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(HANSARD)

Tuesday, April 15, 1997

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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

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THE SENATE

Tuesday, April 15, 1997

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

Prayers.

VISITOR IN GALLERY

The Hon. the Speaker: Honourable senators, I should like to draw your attention to a distinguished visitor in our gallery, namely, the Honourable Danny Gay, Speaker of the New Brunswick Legislative Assembly.

[*Translation*]

This is the first visit to the Senate by Mr. Gay since his election as Speaker of the New Brunswick legislature. We welcome him and his clerk, Loredana Catalli Sonier. Mr. Speaker, we are delighted to have you here as our guest.

[*English*]

THE LATE HONOURABLE MURIEL MCQUEEN FERGUSSON, P.C.

TRIBUTES

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, it is with a true sense of sadness that I rise today to pay tribute to one of our most esteemed former colleagues, the Honourable Muriel McQueen Fergusson, who died in Fredericton on Saturday at the age of 97.

Quite simply, she was a true pioneer in our political landscape. She showed women in her province and throughout this country that determination, spirit and hard work can topple the toughest barricades.

Muriel McQueen Fergusson was one of three women appointed to the Senate in 1953 by the Right Honourable Louis St. Laurent. That brought to only five the total number of women appointed to this chamber in Canadian history to that time.

In her inaugural speech, she said:

> ...My efforts in the future will of necessity be directed towards the problems of every part of Canada and the betterment of conditions for women as well as for all other citizens.

Throughout her career in this chamber, she followed her original words in terms of support for women, for children, for resources for seniors, and for those who needed help.

In 1971, Senator Fergusson also fought for and won another first, the right for young women to become pages in the Senate. We have been tremendously well served by that initiative in the years since.

She went on making history, becoming the first female Speaker in this chamber in 1972. Indeed, she was the first female Speaker of either House of this Parliament at that time. She served senators with excellence and with fairness in that position until she retired from the Senate in 1975.

When Muriel McQueen was born in 1899 in Shediac, New Brunswick, Sir Wilfrid Laurier was the Prime Minister of Canada. Little did Mrs. McQueen know that her daughter Muriel would become a powerful force and a role model for women in the new century.

The role that Muriel carved out for herself began shortly after she began Mount Allison University in 1921. Although her mother told her that she would "settle down and marry and have children" — as they said in those days — she herself had other ideas. She wanted to become a lawyer. She did succeed eventually, and was a very successful, distinguished lawyer and judge, and also a crusader for women's rights, and she did marry another young lawyer, Aubrey Fergusson, in 1926.

•(1410)

Muriel blazed a trail through established conventions in society in her province, giving courage to others — some of whom sit in this chamber — to follow her lead. In 1944, she became the first women appointed Chief Enforcement Officer for the Wartime Prices and Trade Board in New Brunswick, and in 1951 she became the first women elected to the Fredericton City Council. In 1947, a few years earlier, with the backing of both national and women's groups, she had lobbied to have the regional director's position of the New Family Allowance Plan reopened to include both men and women candidates. She was successful, and was appointed to that post herself for six years.

Honourable senators, in 1953 there was another extremely important move. She and a group of other members of the New Brunswick Business and Professional Women's Club pressured the premier of the province for reforms — such as equal pay and other rights; such as the right of women to sit on juries. The following year, an act was passed to amend the Jury Act to include women.

Of course, Muriel Fergusson never really retired at all, but continued to fight against social injustice. In 1976, she became a member of the Privy Council and an Officer of the Order of Canada in recognition of her many important contributions to this country and to the life of Canadians. Her work has been commemorated in the Muriel McQueen Fergusson Foundation, which recognizes the contributions of women in their efforts to eradicate violence against women.

With all of her honours, however, Muriel never changed. She was full of laughter, kindness, energy and grit, and she remained very close to her roots. Even in recent years she was constantly on the road, giving speeches and building courage in others to take on today's issues on behalf of those who need a voice and a helping hand. Her bright and cheerful home, overlooking the Saint John River, was always open to friends, for good conversation and strong tea. She was my friend as well. As one who was left breathless by her energy and her commitment, the best tribute that I can offer in her memory is to keep on working and fighting for the causes she moved forward throughout her life.

Honourable senators, I offer our sincere sympathy to the family of Muriel McQueen Fergusson. She was a rare jewel who helped make this a more thoughtful and caring land, and Canada was lucky to have her as a champion. This institution is marked in history by her presence.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, the story of Muriel McQueen Fergusson is the story of her community and how she changed it; it is a story of her province and how she changed it; of her country and how she changed it, too.

People who were close to Muriel McQueen Fergusson at different stages of her long and marvellously busy life will tell you that she was never an uppity do-gooder, never a conniver and, in spite of the things said about her, never a women's libber. The *Atlantic Advocate* said "made of stern stuff, she's entirely feminine." The *Ottawa Journal* — "her eyes sparkle with the fires of battle." The other day in *The Ottawa Citizen*, the Lieutenant Governor of New Brunswick recalled "she was a little, tiny woman with a soft voice and gentle manner" who went around "knocking down barriers without being provocative or strident."

Honourable senators, perhaps I should start out by saying that Muriel McQueen Fergusson was a Privy Councillor, for in this town, that association signals a person of distinction in a job with grave responsibilities. Why is it, then, that I feel Senator Fergusson looking over my shoulder, saying: "Get it right, young man, and start at the beginning"? The beginning, honourable senators, is New Brunswick. Are we aware that she was Patroness of the Women's Institutes of New Brunswick, the Hospital Auxiliaries of New Brunswick, Transition House of Fredericton, Director of the Elizabeth Fry Society, the provincial Council on the Performing Arts, Honorary Chair of the New Brunswick and Fredericton University Women's Clubs, Life Member of the I.O.D.E., and Honorary Member of the Royal Canadian Legion? Perhaps when you add up those institutions and maybe a dozen others, you can broaden the field. Start with the Order of Canada, Zonta, the Person's Award, and go to the Bar Association, the Law Society of New Brunswick, the Canadian UNICEF Association, the Girl Guides, the Victorian Order of Nurses, and even — yes — the Liberal Party of Canada!

Muriel Fergusson would never admit to being a joiner — nor was she ever accused of being such. Important organizations asked her to help them, or she turned to them for help in her labyrinth of causes and crusades for the ailing, the aged, the poor, and the minorities — especially women who came into this century without most of the rights men took for granted.

Honourable senators, after being summoned to the Senate, her straight line persisted. She was one of Senator David Croll's soldiers in the war on poverty; she clung to opportunities for improving human rights through the Joint Committee on the Constitution; she called the work in the legal committee her passion. It was her Senate bill on extending rights to women to serve on criminal juries that led to changes in legislation.

For two years before her retirement, she extended her political efforts to focus on the world, and in seminal rights conferences in Washington, Budapest and Mexico City she helped to change the world as surely as she had changed Fredericton.

To her family, I extend my deepest sympathy.

Hon. Mabel M. DeWare: Honourable senators, I, too, wish to express my thoughts about Senator Muriel McQueen Fergusson. There were tears in the eyes of countless Canadians, particularly Canadians living in New Brunswick, upon learning of the passing of Muriel McQueen Fergusson.

Senator Fergusson was an incredible person. She was a trail-blazer, a woman ahead of her time, but always a woman with her feet planted firmly on the ground. It was her ability to achieve so much throughout her career while being just herself that stands out in my mind. She was an inspiration and a source of strength to many women who served in public life. Indeed, her influence reached across political party lines, as it did in the case of my relationship with her. In my view, it was not just what Senator Fergusson achieved in her distinguished career; rather, it was how she went about it that made her so special. She was not the type to beat down the door or pound the table to achieve her vision, but neither was she easily put off in her lifelong pursuit of social justice.

This trait was easily recognized in Senator Fergusson's career. One example that influenced me was when she worked to help secure Fredericton women the right to vote in civic elections, regardless of economic or marital status. Then, after challenging the city's prohibition against women serving on the council, she stood for election and won by acclamation. Her quiet determination, without bombast; her rational and careful approach of putting the building blocks in place; that was her style, her way of doing things, and that was what so endeared her to all whose lives she touched.

In many respects, honourable senators, her example of perseverance opened the door for the next generation of New Brunswick women to carry on the struggle to achieve elected office. It certainly was influential in my determination to seek a seat in the New Brunswick legislature, and to seek a seat as a member of the executive council.

