
>
> One cannot repeat enough that we do not seek compensation for anyone. We have no interest in claims, whatever their nature. We do not even presume that the courts will.

• (1810)

We all heard at the time that the dispute was not with the policy of the cancellation, nor was there any interest in money. Something altogether different, something much more fundamental, was at issue. As Senator Lynch-Staunton explained:

> Our problem is understanding the constitutionality of the bill or some of its clauses about which we still have doubts.

The objective of members opposite, as explained by their leader, was as follows:

> We are here to design legislation which, while respecting the wishes of the majority of the House of Commons, also respects the fundamental rights of those affected by that legislation, no matter who they may be.

To what fundamental rights was Senator Lynch-Staunton referring? The answer to that question was provided by both the opposition leader and by Senator Murray.

Senator Lynch-Staunton said:

> We are concerned with denying Canadians the right to go before an impartial, independent tribunal to get an impartial, independent decision, which Bill C-22 denies.

Senator Murray said:

> Our concern is to try to find a way to restore access to the courts and due process to those who are affected.

I have no wish, believe me, honourable senators, to relive in painful detail everything that happened next, but here are some of the highlights. Following hearings where there was contradictory evidence presented about the constitutionality of Bill C-22, the Conservatives used their majority both in committee and in the Senate to amend the bill. The amendments, which would have allowed the developers to sue the government for lost profits and lobbyist fees, were rejected by the House of Commons.

On December 7, 1994, Senator Lynch-Staunton, in this chamber, asked the government to show something by way of compromise in dealing with Bill C-22. He said:

> We are asking the government to meet us part way. We are not being adamant or pig-headed, but we are saying, as have Patrick Monahan, the Canadian Bar Association and other observers across Canada, that Bill C-22 is unconstitutional.

The following week, the government attempted to meet the opponents of Bill C-22 part way by bringing forward draft amendments designed to address the concern raised by some of the witnesses who appeared before the committee.

The initial response was positive. Senator Lynch-Staunton was quoted in *The Toronto Star* on December 14, 1994 as saying:

> "We all agree that the government is going in the right direction. We're delighted to see they're restoring access to the courts and that they're reinstating the contracts."

In *The Financial Post* of the same day, he was quoted as adding:

> "This, we're pretty convinced, re-establishes the constitutionality of the bill."

This initial optimism proved to be somewhat premature because, according to some experts who then appeared before the committee, the proposed amendments led to entirely new legal and constitutional concerns.

The government, in an effort to once again meet members opposite part way, reviewed the evidence and proposed a new package of amendments in May of 1995. Once again, they were described as another step in the right direction, but once again witnesses appeared before the committee who claimed that they raised even more complicated legal and constitutional problems.

Instead of giving up, the government tried for a third time when Bill C-22 was before our Standing Senate Committee on Legal and Constitutional Affairs earlier this month.

This latest package of amendments received a much more sympathetic response, at least by the experts who were called before the committee by members opposite. In particular, I am referring to Professor Patrick Monahan of Osgoode Hall Law School who, during all his previous appearances before the committee, was highly critical of both the bill and the government's proposals for compromise. However, when he appeared before the Standing Senate Committee on Legal and Constitutional Affairs on Monday, June 10, 1996, to comment on the very amendments we now have before us, he said:

> My conclusion on the whole, or on balance, would be that it is likely that a court would rule Bill C-28, as it is proposed to be amended, as valid constitutionally.

Honourable senators, we have now reached the end of the line on the issue of legal and constitutional concerns about this bill. The opposition's own witness, their most supportive witness in the past, has now testified that Bill C-28, as it would be amended, would be valid constitutionally and be upheld by the courts as constitutionally sound. In other words, it is within the competence of Parliament of Canada to adopt it.

In July of 1994, the Leader of the Opposition said:

> We are here to design legislation which, while respecting the wishes of the majority of the House of Commons, also respects the fundamental rights of those affected by that legislation, no matter who they may be.

Without in any way presuming what might be the attitude of the House of Commons to these amendments, I wish to say that the objective enunciated by Senator Lynch-Staunton two years ago has now been achieved. We have designed the very legislation to which he was referring. The question we must now answer is: What are we to do with what we have created?

If we now move to defeat Bill C-28, as the latest amendment suggests, or if we move to bury it in committee until after the court case in Toronto has come to an end, we will be saying that we have engaged the government and numerous outside witnesses in a hollow exercise for two years, that it was a pointless exercise. The witnesses, the hearings, the three rounds of proposed amendments from the government, were all pointless.

What are any outside observers to conclude when examining the facts? It will be very difficult to convince anyone that legal and constitutional issues were what drove and continue to drive opposition to the bill by members of the Conservative Party in the Senate. However, if legal and constitutional concerns are not the motivation, what is? Only members opposite can answer that question.

Honourable senators, the basis of the amendment that Senator Lynch-Staunton has proposed is that the committee be instructed not to proceed with the said consideration until all court proceedings relating to certain agreements be dealt with or have been completed.

The issue of whether Parliament can act while a procedure is before the courts was addressed before our committee. It was raised several times by a number of senators opposite, in particular Senator Lynch-Staunton. It was made abundantly clear, first of all by the Minister of Justice, that there are no constitutional bars, no legal bars, to Parliament acting whether there is a matter before the courts or not. There is no law or constitutional provision that limits Parliament's ability to act in this regard.