Senator Fergusson will be remembered as a truly great Canadian who loved New Brunswick, and who was instrumental, in her time, in modernizing its institutions. She was one of the first female lawyers in the province. She served as judge of the Probate Court for Victoria County in the 1940s where her work was invaluable in dealing with women's issues associated with probate law. She was the first female elected to Fredericton City Council, following which she was summoned to the Senate in 1953.

Senator Fergusson and New Brunswick were honoured when she became the first woman to hold the office of the Speaker in this chamber in 1972. Her career in the Senate was characterized by her progressive work on family issues, and provided the basis for her outstanding work in New Brunswick upon her retirement in 1975. She was the inspiration and the energy behind the establishment of the Muriel McQueen Fergusson Fund by the Board of Directors of Fredericton's Transition House, which both raised money to support the house and funded research in the causes and solutions to family violence.

•(1420)

What Senator Fergusson began at the Transition House has led to the creation of the Muriel McQueen Fergusson Centre for Family Violence Research at the University of New Brunswick. It is the country's first institute for research into the causes and effects of domestic violence, and it is a truly fitting tribute to Senator Fergusson's values, to her vision of a society based on caring, compassion and dignity for all individuals.

Everyone who personally knew Senator Fergusson will have lost a real friend. She was a real presence in the lives of countless Canadians, and has left a place that can never be filled. She has achieved the highest recognition one can achieve in public life — that is, respect with love. Her memory will endure forever through the work of the Family Violence Research Centre at UNB.

My deepest sympathy goes out to her family at this time of sorrow.

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, Senator Fergusson was a close friend of mine from the time I arrived in Fredericton as a young college professor in 1965. She would regularly extend an invitation for tea at her place. I knew Muriel for some 30 years. She was a tremendous pillar of strength as we pioneered human rights legislation in New Brunswick and, more recently, in her ongoing interest in the field of social justice and combatting discrimination on the grounds of gender.

Senator DeWare has mentioned the Senator Muriel McQueen Fergusson Foundation that we established. I myself was working with the Fredericton Transition House when they were concerned with the need to have ongoing funding. We, together with some friends, decided that a foundation would be the appropriate way to ensure the ongoing activity of the centre in Fredericton. I suggested that one way we might ensure that eventuality would be to find someone around whom we could build such a foundation. Of course, our friend Senator Fergusson's name immediately came to mind. I telephoned Muriel, and she invited me and two others down for tea. It was usually over tea that most things got resolved with Muriel. She immediately agreed that it would be quite okay for us to establish a foundation using her name. That foundation has grown and has become a grand success. It will be another lasting tribute, in our community of Fredericton, to the wonderful life and journey of Senator Fergusson.

[*Translation*]

Hon. Eymard G. Corbin: Honourable senators, it would be remiss of me if I did not say a few words on the occasion of the passing of former Senator Muriel McQueen Ferguson, a former Speaker of the Senate. I do so on behalf of the residents of Grand-Sault in New Brunswick, where she practised law with her husband during the Depression and where, unfortunately, she was to lose her husband. She later moved away, although she remained in New Brunswick, to pursue a career that has already been praised in eloquent terms by my colleagues.

As I express the usual sympathy and condolences on my own behalf and on behalf of the residents of Grand-Sault, who remember her well, I would like to say that we all appreciated her. I was not yet born when she practised law with her husband in Grand-Sault, but she lived next door to my parents. Subsequently, she moved to another house on Broadway — the most beautiful street in Canada, for those of you who are unaware of the fact — where she lived next door to my brother, who still lives in Grand-Sault.

When I go for my traditional haircut at the barber shop in Grand-Sault, people still ask me whether I see Muriel McQueen Ferguson occasionally, which proves that Grand-Sault remembers.

I add these few reminiscences to what was said by my honourable colleagues, and I wish to extend my sincere condolences to the members of her family and to her many friends.

[*English*]

The Hon. the Speaker: Honourable senators, in remembrance and tribute to the Honourable Senator Muriel McQueen Fergusson, I ask you to rise for a moment's silence.

The members of the Senate then stood in silent tribute.

SENATORS' STATEMENTS

THE ENVIRONMENT

AUTOMATED NAVIGATIONAL AND WEATHER SYSTEMS

Hon. Pat Carney: Honourable senators, I should like to take this opportunity to update senators on the current status of the government's plans to replace human weather observers with automated weather observation systems, known as AWOS, across Canada.

Senators will remember that many communities and user groups expressed concern at the commissioning of the AWOS installations, for safety reasons, given the current state of the technology. For instance, pilots said that AWOS could not detect the approach of tornadoes, as humans can, could not differentiate between rain or snow or dust or hail, and reported "clear below 10,000" when, in fact, on-site weather was cloudy.

The Canadian Air Line Pilots Association, CALPA, told the Standing Senate Committee on Energy, the Environment and Natural Resources that pilots had lost confidence in the system and that the technology was an accident waiting to happen. A similar system in the U.S. was reported to have similar problems, and other users, such as boaters, have expressed their concerns. In July, 1995, the committee published an interim report on AWOS entitled, "Pull Up! Pull Up!" Among its recommendations were that, since safety is the prime consideration, AWOS equipment must be proven to be at least as accurate and reliable as the human observer-equipment mix it is intended to replace before the human observers are removed. We also recommended that the current moratorium on the commissioning of AWOS sites be solution-driven, not date-driven, that no additional AWOS sites should be installed or commissioned, and that no human observers be removed until members of the user communities are satisfied that such action allows them to meet safety requirements.

In early February, 1997, Environment Canada submitted a report concluding that the deficiencies first identified had been corrected and the performance criteria met. It is interesting, honourable senators, that a copy of the report was never sent to the Senate. Since then, confusion and rumour seem to be the order of the day. Our mailbag tells us that the consensus among weather observers across the country is that AWOS works well until the weather becomes marginal, and then ceiling and cloud-cover readings are suspect or, even worse, erroneous. The consensus is that AWOS readings are unreliable. As one correspondent noted, "Unreliability is a characteristic not particularly welcome in the aviation industry."

•(1430)

At my request the Air Line Pilots Association Canada, the successor to CALPA, provided an assessment of the AWOS performance evaluation. Captain Peter M. Foreman of the association recently wrote to me, saying that it remains to be seen whether AWOS observations and those of a human observer will coincide with respect to weather and sky conditions. An independent audit by experts Dr. Ambury Stuart and Mr. Larry Sharron, criticized the methodology used by Environment Canada.

It is clear that more analysis is required, but Environment Canada has disbanded the analysis team and reassigned personnel, and no further funding has been obtained. The Air Line Pilots Association have written that bureaucrats should not be permitted to overrule or ignore auditors.

The Standing Senate Committee on Energy, the Environment and Natural Resources planned to hold hearings following the evaluation report, possibly in May of this year, our current chairman, Senator Ghitter, advises. Since an election may interfere with this plan, I am asking senators to join me in urging the government not to proceed with further commissioning of these units until such time as the concerns of these users are met.

I know that other senators on the Subcommittee on Safety of the Transportation and Communications Committee are studying matters relating to aviation safety. That subcommittee is in the process of concluding its report, and the results of that study should be before the Senate prior to the government proceeding with any further commissioning of these highly suspect automated systems.

I hope that we have your support for our request that nothing further be done in this matter. No commissioning should take place until the Senate can conclude its investigations, and the users' concerns are met.

[*Translation*]

INTERGOVERNMENTAL AFFAIRS

LINGUISTIC SCHOOL BOARDS IN QUEBEC

Hon. Gérald-A. Beaudoin: Honourable senators, the debate on a constitutional amendment to exempt Quebec from the application of sections 93(1) to 93(4) of the Constitution Act, 1867 has been reopened. Today, Quebec's National Assembly is giving its verdict. I intend to come back to the basic argument, in order to shed light on the issue if possible.

It must be repeated that section 93 of the Constitution protects religion, not language. It is for this reason that Quebec is limiting its amendment to denominational schools. It wants to eliminate constitutional protection in this area. For its part, language is protected under section 23 of the 1982 Charter.

Section 93 can be amended on the basis of section 43 of the Constitution Act, 1982, but this is not the case for an amendment to section 23 of the Charter, which is governed by the 7-50 rule, and which must even, according to certain legal experts, be unanimous. There remains the matter of obtaining public consensus. The Constitution is silent on this point. What is required is a resolution from Quebec City and a resolution from Ottawa. Naturally, from a democratic point of view, a broad consensus would be desirable. Once again, subsections 1 to 4 of section 93 deal with denominational schools and it is in this area that a consensus is required.