On the issue of fairness, the plaintiffs knew that this legislation, in the form of Bill C-22, was before Parliament when they launched their actions in Toronto, so there is nothing unfair here.

In particular, Professor Monahan, in answer to Senator Lynch-Staunton's question suggesting that government cannot change the rules of the game while the game is in progress, said that to limit Parliament's authority to act in such circumstances and to suspend Parliament's legislative authority would lead to possible abuse by any plaintiff that felt that legislation could be introduced into Parliament that might adversely or somehow affect his position. If all that a plaintiff needed to do was to institute an action to paralyse Parliament, then the possibility of that occurring is relevant here.

• (1820)

We have a case in point before us. That is to say, for whatever motives, the bill was introduced in Parliament and the plaintiffs then launched their action. If the result of that is to stop Parliament from taking action and proceeding with this bill, then surely any plaintiff who has a cause or potential cause could suspend Parliament's ability to act.

Another point that I think needs to be taken into consideration is this. There is nothing peculiar about Parliament acting on rights of Canadians that are already being dealt with by the courts or other tribunals. Every time there is an omnibus amendment to the Criminal Code, every time there is a change in sentencing, every time there is a change in the procedures, the courts are in session, cases are before them and Parliament continues to act. There can be a trial, the Crown versus a defendant, and Parliament can pass a bill that would change the sentence from a five-year term to a ten-year term. If affecting the liberty of a person is not a reason for Parliament to be suspended — and it never is — then, surely, to act as the government is acting in this instance, which involves a civil matter, is perfectly proper for Parliament.

Bill C-45 is now before the House of Commons. It has to do with parole eligibility. There are people in penitentiaries who are preparing their cases for parole. Even if those cases are before the parole board or, indeed, have been appealed to the courts, does that mean if Bill C-45 comes to us that we cannot act on it because there are matters before the courts that will affect the rights of a citizen? The answer to that question is a clear "no."

Finally, when Bill C-28 is passed, it will be an act of Parliament. It will have been debated in the House of Commons and its committees. It will have been debated in the Senate and the Standing Senate Committee on Legal and Constitutional Affairs. It has been back and forth a number of times. When the bill is passed by this place and receives Royal Assent, it will become a statute of the Parliament of Canada. It will become part of the law of Canada. It will become part of the rule of law that everyone likes to talk about which the courts of Canada, and the court before which the matter is now, will take into consideration, the same as they take into consideration all of the other aspects.

What tends to be forgotten in the debate is that our system consists of an executive branch, a parliamentary branch and a judicial branch. The government, which cancelled the contract, was the executive branch acting in an executive capacity in what it believed to be the best interests of Canadians. The fact that it was a government bill introduced in the House of Commons does not make it any less a bill of the House of Commons, an address coming to this place from the whole House of Commons, than if it had been introduced by a private member or a member of the opposition.

When the bill is passed in this place and receives Royal Assent, it will be an act of Parliament. It will not be an act of the government. The government will be governed by it, as will the courts, just the same as any other act. I believe it would be helpful to us all if we were able to maintain the distinction —

The Hon. the Speaker: Honourable Senator Bryden, your time has expired.

Senator Bryden: I just need a few minutes in which to conclude, Your Honour.

The Hon. the Speaker: Is the honourable senator requesting leave to conclude his comments?

Senator Bryden: Yes, I am, honourable senators.

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

Hon. Senators: Agreed.

Senator Bryden: As long as we recognize in our system the clear divisions of the legislative, the executive and the judicial branches, then clearly there will be no problem with this bill once it clears this house and if it, indeed, receives Royal Assent. The fact that it was introduced by a majority government does not make one whit of difference, constitutionally or legally. If it had been introduced at a time of a coalition government or a minority government, it would not matter. Once it goes through this process, it will be an act of Parliament, not an act of government. When the act is interpreted, it will be interpreted as it is now, by the judiciary. That is their role. There is no constitutional block. Everyone agrees with that. Therefore, we will have respected the three branches. This bill is perfectly constitutional.

I recommend that the amendment of Senator Lynch-Staunton be defeated and that the bill, as amended, be passed.

Hon. Marjory LeBreton: Honourable senators, a few weeks ago when I last spoke in this chamber during second reading debate on Bill C-28, I gave notice that I would put on the record facts which were publicly reported and which were part of the sworn testimony during the Pearson airport inquiry last summer and fall. This has to do with the role of Prime Minister Chrétien in the whole Pearson Terminals 1 and 2 privatization plan. It is a verifiable fact that the privatization of Terminals 1 and 2 was not an issue for the Liberal Party of Canada or its leader, Jean Chrétien, during the entire three or four years this matter was before the public and in the various stages of negotiation.

I repeat, the Liberal Party had no policy. Proof of this can be confirmed when one checks back to the time in 1992 — some four years ago — when the former Progressive Conservative government's request for proposal was released, the deadline was met by interested parties and the evaluations were under way. Records of the House of Commons show that on only five days were routine questions raised on the privatization of Terminals 1 and 2.