Language is another matter entirely and this consensus must be based on a different amending formula.

We must therefore ask ourselves whether, in Quebec, Catholics as a group and Protestants as a group are opposed to the amendment being sought by Quebec.

The collective rights involved here are rights of the Catholic and Protestant denominations. The protection is for religion, not language.

Finally, there is the question of whether the bilateral formula is sufficient in this case or whether the trilateral formula is required. Subsection 93(2) refers to Quebec and to Ontario, but the reciprocity is not complete. Subsection 93(2) states that denominational rights existing in Ontario are extended to Quebec. However, Quebec may forgo them. This in no way diminishes Ontario's rights. Other jurists think differently. Their point of view must be taken into account.

Honourable senators, it is nonetheless a shame that things have been left to the last minute.

[*English*]

VIMY RIDGE

COMMEMORATION OF EIGHTIETH ANNIVERSARY

Hon. M. Lorne Bonnell: Honourable senators, I rise to advise honourable senators that on April 9 of this year, I had the privilege of attending at Vimy Ridge, representing the Senate of Canada at the commemoration of the 80th anniversary of that great battle. I was proud to be there with my good friend Senator Phillips. I was also proud because we had with us six veterns of World War I, the oldest of whom was 104, and the youngest 98. Some of those veterans, who marched and stood so proudly as they walked up the hills at Vimy Ridge, had actually fought in that battle, the memorial to which stands on Hill 145, the highest point of the 14-kilometre long ridge.

In World War I, the ridge was a vital part of the German defence system. It was so well fortified that all attempts by Allied Forces to take it during the first three years of the war failed. Superb planning and training ensured that the Canadian Corps would achieve its goal.

At daybreak on April 9, 1917, all four divisions of the Canadian Corps, fighting together for the first time, stormed the ridge. Preceded by a perfectly timed artillery barrage, the Canadians advanced and, by mid-afternoon, had taken the whole crest of the ridge except Hill 145, which they captured three days later. The victory was swift, but it did not come without cost. Of the 10,602 casualties, 3,598 of those who gave their lives were Canadians.

The victory at Vimy Ridge was a turning point for Allied Forces in World War I. That victory brought honour and pride to the young Dominion of Canada. Carved on the walls of the monument are the names of 11,285 Canadians who were killed in France, and whose final resting place is unknown. Standing on the monument's wide stone terrace overlooking the broad fields and rolling hills of France, one can see other places where Canadians fought and died. More than 7,000 men are buried in 30 war cemeteries within a 16-kilometre radius of Vimy Memorial. In total, 66,655 Canadians died in World War I.

ROUTINE PROCEEDINGS

TOBACCO BILL

REPORT OF COMMITTEE

Hon. Sharon Carstairs, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Tuesday, April 15, 1997

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TWENTY-FOURTH REPORT

Your Committee, to which was referred Bill C-71, An Act to regulate the manufacture, sale, labelling and promotion of tobacco products, to make consequential amendments to another Act and to repeal certain Acts, has, in obedience to the Order of Reference of Thursday, March 13, 1997, examined the said Bill and now reports the same without amendment but with the following recommendations:

Smoking and its associated health problems are a significant health concern in Canada. However, it was clear to your Committee that there were no simple solutions.

Your Committee believes that legislation such as Bill C-71 is only one aspect to the development of an integrated approach to prevent young people from starting to smoke and/or encouraging others, both young and old, to quit smoking.

Your Committee is particularly interested in the development of programs targeted at youth. Your Committee recommends that such initiatives be motivational, comprehensive, continuous and holistic. Wherever possible, they should be developed by young people and focus on youth helping youth.

Your Committee is aware that not all revenues raised from the surtax on tobacco, now approximately $65 million per annum, are directed toward such initiatives. Your Committee believes it is incumbent upon government to direct such revenues particularly to pre-teens and teenagers, to prevent the development of what, for many, will become a lifelong habit.

However, your Committee also recommends that the government make use of other resources in the community, including the tobacco industry itself, to develop and fund programs targeted at young persons.

In addition, your Committee strongly recommends that the government find, by public and private means, transitional funding to allow artistic, cultural and sporting groups to obtain alternatives to the Moines now provided by tobacco companies to sponsor their activities.

These events are important to the people of Canada, and Canadians do not want them to cease. Your Committee recognizes that many groups have sacrificed and sought alternative funding over the past five years, and they should be congratulated. However, the urgency presently exists for those who accept tobacco sponsorship, and they will need both public and private support over the next three to five years.

Your Committee is of the view that the government must sponsor a number of important studies. These studies should be conducted by independent researchers, and they should be subject to peer review. First, a study should be undertaken to examine the value and consequences of reclassifying tobacco as a narcotic or noxious substance. The purpose of this study would be to enable government to make more effective regulations governing this product. A second study should be undertaken to determine the impact of advertising and promotional activities on both brand preference and new markets, in particular where young persons are concerned.

SHARON CARSTAIRS
Chair

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

Senator Lewis: With leave of the Senate and notwithstanding rule 58(1)(*b),* later this day.

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

Motion agreed to and bill placed on Orders of the Day for third reading later this day.

•(1440)

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, April 16, 1997, at 1:30 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

CRIMINAL CODE

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-27, to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation).

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 later this day.

CRIMINAL LAW IMPROVEMENT BILL, 1996

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-17, to amend the Criminal Code and certain other Acts.

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 later this day.

CRIMINAL CODE
COPYRIGHT 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-205, to amend the Criminal Code and the Copyright Act (profit from authorship respecting a crime).

Bill read first time.

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

On motion of Senator Hébert, bill placed on the Orders of the Day for second reading on Thursday, April 17, 1997.

[*Translation*]

INTERNATIONAL ASSEMBLY OF FRENCH-SPEAKING PARLIAMENTARIANS

MEETING OF BUREAU HELD IN BEIRUT, LEBANON—REPORT TABLED

Hon. Pierre De Bané: Honourable senators, pursuant to rule 23(6), I have the honour to present to this house in both official languages the report of the Canadian section of the International Assembly of French-Speaking Parliamentarians and the financial reports of the meetings of the AIPLF's policy and general administration commission and executive in Beirut, Lebanon, on November 20 and 21, 1996.

[*English*]

SOMALIA INQUIRY

NOTICE OF MOTION REQUESTING SPECIAL COMMITTEE TO TABLE WORK PLAN

Hon. J. Michael Forrestall: Honourable senators, I give notice that on Wednesday next, April 16, 1997, I will move:

> That the Special Committee of the Senate on the Canadian Airborne Regiment in Somalia be instructed to table in this chamber a complete work plan outlining its study;
>
> That this plan include advice on the committee's schedule from the committee's counsel and research director; and
>
> That until such time as this plan is tabled and adopted by the Senate and committee members have had sufficient time to meet with counsel and the research director in order to prepare for these hearings, no witnesses shall be heard.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on Foreign Affairs have power to sit at 3:15 p.m. today, April 15, 1997, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO PERMIT PUBLICATION AND DISTRIBUTION OF REPORT DURING DISSOLUTION OF PARLIAMENT

Hon. John B. Stewart: Honourable senators, I give notice that on Wednesday next, April 16, 1997, I will move:

> That if before the dissolution of the present Parliament the Standing Senate Committee on Foreign Affairs has adopted but not presented a Report on the growing importance of the Asia Pacific region for Canada, with emphasis on the Asia Pacific Economic Cooperation (APEC) Conference to be held in Vancouver in the fall of 1997, Canada's year of Asia Pacific, the Honourable Senators authorized to act for and on behalf of the Senate in all matters relating to internal economy of the Senate during any period between sessions of Parliament or between Parliaments, be authorized to publish and distribute this report of the Committee.

•(1450)

NORTH ATLANTIC TREATY ORGANIZATION

PROPOSED EXPANSION—NOTICE OF INQUIRY

Hon. Jerahmiel S. Grafstein: Honourable senators, I give notice that on Thursday next, April 17, 1997, I will call the attention of the Senate to the expansion of NATO.