In 1993, after the December 1992 announcement of the best overall proposal, no questions were asked in the House of Commons on the privatization of Terminals 1 and 2. In the Liberal Red Book, there was no mention of this issue. Correct me if I am wrong, honourable senators, but the word "airport" does not appear in any context in the Red Book.

Yes, there were a few rumblings over the summer of 1993. There were verbal threats made by the airport authority's Robert Bandeen, which surfaced during last summer's Pearson inquiry, that he would turn up the heat on the Tories and create a public fuss. He finally succeeded when Mr. Chrétien picked up the gauntlet in the middle of the 1993 election campaign when obvious political hay could be made of it. That precise time came in Toronto on October 6, 1993, when the Canadian Press reported Jean Chrétien's first comments as he waded into what the media now calls the "Pearson swamp" — one month after the writ was issued.

Mr. Chrétien's first words as reported in that October 6 Canadian Press wire story were that, if elected, he would order a full-scale inquiry to investigate the deal. He said, "If it is a good deal, we will sign it, if we form a government."

It is a pity he did not heed his own words or sort out in his own mind his previous support for the plan. No such high principles were forthcoming. This turned into pure politics at its very worst. It was all so convenient as they got swept away in their so-called honesty and integrity rhetoric.

When I spoke on May 30, I read into the record comments which clearly demonstrated that it was not the intention of Mr. Chrétien or Mr. Nixon to scrap the Pearson airport deal. Mr. Nixon's own words prove that.

• (1830)

However, as Mr. Nixon's 30-day review quickly consumed the November 1993 calendar and the pressure was mounting from John Nunziata, Dennis Mills and others of the Liberal metro caucus, Mr. Chrétien and the government went for the cancellation option. This might have or should have presented quite a dilemma for Mr. Chrétien and his advisors, but they obviously gave it little thought. They would have no trouble, or so they thought, hanging this around the necks of the Tories. Who would care? After all, the Tories were hated. People were mad at the Tories. They were mad about the GST; mad about the constitutional efforts of Charlottetown and Meech Lake; mad about Canada-U.S. free trade; mad about NAFTA; mad about privatization and deregulation; mad about changes to unemployment insurance; mad that Prime Minister Campbell honestly answering a question about future unemployment levels; and mad about so-called patronage appointments. These were all initiatives and practices, by the way, carried on by the Liberals and Mr. Chrétien. We should start calling them the Carry-On-Gang. After all, this was the Prime Minister who said he would renegotiate NAFTA, scrap the GST, and who said you would not see him fishing with the President of the United States.

Well, he was partly right — he golfs with the President of the United States. This was the Prime Minister who said you would not see him appointing friends from his university days. Well, check out Jacques Roy, the new ambassador to France. It mattered not to Mr. Chrétien and his advisors that he might be caught in a major contradiction as to his own role in the whole Pearson privatization affair. "Not to worry," they must have said, "who will ever know? Who will care? Who will challenge Mr. Chrétien's honesty and integrity? Certainly not those sleazy Tory senators! Why should they worry? Mr. Chrétien can carry it off."

Honourable senators, anyone who can fake an appendicitis attack and carry the hoax through to an appendectomy just to get out of a school he did not like would have no trouble fending off questions about his role in the Pearson matter.

For the record, honourable senators, this is what is known about Mr. Chrétien's role. In December of 1994, *The Globe and Mail* ran a cover story on the first anniversary of the cancellation and raised serious questions about the role of Mr. Chrétien. This was followed by questions in the Senate on December 6, 1994, by my colleagues Senator Ghitter and Senator Phillips and by members of the opposition in the House of Commons. Mr. Chrétien responded in a number of ways, one being he "never had, as a lawyer, any discussion about the Toronto Airport with any of these people." Mr. Chrétien, in effect, denied a meeting even took place — "never had, as a lawyer, any discussion about the Toronto Airport with any of these people," although his office confirmed a meeting occurred in January 1990. Shortly after this confirmation another date for the meeting was injected into the debate — April 1989 — a safe date well before Mr. Chrétien's leadership plans.

On March 25, 1995, *The Financial Post* ran a feature story questioning Mr. Chrétien's involvement in the Pearson deal. They headlined the story "A Political Hijacking in Flight: Did Mr. Chrétien Lie to the House?" Questions were again raised in the House of Commons on March 27, 1995, and the details of the meeting in relation to Mr. Chrétien's leadership plans and expectations were revealed. Mr. Chrétien then inserted into the debate the name of a former colleague, Mr. Paul LaBarge, who he said "represented the Matthews Group in that office." He continued on to state, "I spoke with him and he confirmed that the Toronto airport was not discussed at all."

The opposition continued with questions about content and timing of the meeting in that, according to news reports, it was Mr. Matthews' recollection that Mr. Chrétien was in the running for the leadership of the Liberal Party of Canada, thereby refuting the April 1989 date. Mr. Chrétien's denials continued.

Observing all of this from a distance was Mr. Jack Matthews, the object of these claims and denials. Mr. Matthews' honesty was being called into question. On March 30, 1995, Jack Matthews wrote an open letter to all senators and members of the House of Commons stating that "issues of credibility have been raised in the debate over the privatization of the airport." He continued on to state that "these issues can only be resolved in testimony under oath at any inquiry relating to Pearson airport."

The questions continued, honourable senators. On April 1, 1995, another feature story in *The Financial Post* — entitled "Pearson Questions Linger" — resulted in more questions in the Senate and the House of Commons on April 5, 1995.

In July of 1995, *The Ottawa Citizen*'s Mark Kennedy wrote a feature story on the whole Pearson airport controversy and dealt in some detail with the ongoing Chrétien-Matthews-LaBarge meeting and related controversy.

On September 14, 1995, our committee heard under oath from Don Matthews, chairman of Matthews Corporation, that Prime Minister Jean Chrétien supported the privatization of Pearson airport before he ran for the leadership of the Liberal Party. We also had testimony from other witnesses about other Liberals who were supportive.

Mr. Don Matthews told our inquiry of a meeting with his son Jack Matthews, Mr. Chrétien and a company lawyer in which the future prime minister expressed support for the emerging public policy of privatizing Pearson airport. On September 21, 1995, Mr. Jack Matthews, who led the negotiations for Matthews, testified under oath before our special committee. He confirmed that the meeting took place just prior to Mr. Chrétien announcing that he would run for the Liberal leadership, and he testified under oath that he had a taped conversation to back this up.

As an aside, honourable senators, in order to keep this in perspective, it should be pointed out here that Mr. Chrétien announced his leadership bid on January 23, 1990.

Back to the committee deliberations. On the same date as Jack Matthews appeared, at the insistence of Senator Bryden, there was a last-minute addition to the witness list in the person of Paul LaBarge, Mr. Chrétien's former law partner. Mr. LaBarge denied a meeting took place in January 1990 just prior Mr. Chrétien entering the Liberal leadership race and, under oath, set the date back a year to April 1989. The next day, *The Financial Post* reported on the tape recorded telephone call between Jack Matthews and Paul LaBarge which supported the January 1990 date. *The Globe and Mail* also reported on this story, and I quote:

> Mr. LaBarge confirms that the meeting took place just before Mr. Chrétien launched his bid...and that campaign contributions were discussed.

Honourable senators, there were more questions in the House of Commons on September 22, 1995, led by the Leader of the Opposition. Mr. Chrétien's response was interesting, and I quote:

> Mr. Speaker, I continue in my denial. Particularly because the meeting was held on April 14, 1989 in the company of a lawyer, who testified under oath and kept notes in his files...

On September 28, 1995, at the Pearson inquiry, I personally raised the matter of the date of the Chrétien-LaBarge-Matthews meeting before the Pearson committee. I pointed out that our committee had proof of the date of the meeting, and it was actually January 17, 1990 — this despite Mr. LaBarge's statement under oath that he had no meetings with clients in January 1990.

Honourable senators, by referring to both the sworn testimony of September 21, 1995 given before the Pearson committee by Jack Matthews and by Paul LaBarge, and referring to Mr. Matthews' Ottawa-based colleague Mr. Ray Hession, who had testified on August 2, 1995 and had tabled his diaries, it was proven without a doubt that Jack Matthews attended a meeting in Ottawa on January 17, 1990, at which both Mr. Paul LaBarge and Mr. Jean Chrétien were in attendance — just six days before Mr. Chrétien entered the race for the Liberal Party leadership.

Honourable senators, we have the sworn testimony and a taped telephone conversation between Mr. LaBarge and Mr. Matthews. We have written evidence in the form of an entry in Mr. Hession's daily agenda that proves the date and the location of the meeting. We clearly see the following points: Yes, Mr. Chrétien did meet Mr. Matthews just prior to entering the Liberal leadership race on January 17, 1990. Pearson was discussed. Mr. Chrétien's leadership plans and expectations were discussed, and thanks to Senator Bryden, who insisted on having Mr. Hession's diaries tabled with the committee, we have proof on the record supporting Mr. Matthews and directly refuting the claims of the Prime Minister. In short, Mr. Jack Matthews told the truth.

Honourable senators, it really did become a swamp. For those in the public who watched this closely, who listened to the sworn testimony and who witnessed the confusion around the Prime Minister's denials and half denials of what was said and when, who watched the attempts to get another date on to the record without success, the time has come. Surely the Prime Minister would want to come clean and admit that his role in the Pearson airport deal was and still is quite the opposite to what Parliament, the public and the media were led to believe.

As I have said before in this place, honourable senators, wither honesty and integrity.

Hon. Duncan J. Jessiman: Honourable senators, I will not repeat what I said the other day in speaking to this bill, but I wish to say a few words about some of the things I neglected to say and some others that I wish to add.

Two years ago at this time, Bill C-22 was introduced and discussed in this chamber.

• (1840)

Shortly before our summer recess, with the consent of the leadership on this side, I approached the then leader, Senator Royce Frith, and suggested that this side would be agreeable to the cancellation of this contract but that any matters concerning damages should be left to the court to decide. In particular, we discussed any loss of profit or any fees paid to lobbyists. At that time, Senator Frith said that he thought it was reasonable for the court to consider that kind of information but, in view of all the circumstances and because time was short, it was not done at that time.