[*Translation*]

TOBACCO ACT

FREEDOM IN ADVERTISING—PRESENTATION OF PETITION

Hon. Normand Grimard: Honourable senators, I should like to present in both official languages a petition bearing 370 names of individuals in Montreal and Quebec City initiated by the Ralliement pour la liberté de commandite. This is a group that opposes Bill C-71.

[*English*]

QUESTION PERIOD

SOMALIA INQUIRY

SPECIAL SENATE COMMITTEE—ASSURANCE OF RECONSTITUTION FOLLOWING POSSIBLE ELECTION—GOVERNMENT POSITION

Hon. Finlay MacDonald: Honourable senators, in the absence of the Chairman of the Special Committee of the Senate on the Canadian Airborne Regiment in Somalia, I wish to put some questions to the Leader of the Government in Senate.

A headline in the April 11 issue of *The Globe and Mail* reads, "Senate Somalia panel may have short spring," with the subheading, "Election call could cut hearings at outset".

Further, in the article, I read:

> Mr. Rompkey acknowledged that an election campaign this spring might prevent the panel from getting very far into its work.

Four days to be exact.

> All Senate committees cease to exist when Parliament is dissolved for an election.

This is the key sentence, honourable senators:

> But the Liberals would want to reconstitute the committee if there was a spring election and a new Parliament was in place by the fall, he said.

The "Liberals would want" is the phrase he used. Do I understand from the remarks attributed to Senator Rompkey that the Leader of the Government in the Senate is giving us binding assurance that this committee will be reconstituted in the fall?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I am not in a position to give a binding assurance to my honourable friend. I do not know when the election will be called. Nor do I know, if it is called, who will win. I will speak to Senator Rompkey who is not in the chamber at the moment.

It is obvious that senators on both sides of this chamber want to get on with this hearing. That is all I can say on the matter at this time, without knowing what the future will bring.

Senator MacDonald: Honourable senators, with all due respect, that is not quite the answer I expected. If there is an election this spring, what does the new government, whether it is the same or another, have to do with decisions made in the Senate? Why does the minister have to speak to Senator Rompkey? Can we not be given binding assurance that this will not be a four-day farce, if there is a spring election?

Senator Fairbairn: Honourable senators, as I have said, I cannot give such a binding assurance. However, I can tell my honourable friend that we have agreed to this committee in good faith. We have worked with Senator Murray. The committee is now established. We want it to go ahead. It will go ahead.

At this point in time, without knowledge of what the next days will bring, I will not give binding assurance on anything, other than to say that we have proceeded in good faith, and we will continue to proceed in good faith.

Senator MacDonald: Honourable senators, on March 20, in moving the motion, the Leader of the Government said:

> Senator Murray made his motion proposing that the house organize such an examination. The government welcomed his initiative, and discussions have taken place over the past weeks to work together in order to see if we could come to an agreement on terms of reference on how to proceed.

I am sure the minister knows that the steering committee has not come to any agreement on the terms of reference on how to proceed. They have no work plan. They have engaged no legal counsel. When they engage legal counsel, they have no idea as to what counsel's functions will be. They have no director of research and they have no research department. Yesterday afternoon, the clerk received 18 volumes of documents which no member of the committee has yet seen.

As a matter of fact, they do not know today who the first witness will be next Monday. Faxes are being sent out to possible witnesses requesting information on their availability.

I repeat the remarks of the Leader of the Government on March 20, who said:

> ... we in this chamber can assist this process through a balanced and meaningful examination of the issues placed before us.

I suggest that this committee has rendered those remarks hollow.

Senator Fairbairn: Honourable senators, I do not wish to prejudge the work of the committee. My honourable friend is expressing details to me today. He is obviously working away in the committee. I was not aware of some of that information until now. I will talk to Senator Rompkey. I continue to believe that there is a desire on the part of both sides to get on with it. It is my understanding that is what the committee is in the process of doing. I commend it for doing so. I hope it will get on with it.

I do not see how my remarks have been rendered useless or void. The committee is trying to do exactly what this house expects it to do, which is to work out its plan, the way it wishes to operate, and bring in the witnesses that are suggested, and others if necessary.

Senator MacDonald: Honourable senators, I must persist. Does the leader not realize that, by not giving us the assurance that in the event of a spring election this work will be continued in the fall, there may be a suspicion that this whole thing is a farce or, even worse, some kind of cover-up?

•(1500)

Senator Fairbairn: Honourable senators, I choose to ignore the last remarks of Senator MacDonald. They are completely untrue. There is no intention on the part of the government to make this undertaking a farce. It is the hope of the government and friends opposite that the committee will get on with the task assigned to it.

I do not really know what else I can say to Senator MacDonald other than to reiterate that, in response to what is a hypothetical situation, I am not in a position to give a binding commitment on anything. However, I can say that we have entered into this agreement in good faith and seriousness, and we would hope to see this committee begin and continue its work.

Senator MacDonald: My final question is simply this: Given the position that you took on March 20, what circumstances would cause you to change that position in the fall?

Senator Fairbairn: Part of the answer to my honourable friend's question should be obvious. I do not want to prejudge the work of the committee, and I also do not want to prejudge the voters of Canada. It is on that basis that I am not making binding commitments on anything.

We have entered into this agreement to hold the hearings of the committee and to invite witnesses, the ones mentioned and others, if necessary. That commitment stands, and I hope that all of the members of that committee will be working assiduously to that end. In fact, I know they will because it is a good committee.

HEALTH

TOBACCO DEMAND REDUCTION STRATEGY—
SUCCESS OF CAMPAIGN—GOVERNMENT POSITION

Hon. Duncan J. Jessiman: Honourable senators, we have all been inundated in recent weeks with letters, faxes, and telephone calls on the subject of advertising and sponsorship of cultural and sporting events. Bill C-71 highlights the belief of this government that advertising is effective.

In 1994, the Prime Minister undertook to fund the largest anti-smoking campaign the country had ever seen. Since that glowing promise, we have seen annual federal expenditures on the tobacco demand reduction strategy being reduced so that the entire program is on the verge of elimination.

Is it the view of the government that the campaign has been so successful that measures to enhance public awareness about the dangers of tobacco are no longer necessary?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, the short answer is "no."

TOBACCO DEMAND REDUCTION STRATEGY—USE OF ANNUAL
SURPLUS TO FILL SPONSORSHIP GAP—GOVERNMENT POSITION

Hon. Duncan J. Jessiman: I have a supplementary question. I note that the government introduced a brand new surtax on tobacco in 1994, which brings in some $60 million in revenue annually to fund the tobacco demand reduction strategy. Although the program itself saw its funding cut from $13.2 million to $8 million in the current fiscal year, will the government use this $52 million annual surplus to help fill the sponsorship gap which is being created by Bill C-71?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I will certainly transmit the senator's suggestion to my colleague the Minister of Health, who is obviously quite alert to the concern in this area, and is flexible in receiving good advice on how to address it.

HUMAN RIGHTS

FAILURE TO CO-SPONSOR RESOLUTION ON CHINA
AT UNITED NATIONS—GOVERNMENT POSITION

Hon. A. Raynell Andreychuk: Honourable senators, I would take my honourable friend back to the resolution on China that is now before the United Nations Human Rights Commission. It is clear that the Netherlands, the United Kingdom, Austria, Portugal, Luxembourg, Liechtenstein, Belgium, Ireland, Finland, Sweden, Norway, Iceland, Switzerland, the United States of America, and Denmark have all co-sponsored that resolution about China. I would also bring to the attention of my learned friend the contents of that resolution, which reaffirms every member state's responsibility and obligation to promote fundamental freedoms and human rights.

The co-sponsors of that resolution are also mindful that China is a party to various international conventions on the elimination of all forms of racial discrimination against women, against torture, against cruel, inhumane or degrading treatment, and is a signatory to the Convention on the Rights of the Child.

The wording of the resolution is also fairly balanced, acknowledging the difficulties that China has encountered in changing its society, and giving full credit to China's reform policies. It also takes into account the reports of the special rapporteurs and their comments. These are United Nations people who have made comments, quite rightly and legally within their mandate, about China.

The resolution expresses a concern at the continuing reports of violations of human rights and fundamental freedoms in China. These concerns have been made by local, provincial and national authorities within China. Those authorities have expressed concerns about the severe restrictions on the rights of citizens and their freedoms. The expression of religion has been curtailed, as has due process and the right to a fair trial. In particular, they have noted the problems encountered in attempting to improve the impartiality of the administration of the justice system.