I then had occasion to work with legislative counsel and drafted two amendments in respect of compensation. I want to read them into the record. The first one is the short version reading "Compensation." I suggested that this could be part of a bill that this side of the house would favour. It states:

> No amount shall be payable under the agreement in relation to
>
> (*a*) any loss of profit, or
>
> (*b*) any fee paid for the purpose of lobbying a public office holder, within the meaning of subsection 2(1) of the Lobbyists Registration Act
>
> which shall be found by a justice of a divisional court of an Ontario court to be unreasonable under the circumstances in which the agreement came into existence.

I will now read into the record the long version, which details what the court would consider as a result of all the things that the Liberal senators were telling us were wrong with this whole transaction. The longer version, which is also headed "Compensation" states:

> (1) In determining the amount of any compensation from Her Majesty in any action or other proceeding including any action or proceeding in restitution, or for damages of any kind in tort or contract that is based on or in relation to an agreement, a court shall take into account the following:
>
> (*a*) the circumstances and timing when the agreement was executed on behalf of Her Majesty on or about the 7th day of October, 1993 —

As you will remember, there was a great deal of fuss about the fact that this was signed on or about that date. The amendment goes on to state:

> (*b*) the lobbying of public office holders in respect to the agreement.
>
> (*c*) the fact that Her Majesty, at the time the agreement was executed on or about the 7th day of October, 1993, was represented by a government at the end of its mandate.
>
> (*d*) the fact that the House of Commons had been dissolved and an election had been called to be held on the 4th day of November, 1993.
>
> (*e*) the fact that the then Leader of the Opposition in the House of Commons on the 6th day of October, 1993 declared publicly that, if he formed the Government of Canada as a result of the federal election being held at that time, the agreement would be reviewed and, if necessary, legislation would be passed.

(*f*) review of the agreement by Robert Nixon; and

(*g*) any other matter the court shall consider reasonable.

(2) If, after consideration to subparagraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), and (*g*) above the court is of the opinion that:

(*a*) it was unreasonable for the government to have caused Her Majesty to execute the agreement on or about the 7th day of October 1993, or

(*b*) the fees paid or contracted to be paid for the purpose of lobbying public office holders in respect to the agreement were unreasonable and/or excessive, the court shall...

(*c*) in respect of subparagraph (*a*) above, substantially reduce or eliminate any claim for loss of profit, and

(*d*) in respect of subparagraph (*b*) above, substantially reduce or eliminate any claim for payment of fees for the purpose of lobbying public office holders.

That proposed amendment, honourable senators, was read to our caucus, and they approved it. I gave copies of it to senior members on the Liberal side with the hope that something would be done. Unfortunately, the government was prepared to cancel the agreement and let the court rule on all the things the Liberals said were wrong with the bill. It was not prepared to let a fair, honest and impartial person decide.

By passing this legislation, you are determining what should be done. It is your judgment. Although you have in some way lessened the effect of that Draconian legislation — and I want to speak to that later — to some extent you remain in the same position that you were in when the legislation was first drafted, namely, the prosecutor, the judge and the jury.

Let me now deal with the bill as unamended and as it came to the Senate for its consideration. It had to get here as provided for in the House of Commons. *Beauchesne's Rules & Forms of the House of Commons of Canada* states:

> The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed. Every bill must therefore be renewed after a prorogation, as if it were introduced for the first time.

I am suggesting that that is what the government should have done with Bill C-28 which is now before us. It knew, as did all those who were on the committee, that the old Bill C-22 was so unconstitutional and invalid that it would be struck down.

Senator Haidasz: How true. I believe you.

Senator Jessiman: The bill was brought to this place under another rule because it is also now convention. It says in Beauchesne that in cases where you have a bill that is exactly word for word in form and substance as it was at the time of prorogation, you do not have to bring it into the House of Commons; you need only bring it here and the bill is valid.

They did that and then they have the audacity — and I cannot understand for the life of me why a person with the quality of education and integrity of the Minister of Justice would stamp that the second time around — to state that it complies with the Bill of Rights and the Charter. He knows and I know, as we all do, that that is not the case. It does not comply. In fact, it never complied. Notwithstanding that, rather than bringing it back the proper way, namely, by introducing it first into the House of Commons, getting first, second and third reading there and then referring it here, they did it the other way.

I am of the view that the bill as you are now amending it, if it is passed — and, I assume from the numbers that it will be passed — may be invalid *ab initio*. I am not certain, but I think so.

Let me now deal with the bill as it was presented first by Senator Kirby. Some of these quotes were read in by Senator Lynch-Staunton, but not all of them.

• (1850)

Senator Kirby, at page 349 of the *Debates of the Senate* of May 15, 1996, stated that Bill C-22, the predecessor to Bill C-28, without any amendment, was legal, constitutional, and perfectly within the authority of Parliament. It therefore follows, although Senator Kirby did not expressly say so, that it is the government's view that Bill C-28, as presently drafted, is legal, constitutional and perfectly within the authority of Parliament.

At page 356 of the same volume, he said:

> ...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.

At page 349, Senator Kirby also said:

> ...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.

Then at page 356, he said:

> I have not said that we will introduce amendments. I said, categorically, that we would introduce them, if you insisted on them.

Honourable senators will know, from reading the proceedings of the committee, that the senators on this side — for the reasons that I have given, as a result of which we thought the bill was improperly before us — would not move the amendments. So what happened? Senator Bryden knows what happened. He moved the amendments. It is only by his moving them that they are before us now, contrary to Senator Kirby's statement that the amendments would only be moved on our insistence.