I therefore ask the Honourable Leader of the Government in the Senate what guidelines the Government of Canada used in making the decision that Canada will not co-sponsor this resolution? Does this mean that we are not now concerned about adhering to the conventions that we have all signed? Does the Government of Canada not believe that it is duplicitous on the part of the Government of China not to allow the fair observation of these conventions by the special rapporteurs who have been assigned? These special rapporteurs work within Canada and all other countries. Under what circumstances were these guidelines developed, and on what basis will we now adhere to the conventions which we have signed?

In the area of trade, does it not give the Government of Canada some pause and some concern that, if the Government of China is not prepared to adhere to conventions and agreements and is not prepared to work towards an impartial judicial system, the trade which we have attracted in China, and indeed any future trade, will be jeopardized because of this lack of fairness, stability and freedom?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, my honourable friend has asked a very comprehensive question. I will endeavour to get her a comprehensive response on some of the particular issues about which she is concerned.

The honourable senator will know from statements that have been made in the last day that it was the conclusion of the government that this country could have a greater influence on human rights in China by intensifying its human rights dialogue. Our two countries will establish a joint committee on human rights. Canada is in the process of setting up new projects in China on the issues of legal reform, including developing a legal aid system and more training for Chinese judges.

My honourable friend, as I say, asked a series of questions for which I will try to get her a more comprehensive answer than I can give her today. However, the Government of Canada is in no way reducing its concern about the question of human rights in China. It has repeatedly expressed those concerns. It is seeking, during this year, to intensify its bilateral work with China. The decision not to follow the same path as it has in the past towards resolution will be re-evaluated over the year with a view to assessing whether sufficient progress has been made to justify the continuation of this approach or whether a change is appropriate.

•(1510)

I know this comes as an enormous disappointment to my honourable friend who has been outspoken but, at the same time thoughtful, in expressing her concerns in this chamber. Those concerns were brought to the attention of the minister, as were those of other colleagues. The decision of the government was to turn the heat up on the bilateral front in the hope that we could make a contribution that would have a marked success in our dealings with China on these issues.

Senator Andreychuk: By way of supplementary, honourable senators, it was not so long ago that the government stated that it did not want to impose our values on China and that it preferred a multilateral forum. They now seem to be taking the position that they do not care what the multilateral forum is doing and that they are more concerned about expressing jointly, with China, their opinion on human rights. It appears that we do not know what "human rights" means to us and where we are going on the issue.

The reasons the Leader of the Government in the Senate has given as to why the government has not co-sponsored does not square with what the Minister of Foreign Affairs said. He said that there was no consensus. Why would the Canadian government put more weight on the opinion of Germany, France, Greece and Spain than it would on the opinion of the Netherlands, the United Kingdom, Australia, Portugal, Luxembourg, Liechtenstein, Belgium, Ireland, Finland, Sweden, Norway, Iceland, Switzerland, the United States of America and Denmark? How can we say that we side with Germany, France, Greece and Spain in this particular case? I should like some assurance that we are not siding with some of those members for reasons other than the pure evaluation of human rights.

Senator Fairbairn: Honourable senators, I will also convey this question to the minister. I am in no way disagreeing with my colleague the Minister of Foreign Affairs. He has indicated, in some detail, the background considerations that went into the decision the government reached. With that reference noted — a weakening of the consensus — he is not doing a number count on this issue. He is taking a view on a changing situation. The relationship between Canada and China is also evolving. Having visited China recently, he is of the opinion that progress is being made between our two countries towards sharing this kind of effort and information. It is not a question of Canada's imposing any kind of will on China; it is a question of two countries discussing an issue.

As I have said many times in this chamber, the Prime Minister and other ministers have had frank discussions with China. We are now in the position of developing a much stronger bilateral relationship on the issue of human rights and the way in which institutions and methods in China can be strengthened to support human rights.

Senator Andreychuk: As a final supplementary question, honourable senators, a dialogue with leaders of countries who choose to be oppressors may be adequate to keep channels open, but at some point that dialogue must be constructive. I trust the government will set guidelines for this constructive dialogue and show some consistency. The Canadian people do not know what this quiet diplomacy and dialogue are all about. Surely our actions will speak louder than words.

Honourable senators, I hope these answers will also include the basis upon which we can co-sponsor resolutions on any other country, mindful of the fact that it appears we could co-sponsor resolutions on small countries which do not have China's clout.

Hon. Ron Ghitter: Honourable senators, what we have just heard in response to Senator Andreychuk's questions is typical: more words, more rhetoric, and no action. First, the Prime Minister comes back from China saying he had discussions on human rights and is very concerned. Then the Minister of Foreign Affairs comes back and says he talked about human rights and Canada's concerns. Immediately after that, when we feel that Canada is finally coming forward to express its leadership in this area — of which we have always been proud — we turn around and, at this first opportunity to show leadership in this area, the government abdicates and shows it has no backbone to discuss this issue.

Why does my honourable friend not merely admit that Canada is finally falling into the trap of letting economic considerations far outweigh its human rights considerations, and that the government has abdicated its position of leadership and responsibility in the world and is no longer looked upon as a country that cares?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I listened with respect to the comments of my honourable friend, knowing also his background on human rights and the concerns he has expressed over a number of years. I would assure him that Canada is not abdicating its responsibility. It is trying, in a different fashion, to renew a responsibility and to see whether this will have influence and productive results.

Honourable senators, this bilateral effort will be assessed in the year ahead as to whether progress is being made on the fronts on which we are working, and whether general human rights developments within China are indicative of progress. We will re-evaluate the decision we have taken in recent days in the light of that review.

No, honourable senators, we are not moving away from our concern on human rights.

Senator Ghitter: Honourable senators, would the Honourable Leader of the Government advise the Senate why Canada did not step forward and support the resolution? What were the negatives? Are we unaware of some negative impact to Canada in doing so? If so, would she please explain to the Senate the negatives involved in Canada's not adding its support to the resolution to which Senator Andreychuk referred?

Senator Fairbairn: Honourable senators, as I said to the Honourable Senator Andreychuk, these questions deserve a more comprehensive answer than I can give this afternoon. Therefore, I will refer these questions to my colleagues in an effort to obtain a comprehensive answer.

ABORIGINAL PEOPLES

RECOMMENDATION OF ROYAL COMMISSION ON CONSTITUTION OF FORUM—POSITION OF THE SENATE

Hon. Mira Spivak: Honourable senators, if I could move away from the subject of human rights, which was so eloquently addressed by my colleagues, I would point out that Canadian citizens of aboriginal descent have been seeking a response from the government to the report of the Royal Commission on Aboriginal Peoples.

•(1520)

On February 19 of this year, I placed a motion on the floor of this house, seconded by the Honourable Senator John Lynch-Staunton, which asked the Senate to take a position on this matter, and that the Senate appeal to the Prime Minister to convene a meeting — simply a meeting — which is what the aboriginal peoples are requesting. They are requesting a meeting to discuss the whole subject. The motion asked the Senate to appeal to the Prime Minister to convene such a meeting in order to give a clear sign of the government's intent to address the serious and pressing matters raised by the Royal Commission on Aboriginal Peoples. To date, there has been no response — and I am not speaking now of the Government of Canada. There has been no response from the leadership on the other side in the Senate on this matter.

With the imminence of an election and the possibility that, of course, all matters on the Order Paper will die, will the Senate give no indication at all of its position on this matter, on this very minimum demand — never mind its position on the recommendations of the royal commission — of the aboriginal citizens, to have a meeting convened so that these issues can be discussed?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I am very much aware of the honourable senator's concerns. I have conveyed her interest and concern to the Prime Minister's Office and I will again seek a response from them.

Senator Spivak: As honourable senators know, I am not a member of the Aboriginal Affairs Committee. I put this resolution forward following a request from some of the people in the leadership of the native organizations. As we all know, Manitoba has a large aboriginal population. I am in a quandary as to what to tell them. Can I tell them that the Senate would like to a take a position on this matter? I am speaking now of the Senate and not necessarily of what the government would like to do. What is the honourable senator's advice as the Leader of the Government in the Senate as to what I should tell those people?