We have before us a bill — improperly, I suggest. It has been amended to make it constitutional, and it may well be constitutional, but it is still unfair. All I have to say is that the judiciary should have been allowed to do its job.

Hon. Lorna Milne: Honourable senators, I just want to add a few remarks about Bill C-28, in its amended and unamended forms, and with Senator Lynch-Staunton's further amendment.

Just last week Senator Beaudoin reminded us that the Senate was formed to provide a regional voice in the Parliament of Canada. I remind honourable senators that Lester B. Pearson International Airport is right smack in the middle of the area I represent. I am the only senator to represent Peel, Halton and Dufferin counties, the cities of Brampton and Mississauga, as well as Milton, Georgetown, Caledon, and Orangeville.

These areas have developed over the past 30 years because of the airport. Many of the newer urban areas exist in these counties only because of the airport. The airport, and the industries spun off from it and located in these areas because of it, represent a huge proportion of the jobs and the prosperity of my region.

I want honourable senators to be very clear on this matter — and I wish there were a few more of you over there to hear this — the people of my area overwhelmingly support this bill. In fact, most of them have been astounded to find out that the matter has not yet been settled. If I were to pass on to this august group opinions that have been forcefully expressed to me from time to time in the last few months, in perhaps more polite language than my friends and neighbours usually use when asked about the airport situation, I think their succinct instructions to this body would be, "For Pete's sake, get off the dime and get on with the job."

Following the policy that has been in place since 1987, the preference for administering airports in Canada has been to create local not-for-profit airport authorities. Major airports in Vancouver, Montreal, Edmonton, and Calgary are now under the control of their own non-profit local airport authorities. It is time — and high time — that we passed this bill and gave the people of my area, and of the Greater Toronto Area, control over the destiny of their own airport.

Wherever you come from in Canada, please consider the people of my area when you vote on this bill.

Hon. Philippe Deane Gigantès: Honourable senators, when Professor Monahan appeared last before our committee, I asked him whether it was not true that, from the very beginning, the people who had won the contract for the Pearson airport could have gone to court, even if the bill had passed, to question its constitutionality. He replied, yes, they could have, but that the federal government would have then introduced a motion and that would have been the end of it. I say that is not correct. Where would the federal government have introduced the motion? It would have introduced it in the courts, which proves that there was access to the courts. Who would have decided whether the federal government's motion was valid or not? The court would have made that decision.

The fact is that from the very beginning the partners of T1T2 or Paxport, call it what you like, always had access to the courts. It was never true that the legislation impeded access to the courts. They could always have gone to court to challenge the constitutionality of the bill.

Hon. Finlay MacDonald: Honourable senators, as I understand it, I am to be last speaker from our side. I will be brief and I will try to make my speech as thoughtful as possible.

There are seven senators who know this issue better than anyone else in this chamber — seven plus those who occasionally substituted for those who were absent from our committee meetings. All of those senators gave up six months of their time, including last summer, to work on this in Ottawa. I will not go over the evidence.

That process was one of the most educational exercises of my life. It was not surprising, regardless of what evidence we chose to believe, that there would be a minority or a dissenting opinion. That seems to be the nature of the beast.

We had a number of disappointments. I was led to believe, being a member of the Scrutiny of Regulations Committee and having read the paper of Diane Davidson, the legal counsel of the House of Commons, that there was some importance in a parliamentary committee, that it was an extension of the whole chamber. However, it is one thing to talk about parliamentary committees as their work relates to legislation and quite another to talk about parliamentary committees in an inquiry mode where the committee sends for documents, summons and hears witnesses and where the committee has virtually unlimited powers, very similar, as Senator Stanbury would know, but with a few subtle differences, to a judicial inquiry.

A majority government in Canada, as all honourable senators know, is a government with incredible power and authority in Canada. We have seen them. We have one now; we had one before. Neither one has the monopoly on being dumb, or on being virtuous, or on being smart, and no one quite knows how to make them accountable. In spite of what Ms Davidson says, who is to stop them? Who is to initiate in the House of Commons a parliamentary inquiry to examine the wisdom of something that that same government did some time ago? The member of the House of Commons who would suggest such a thing would get short shrift.

• (1900)

Similarly, if a parliamentary inquiry or a Senate parliamentary inquiry, which is another way of putting it, were ever introduced into a chamber dominated by the same party, that, too, would get short shrift. It is unrealistic to think that a parliamentary inquiry is unbiased, unless the Senate is not dominated by the same party as the majority government in the House of Commons and the opposition has a majority in this place. That is the only way we were able to start this inquiry.

It is fine for Senator Graham to talk about senators as legislators. Brothers and sisters, we know why we are here, and I do not think we should kid one another. We are a second chamber. We are not a chamber on equal terms with the House of Commons. We know that. We know that, way back when, we had legal and constitutional authority to veto any piece of legislation coming from the elected place. We know that convention has overtaken that practice and that our constitutional rights to do that have long since gone, leaving only a legal right to do it.

We might exercise that right, as indeed we did a couple of years ago. I am not talking about a free vote now. I am talking about the time that we in this chamber defeated a government bill. It was a budget bill and we defeated it. How did we get away with it? Because the only punishment for doing that is a political punishment. They decided to let it go, but it was a serious matter.

I agree with my friend Senator John Bryden. The government has a perfect right to cancel the contract. It was a little unusual. It was done fairly quickly. It caught the Pearson development people by surprise. They thought there would be a negotiation. Mr. Coglin, the president of the corporation, testified before us that it was the saddest mistake he ever made to believe a senior deputy minister when he said to hold on and wait, that there would be some negotiations. This was after the Nixon report. Instead of negotiations, legislation was introduced.

Had the Conservative government tried to cancel the contract before the election, as had been suggested, they were faced with clear proof that the contract had closed or was getting close to closing or that it was in effect. There was evidence to this effect. There would have been legislation one way or the other, but let us get back to disappointments again.

Senator Kirby and I were so frustrated and disenchanted with the roadblocks being put before us that we agreed to jointly author a paper which appears, of course, in our report. We came to the conclusion that this was like fighting city hall. We were up against the Department of Justice, which is the solicitor for all of the departments of government. They have a budget of $42 million a year to hire outside lawyers, whereas we in the committee spent $210,000 in our inquiry over that whole period of time.

The Government of Canada, through the Department of Justice, paid a private Ottawa law firm and a bunch of forensic auditors something more than $1 million — I would like to say to thwart us. I am careful about that, but I would like to make that point. I suppose the education of which I speak was: Do not ever try it unless you are really passionate about it; unless you really want to see how the Canadian government operates and how the system which we thought would work — the principle of Parliament through parliamentary committees — has been long since forgotten, little known and little understood.

I do not want to be considered naive in saying these things, although, as I approach now my last year in this place, it would be a great compliment. Certainly I agree with the point that Senator Gigantès made early on in a Legal and Constitutional Affairs Committee meeting, before we ever got into this inquiry: Sure you can have access. There is only one place in Canada where you can get a constitutional opinion on whether a piece of legislation is constitutional or not. There is only one place and that is the Supreme Court of Canada.

Who will bring this case before the Supreme Court? Either it will be the Government of Canada or it will be someone with very deep pockets. It will take years and it will take more money than the damages that will come from this litigation.

I thought that Senator Bryden was going to catch me up on something I said the other day when I talked about money. He looked at me puzzled as if to say, "Aha! Now you are talking money and you are supposed to be talking constitutionality." The question I put to Senator Graham which he did not or could not answer was to the effect: Where did you get the figure of $600 million which the plaintiffs are supposedly claiming? How is it broken down?

There are only three ways to break down that figure. One element is out-of-pocket expenses, general damages. The amendment we received from Mr. Rock, which pleased us because it was a little something, goes to general damages. The second part of that $600 million —

Senator Bryden: That is $668 million.

Senator MacDonald: — would be for forgone profits and then third-party claims. My purpose in raising that point is to say this: Instead of resurrecting the bill, if it had just gone to the courts, which are not known for paying big amounts in damages, this matter would have been settled, and the Government of Canada would not be facing accusations — if they are and if it means anything to them — of drafting Draconian legislation or eyebrow legislation or legislation which might inhibit a foreign investor from coming into Canada, any of those things. The matter would have been adjudicated by the court. They are well along in the case.

• (1910)

The Government of Canada, as Senator Bryden says, has a perfect right not only to cancel the contract but also to bring in a final solution as to its determination, having satisfied themselves and some of us as to the constitutionality of the bill by giving access to the courts for the purposes of general damages and forgetting altogether any other prohibitions. A government only does that when it has completed a careful counting of heads, when it has made a political calculation, when it knows that what it is doing will not be defied, that it will not create a problem.

This bill will go amended to the House of Commons, but what do you have over there? You have a bunch of pussycats who are aging, white, angry people who are about to dismember the country. That is what you have standing between you and a huge, popular, majority government. Bringing this back is like fanning the fire. We must accept that it will pass in an instant. It will be a political decision. Let us not kid one another.

I felt that the exercise was worthwhile. We ran the course; we kept the faith; we accepted the evidence as we heard it; we admired the public servants who appeared before us; and we satisfied ourselves that we did the right thing.

I am still a little mystified, after 13 years here, that we, as senators, consider ourselves to be members of a chamber of confidence, when we are not, and that we believe we will be frowned upon by our Liberal or Conservative friends or by those who appointed us, when we should not give a damn.

In the final analysis, we do not have to vote in conformity with party politics. An occasional breach in the partisanship on both sides would provide some rather refreshing encouragement. It does not take much courage. I know that this is an adversarial chamber, but sometimes I think we carry it too far. I, for one, never thought that I was coming here as a purchased agent.

Senator Gigantès: Will Senator MacDonald accept two questions?

Senator MacDonald: Certainly.

Senator Gigantès: Does the honourable senator doubt that some of us may genuinely believe that government legislation is good legislation? We may be wrong, but we believe it.

Senator MacDonald: Yes, I do accept that you believe that.

Senator Gigantès: Thank you.