Senator Fairbairn: Honourable senators, first, I should like to follow up the initial request for information. Then I will convey that to the honourable senator.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

YORK FACTORY IMPLEMENTATION AGREEMENT AND NELSON HOUSE IMPLEMENTATION AGREEMENT— STATUS OF LEGISLATION—REQUEST FOR ANSWER

Hon. Janis Johnson: Honourable senators, part of my question has been raised by Senator Spivak. As she pointed out, since we represent Manitoba, these questions are asked of us quite often. I look forward to the Leader of the Government's reply.

I also want to follow up on my March 13 question, a day on which a number of questions were asked concerning aboriginal peoples. On that day, I asked whether or not Bill C-39 and Bill C-40, dealing with settlements of matters arising from agreements relating to the flooding of land in Manitoba, will be coming before the Senate soon for passage.

The Leader of the Government indicated that she would make inquiries of the minister and get back to me. To date, I have had no reply. I am on the Aboriginal Affairs Committee, and we have not had a status report either. I am wondering if this matter was raised with the Minister of Indian Affairs and, if so, what his response was. Does the Leader of the Government have a response for the Senate?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, we have been trying to get clarity in a number of areas on how quickly we can expect movement on some of this legislation. I do not have an answer yet, but I shall try again.

DELAYED ANSWER TO ORAL QUESTIONS

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I have a response to questions raised in the Senate on March 11 and March 12, 1997, by the Honourable Senator Stratton regarding Human Resources Development, the level of unemployment and a comparison with other industrialized countries.

HUMAN RESOURCES DEVELOPMENT

LEVEL OF UNEMPLOYMENT—COMPARISON WITH OTHER INDUSTRIALIZED COUNTRIES

(Response to questions raised by Hon. Terry Stratton on March 11 and March 12, 1997)

Canada — U.S. Difference

A large part of the current difference in unemployment rates between Canada and the U.S. is because the Canadian economy experienced a more severe downturn in 1990-1991 and has not been growing as fast as the U.S. economy throughout the recovery.

This has meant that the Canadian unemployment rate rose more during the recession than it did in the United States, and has fallen less over the recovery.

But institutional and structural factors are also key to explaining the Canada-U.S. unemployment rate gap:

— For example, Canada's unemployment insurance system has been more generous than the equivalent system in the U.S., creating more incentives to be in the labour force in order to qualify for benefits and less incentives to leave unemployment.

— This has resulted in the U.S. labour market being more flexible than in Canada. And given the growth experienced over the past several years, this has allowed the unemployment rate in the U.S. to fall more than in Canada. But this flexibility has a cost — many analysts attribute greater income inequality in the U.S. than in Canada to it.

— Canada is also more dependent on seasonal and cyclically-sensitive industries, which has resulted in relatively temporary layoffs and unemployment in Canada.

— Past reforms of the unemployment system have focused on tightening entrance requirements and reducing duration of benefits, but employment insurance did not take that approach.

— Employment insurance is about addressing structural unemployment and providing people with assistance they need to get back to work quickly:

— the reinvestment of $800 million in active measures will address structural, long-term unemployment;

— the $300 million Transitional Jobs Fund will help create lasting jobs in high unemployment areas; and

— the hours-based system will enable many people to qualify for benefits for the first time.

Finally, research has shown that Canadians who are not working are more likely to be classified as "unemployed" than Americans, due to measurement differences.

— In Canada, a person that is not working can just look at help-wanted ads to be classified as "unemployed".

In the U.S., this is not sufficient to be classified as unemployed.

Canada — United Kingdom Difference

Standardized measures of unemployment by the OECD show that the unemployment rate in the United Kingdom was 8.2 per cent in 1996 as compared to 9.7 per cent in Canada.

To some extent this reflects that the United Kingdom experienced more robust growth than did Canada in 1996.

The difference is also partly due to the much more generous unemployment benefits in Canada than in the United Kingdom.

PRIVATE BILL

AN ACT TO INCORPORATE THE BISHOP OF THE ARCTIC OF THE CHURCH OF ENGLAND IN CANADA—BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-15, to amend an Act to incorporate the Bishop of the Arctic of the Church of England in Canada, and acquainting the Senate that they had passed the bill without amendment.

BANKRUPTCY AND INSOLVENCY ACT COMPANIES' CREDITORS ARRANGEMENT ACT INCOME TAX ACT

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill C-5, to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Income Tax Act, and acquainting the Senate that they had agreed to the amendments made by the Senate to this bill without further amendment.

ORDERS OF THE DAY

CANADA LABOUR CODE CORPORATIONS AND LABOUR UNIONS RETURNS ACT

BILL TO AMEND—SECOND READING

Hon. Shirley Maheu moved the second reading of Bill C-66, to amend the Canada Labour Code (Part I) and the Corporations and Labour Unions Returns Act and to make consequential amendments to other Acts.

She said: Honourable senators, today I rise to speak in favour of Bill C-66, a bill that will amend Part I of the Canada Labour Code.

[*Translation*]

This bill will modernize the labour relations portion of the Canada Labour Code. "Modernize" is not too strong a word, for, after all, the last time the government made any extensive modifications to that part of the code was as far back as 1970. There have been a good many changes in the working world since then.

[*English*]

With these amendments, the government is being proactive, putting in place new structures that will help parties involved in labour disputes to settle their differences in a less controversial fashion than has been the norm. The end result will be an environment in which both labour and management will have the ability to resolve their differences quickly and with a minimum of disruptions. I do not need to tell honourable senators that such positive labour relations will benefit both workers and employers, helping them to survive and thrive in an increasingly competitive world economy.

The fact that this bill will benefit both groups is no doubt one of the reasons why business leaders and trade union representatives accomplished so much in the work that went into Bill C-66. Indeed, this legislation is an example of government's commitment to consultation and partnership.

•(1530)

The ideas incorporated in Bill C-66 did not come down from some government office. They came up from the grass roots of the country, communicated through an extensive consultation process. These consultations included a task force of labour relations experts, a working group of management and labour organizations, and a series of meetings involving the Minister of Labour and representatives of labour, management, and other interested parties.

[*Translation*]

The task force was headed by Andrew Sims, an Edmonton lawyer specializing in labour matters, arbitration and dispute resolution in particular. There were also two other experts in the field, Paula Knopf, a Toronto arbitrator and mediator, and Rodrigue Blouin, a Quebec City labour arbitrator and professor at Laval University.

[*English*]

The task force considered numerous written submissions and met with labour and management delegations and with members of the academic and legal communities during hearings held throughout the country.

[*Translation*]

It was also in favour of striking a task force composed of management and labour organizations whose membership was governed by the Canada Labour Code, with a view to discussing various issues and reaching consensus. It is encouraging to note that, despite longstanding rivalries, these two groups were able to reach agreement on a number of points.

[*English*]

When the task force submitted its report entitled "Seeking a Balance," it reflected the consensus reached by that labour management working group in a number of very important areas.

[*Translation*]

Honourable senators, I would draw your attention to the fact that both labour and management have acknowledged the overall balance in the task force's recommendations.

[*English*]

At the same time, both management and labour groups have praised the consultation process that the minister personally undertook before introducing this bill. They have also expressed satisfaction with the fact that the Minister of Labour has reacted positively to the different agreements reached between labour and management as a result of the consultation process.

Finally, Canadians were able to express themselves on this issue during the consideration of this legislation in the House of Commons. In response to issues raised during the work of the Standing Committee on Human Resources Development, changes have been made to improve the bill.

[*Translation*]

Much of Bill C-66 reflects the consensus reached by labour and management referred to in the Sims report. The bill will modernize the Code in various ways. Some of its innovations are as follows.

[*English*]

The new representational Canada Industrial Relations Board is composed of a neutral chairperson and co-chairpersons, and neutral numbers of members representing both employers and employees. This board will replace the current non-representational Canadian Labour Relations Board. The new board will be given greater flexibility to deal quickly with routine or urgent matters.

[*Translation*]

The powers of the board are broadened and clarified, in order to allow it to definitively settle complex industrial relations issues such as those relating to reviewing the structure of negotiating units or the sale of companies, and to provide appropriate recourse in the event of unethical behaviour, such as the failure to negotiate in good faith. The neutrality of the federal mediation and conciliation service, a key component of the Human Resources Development Canada Labour Program, will be reinforced, its role being defined in the legislation. New powers can be delegated to the director who will, moreover, report directly to the Minister of Labour.

Some of the changes focus on the fact that conflict resolution and prevention programs are an essential component of Canada's collective negotiating policy.