My honourable friend seems to be saying that only people with very deep pockets can go to the Supreme Court. I would point out that people with deep pockets can afford to pay for better lawyers. That happens to be a sad fact of our system of justice. The poor find themselves in trouble much more often than the rich, and the poor end up in jail much more often than do the rich for the same offence. I deplore that situation, but there is nothing we can do about it.

Do the people involved in this particular legislation have deep pockets?

Senator MacDonald: I am trying to follow the analogy. Mr. Bronfman, who owns 67 per cent of that which was cancelled and who is one of the plaintiffs, and poor Mr. Matthews, whose consortium owns 18 per cent, could, I suppose, go to the Supreme Court to prove that this is unconstitutional, if they wanted to do so. However, there is one other matter to consider, and that is that Mr. Bronfman, and Mr. Lockheed, who owns one part of Terminal 3, have other fish to fry, and they do not want to particularly irritate a government with which they are doing a lot of business. Is that the answer the honourable senator was seeking?

Senator Gigantès: If that is the best answer Senator MacDonald can give me, he will not arouse any pity in me for either Lockheed or the Bronfmans. I do not think they will suffer. If they make the choice not to irritate the government because they will make more money without irritating the government, what is all the fuss about?

Senator MacDonald: This comes back to the point I was making with Senator Bryden. Senator Bryden caught me making a remark about a settlement for $171 million, and he did not follow it up. It could have been settled out of court.

There was no interest on our part in trying to protect the developers. We were working at a different level. We started in the committee considering a constitutional matter, and then we were dragged into an inquiry because the loud-mouthed Minister of Transport, Mr. Doug Young, made many inflammatory remarks which he should not have made.

Senator Haidasz: Oh, dear.

Senator MacDonald: "Oh, dear." I agree.

Senator Bryden: I just want to make a comment.

The Hon. the Speaker: If you wish to ask a question of the last speaker, that is in order.

Senator Bryden: Since this may be the last time that I have the opportunity to hear Senator MacDonald in full flight on this issue, I would simply ask: He has said that we ran the race, we fought the fight, and we kept the faith. Is it not also the case that some of us at least preserved our humour?

Senator MacDonald: Oh, yes. When I referred to keeping the faith, I was not only referring to the Tory side. I thank the entire committee for their courtesies to me. It was not an acrimonious situation, although there were moments when it started to go in that direction. Ours was a hard-working committee. There were two opinions, and we knew that when we got into it. That is why I was delighted that Senator Kirby and I talked about the difficulties we had in committee. We did keep our sense of humour.

I was disappointed that not all the Liberal members signed off on this report. That is quite important, and next fall it is my intention to send this matter to the Standing Senate Committee on Legal and Constitutional Affairs. Senator Corbin will remember that a few years ago I suggested that the committee should look into the powers of parliamentary committees and that we could, perhaps, set up a joint committee.

There is still an unfinished symphony, and it has to do with government. I did not like some of the things the last government did any more than I like some of the things this government is doing. I know some of you share my experience in that regard.

• (1920)

Senator Bryden: I take it from what you have said, senator, that we do not need to play the rest of that symphony tonight.

Senator MacDonald: Do not ask me any more questions.

The Hon. the Speaker: If no other honourable senator wishes to speak, is the house ready for the question?

Hon. Senators: Agreed.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those honourable senators in favour please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinions, the "nays" have it.

And two honourable senators having risen.

The Hon. the Speaker: I see a call for a recorded vote. Under the rules, the vote is deferred until tomorrow at 5:30 p.m.

JUDGES ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-42, to amend the Judges Act and to make consequential amendments to another act.

Bill read first time.

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

On motion of Senator Graham, with leave of the Senate and notwithstanding rule 57(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

FEDERAL COURT ACT
JUDGES ACT
TAX COURT OF CANADA ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-48, to amend the Federal Court Act, the Judges Act and the Tax Court of Canada Act.

Bill read first time.

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

On motion of Senator Graham, with leave of the Senate and notwithstanding rule 57(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

INCOME TAX BUDGET AMENDMENT BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-36, to amend the Income Tax Act, the Excise Act, the Excise Tax Act, the Office of the Superintendent of Financial Institutions Act, the Old Age Security Act and the Canada Shipping Act.

Bill read first time.

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

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, with leave, at the next sitting of the Senate.

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

Hon. Marcel Prud'homme: Honourable senators, I should like to be on record as saying once again, as I have said for many years, that at the very end of the session, the House of Commons pushes legislation into the Senate. They say, "Come on. Hurry up over there." I will make a case out of that, eventually.

I want to be on record as saying that I object to this procedure. I am sure senators on both sides of this place object to being pushed because, perhaps, there is a prospect of adjourning either this week or next week.

The Hon. the Speaker: Honourable Senator Prud'homme, I do not want to interrupt you at this time of the day, but I must remind you that when leave is requested, the answer is either "yes" or "no" without debate.

In any case, leave was granted.

On motion of Senator Graham, with leave of the Senate and notwithstanding rule 57(1)(*f*), bill placed on the Orders of the Day for second reading at the next sitting of the Senate.

BUSINESS OF THE SENATE

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I ask for agreement that all remaining items on the Order Paper stand.

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

Hon. Senators: Agreed.

The Senate adjourned until Wednesday, June 19, 1996, at 1:30 p.m.

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Tuesday, June 18, 1996