[*English*]

Other changes to be made to the code include the replacement of the current two-stage conciliation process by a single stage with a choice of procedures to take no more than 60 days.

The right to strike or lock-out will be subject to the holding of a secret ballot vote within the previous 60 days and the giving of a 72-hour advance notice. Parties involved in a work stoppage will be required to maintain activities necessary to protect public health and safety.

[*Translation*]

Two of the proposed changes have attracted more attention. The first relates to grain shipment services: in fact, Bill C-66 stipulates that these services must be maintained if legal work stoppages in ports are initiated by third parties.

[*English*]

To be specific, with respect to longshoring and other port activities, the legislation would require that, in the event of work stoppages, parties continue providing services to ensure the loading of grain vessels at dockside and their movement in and out of port.

While grain handlers and their employers will retain the right to strike and lock-out, in the event of a work stoppage involving other parties in port-related activities, for example, longshoring, services affecting grain shipments must be maintained.

[*Translation*]

Honourable senators, this represents a major change that will benefit Canadians. Grain shipment brings in several billion dollars, as Canada exports grain to more than 70 countries. The livelihood of over 135,000 people, primarily western families — not to mention all the other Canadians working in related industries — depends on our reputation for reliability as a grain supplier and exporter. We cannot allow this industry to be at the mercy of repeated work stoppages by third parties.

[*English*]

When a work stoppage involving employees in longshoring or other dockside operations hampers the export of grain, the introduction of special labour legislation has become the standard course of action. This has effectively removed the incentive for the parties to resolve their own disputes.

[*Translation*]

It also goes against sound labour relations practices. Everyone knows that the best collective bargaining arrangement is the one that allows the parties to assume the greatest responsibility in negotiations. The amendments proposed in Bill C-66 will help the parties resolve their differences in good faith.

The second change that caused considerable interest is the provision on replacement workers. The bill does not contain any general prohibition on the use of this class of worker.

However, if replacement workers are used to undermine the union's representational capacity, the new board may declare that their use constitutes an unfair labour practice and order the employer to stop using them for the remainder of the dispute.

[*English*]

Both labour and management organizations have criticized this provision. Unions do not think it is strong enough, while employers are dissatisfied with the Canada Industrial Relations Board's new power.

I would say to both groups that this change strikes an appropriate balance between the expectations of the two camps. I believe that it is an honourable compromise, one that will make the most tangible contribution towards improving labour relations in cases where replacement workers might be used.

Honourable senators, Bill C-66 contains a number of other amendments which time, unfortunately, will not allow me to explore.

[*Translation*]

I will simply say that these amendments, just like the ones I mentioned earlier, have a single objective: to create within Canada an environment that promotes greater cooperation in negotiations and benefits both employers and employees.

[*English*]

Enhanced cooperation will lead to improved productivity, better job security and increased worker participation in workplace decisions, and that is good for all Canadians.

[*Translation*]

Hon. Michel Cogger: Honourable senators, I listened with interest to our colleague's comments on Bill C-66. There was much in her comments I could agree with, but, although she did so in good faith, she gave the government's position and at times failed to shed sufficient light on some of the provisions of this bill.

Bill C-66 which is before us today is a very important piece of legislation. To all intents and purposes, it regulates the lives and work of about 750,000 Canadians who either work directly for the federal government or for federally regulated companies in the banking, telecommunications and transportation sectors, for instance.

If only for the number of citizens it affects, this bill is very important, especially since Bill C-66 is just as important as the Canada Labour Code. This kind of legislation is not amended very often.

In fact, Bill C-66 is probably the first major review of the rules that have regulated the work place for the past 25 years.

[*English*]

The whole object of the bill, of course, is important because it affects the delicate relationship between management and workers. It affects the delicate equilibrium that ought to be maintained at all times between the investors, the bosses, the risk takers and the job creators on the one hand, and the workers — the people who bring their life's efforts to the service of the enterprise — on the other. Therefore, we must seek just and fair remuneration, working conditions and social benefits that create a milieu that is fair, just and rewarding for the worker.

[*Translation*]

I assume the bill will be considered in committee. Senator Maheu raised a number of points that are indeed to the credit of this bill, in that they correct aspects of the present system that are either obsolete or considered to be wrong.

This afternoon I simply want to draw the attention of honourable senators to three specific points that I think require further clarification. If we are going to amend the Canada Labour Code once every 25 years, I think we should take the time to do it carefully.

First, as Senator Maheu pointed out, there is the whole issue of replacement workers, referred to in the not so elegant French of my own province as "les lois anti-scabs," in other words, the total ban on using temporary workers.

The provisions mentioned by Senator Maheu do not satisfy anyone, but just the same, the committee will have to look into this.

In the bill, the minister ignored the recommendation of his own task force. The Sims task force to which Senator Maheu referred included in its recommendations a proposal for regulating the use of replacement workers. However, the minister decided to further qualify or dilute this recommendation in the bill. So much so that, according to a number of experts, there is nothing left of the original proposal.

The committee will have to consider or ask the minister why he decided not to follow up on the recommendation of the task force he himself appointed.

That is one point the committee should examine. Another point, which is equally important, would seem to create a dangerous precedent. From now on, under this legislation, the employer may be obliged to disclose to the union personal information on off-site workers.

Twenty-five years ago, when the previous system was established, this was not a very relevant factor because it was a rarity. In recent years, it would seem the numbers are increasing, especially in the federal public service, so it is no longer a minor issue. In fact, it seems that an increasing proportion of workers will be working at home, what is referred to in English as "off-site workers."

[*English*]

Under this new regime, the employer would be forced to give the union a list of all the employees with their addresses and phone numbers. This is new. This ought to be examined very carefully because I suspect that it may constitute a serious breach of the privacy of Canadian workers. Without casting aspersions, I suspect that citizens who work at home might be wary of enthusiastic union recruiters having their home phone numbers and addresses, legitimately obtained under the provisions of Bill C-66. Perhaps we ought to ask the Privacy Commissioner of Canada what he thinks about these new provisions. That is the second point which I think we must seriously examine.

A third point, which is very interesting, is that under the bill, for the first time ever, unions would no longer be forced to disclose their financial affairs to Statistics Canada. I wonder why, and I will ask the minister that question.

•(1550)

In 1992, the last year for which data is available, unions across this country collected more than $1 billion in union dues, tax free. They administered more than $4 billion worth of assets, the income on which is tax free. They had a reserve of strike funds totalling well over $1.5 billion. That is a great deal of money taken from the pockets of Canadian workers under the rules which we put into place. That money is handled tax free under the rules we have set for ourselves.

If the federal government has the power to set the rules and the power to forego the tax on the income and so on, I do not see why the federal government should, at the same time, forego any knowledge of the very existence of those vast sums of money. I am not suggesting that they should impose a tax or anything of the sort. I simply think that it is in the interests of the community to know how much money we are talking about at all times in these various activities.

That is another point which I think, with all due respect to Senator Maheu, we must seriously examine. I look forward to working jointly with colleagues, including Senator Maheu, when the committee chooses to sit. I suspect, having heard the motion an hour ago by Senator Stewart, that we do not have too much time before an election is called. Let us get on with it.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Landon Pearson moved the second reading of Bill C-27, to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation).

She said: Honourable senators, it is with great pleasure that I rise today to speak to Bill C-27, an act to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment, and female genital mutilation). I have been awaiting this opportunity since attending the first World Congress against the commercial sexual exploitation of children, which was in Stockholm last August, where I was able to say, with pride that legislation had already been introduced into the Parliament of Canada to address some of the grave issues that were being raised.

Bill C-27 has taken longer to reach the Senate than I would have liked. However, it has been amended along the way so that even more children will be protected than would have been the case with the original bill. I am delighted with that.

As was stated in the Speech from the Throne in February 1996, this government, in fulfilment of its obligations under the UN Convention on the Rights of the Child, which Canada ratified in December 1991, has made children's rights a priority both nationally and internationally. This means, among other things, that we are firmly committed to the better protection of children against unhealthy and unlawful sexual practices and against all forms of sexual abuse and exploitation, whether those children are Canadians at home or abroad, or children in other countries.

Bill C-27 aims to protect children in a number of ways. The first component of the bill is directed at diminishing child prostitution in Canada, a problem of tragic proportions. Since 1995, there have been broad federal-provincial-territorial consultations on prostitution which have clearly indicated the urgency of finding some solution to the situation of young girls and boys who are involved in prostitution. These consultations revealed substantial problems with the effective enforcement of the criminal law provisions in this area.

The clauses in Bill C-27 addressing these concerns should have a major deterrent effect on adult predators who seek children for sexual services. If customers recognize that buying sex from a child is child sexual abuse and punishable as such, they are much more likely to desist. If not, Bill C-27 will ensure that they will be pursued and convicted. The bill will also allow for severe sentences to be imposed on pimps and others who exploit young prostitutes for economic gain.

The national consultations on prostitution indicated strong support for an amendment to subsection 212(4) of the Criminal Code in order to make this provision easier to enforce. This is the provision that makes it a criminal offence for customers to try to obtain the sexual services of a child, a person, as defined by the UN Convention, under the age of 18.

The current wording of this provision does not allow for easy or effective police enforcement because the child must agree to testify as to his or her age in court, or there must be some other reliable evidence as to the child's age. Many young people are not at all amenable to providing the required evidence of their age. In addition, undercover police officers cannot play the role of decoy to catch customers who would purchase sex from children because the provision, as currently drafted, requires that the attempt to purchase sex be directed at a person who is effectively under the age of 18.

The new wording proposed by Bill C-27 with respect to subsection 212(4) makes reference to a person the offender believes is under the age of 18. To facilitate proof of this belief, a new subsection 212(5) provides an evidentiary presumption. These two subsections will be a great help in making the child prostitution provision more enforceable by allowing a police decoy or undercover officer to present himself or herself to the prospective customer as being less than 18 years old.

Bill C-27 also deals a blow to pimps who, for their own profit and while living off the avails of young prostitutes, use violence and intimidation against these children in the course of their prostitution-related activities. Canadians deplore this kind of behaviour and have indicated they would like to see these particular offenders receive stiffer sentences, sentences proportionate to the gravity of such a gross abuse of power involving children. In response, Bill C-27 creates the new offence of "aggravated procuring". The offence carries a mandatory minimum sentence of five years imprisonment. I believe that removing judicial or administrative discretion in this area and imposing this five-year minimum sentence is more than justified by the dehumanizing character of this crime, by the public's revulsion with respect to such conduct, and by the importance of protecting vulnerable young people.

On another note, it is important to realize how traumatic it can be for a young person to have to testify in a courtroom concerning prostitution-related activities. Children involved in prostitution are often fearful of testifying, expecting reprisals from their procurers. That is why Bill C-27 offers several special protections to ease the burden of children testifying in these cases, as well as in cases involving child pornography or assault. These protections include testifying from behind a screen or outside the courtroom via closed-circuit television, using video-taped evidence, and ordering a ban restricting the publication or broadcast of the identity of a complainant or witness in this type of case.

Bill C-27 deals with another important issue directly related to the involvement of children in prostitution, one that is international in scope. I refer here to child sex tourism. The congress in Stockholm clearly indicated the heightened concern and outrage in the international community regarding citizens and permanent residents from developed countries who travel abroad with the specific intention of engaging in sex with children in the countries of the developing world. A strong commitment at the national level to deal with this problem and collaboration at the international level are absolutely essential to deal effectively with the scourge of child sexual exploitation.

•(1600)

When it was introduced in the other place, Bill C-27 proposed to amend the Criminal Code to allow the criminal prosecution in Canada of Canadian citizens and permanent residents who travel abroad in order to engage in the sexual exploitation of children for money or any other form of consideration. As a result of committee hearings, however, the scope of the bill before us was broadened to include not only commercial child-sex tourism, which involves a payment in money or other consideration, but also other instances of sexual abuse committed abroad against either Canadian or foreign children even when no money or consideration is involved.

Two preconditions would apply before prosecution can be initiated in Canada with respect to instances of child sexual abuse, other than child-sex tourism allegedly committed on foreign soil. First, the appropriate authorities of the foreign state where the alleged offence took place would have to make a formal request that Canada prosecute the suspected offender. Second, the responsible provincial attorney general would have to agree to go ahead with the prosecution.

The reason for these preconditions is that, while child-sex tourism is the object of a clearly stated international consensus that allows a country to prosecute such cases when they are committed abroad, there is no such consensus on the non-commercial aspects of child sexual exploitation. These two preconditions will allow Canada to be in compliance with current principles governing extra-territorial jurisdiction. It will also ensure a commitment from the foreign state to support the Canadian prosecution of these offences.

Honourable senators, a third component of the bill, designed to protect the vulnerable, concerns criminal harassment, commonly referred to as stalking. Bill C-27 proposes two reforms to provide extra protection for women and their children, who are the most frequent victims of this type of behaviour. The first reform is an amendment to the Criminal Code stating that where a person commits murder in the course of stalking in circumstances where the offender intended to make the victim fear for his or her life or safety or that of other persons, such as his or her child, then the offender can be convicted of murder in the first degree with the mandatory sentence of life imprisonment. The second reform in the area of stalking is that when an offender commits the offence of criminal harassment while under an existing protective court order, then the court shall treat such breach of court order as an aggravating factor to be considered in sentencing.

The fourth component of Bill C-27 deals with the practice of female genital mutilation, also referred to as FGM. This practice may cause severe and often irreversible health problems and is known to contribute to natural morbidity as well as mobidity of the most humiliating nature. It has therefore been declared a violation of human rights by the Fourth World Conference on Women in Beijing in 1996. Little girls are particularly vulnerable to being subjected to FGM. They need and deserve as complete a protection as possible against this practice.

While FGM is already covered by the Criminal Code's aggravated assault provisions, Bill C-27 proposes to clarify the prohibition of this practice by clearly stating that no form of FGM is permissible in Canada and that this conduct is considered an offence under Canadian criminal law. The wording of Bill C-27 leaves no doubt that no one can consent to such a procedure as it results in bodily harm. The Departments of Justice, Health Canada, the Status of Women, Canadian Heritage, and Citizenship and Immigration Canada are currently collaborating on the development of public, legal, health and cultural information materials on FGM, and this reform will facilitate these efforts.

Honourable senators, Bill C-27 is a bill to protect those who are most vulnerable in our society from the aberrations of human sexual behaviour. It addresses several issues where women and children, boys and girls alike are particularly at risk — issues related to juvenile prostitution, child-sex tourism, child sexual abuse abroad, female genital mutilation and criminal harassment. It is our obligation as legislators to do everything we possibly can to deal with these problems of violence and exploitation.

I am convinced, honourable senators, that Bill C-27 will help us deal with these issues. It demonstrates Canada's international commitment to collaborate with the rest of the world in adopting measures to put a stop to the brutal practice of sexually exploiting children, and it provides better protections for women, young persons and children in Canada against instances of abuse and degradation. I urge all senators to support it.

On motion of Senator DeWare, for Senator Andreychuk, debate adjourned.

CRIMINAL LAW IMPROVEMENT BILL, 1996

SECOND READING—DEBATE ADJOURNED

Hon. Lorna Milne, for Hon. Wilfred P. Moore, moved the second reading of Bill C-17, to amend the Criminal Code and certain other Acts.

She said: Honourable senators, I am pleased to speak on the motion to read Bill C-17 a second time. This bill, which is to be known as the Criminal Law Improvement Act, 1997, is primarily directed at amending and improving the Criminal Code. It makes several changes to related statutes, including the Canada Evidence Act, the National Defence Act and the Supreme Court Act.

This is an important bill with over 140 amendments to the criminal law. Many of these amendments are procedural or technical in nature. Some of them make more substantive changes to the criminal law, but all the amendments taken together will significantly streamline and modernize court proceedings, thus allowing us to maintain the high standards that Canadians expect of the criminal justice system.

Honourable senators, there are several sources behind the development of this bill. A fair proportion of the amendments originated with the Uniform Law Conference of Canada. The criminal law section of that conference is made up of delegates from provincial, territorial and federal jurisdictions. The delegates are a cross-section of defence lawyers, Crown attorneys and senior officials in justice ministries who come together to pinpoint particular problems in the law and to propose solutions to those problems.

Other amendments were suggested by various private and public organizations, such as the Canadian Bankers Association, the Federation of Canadian Municipalities, the Insurance Bureau of Canada, the Canadian Bar Association and the Criminal Lawyers Association. Various judges, members of the bar, federal and provincial departments and officials also should be acknowledged as contributors.

Some amendments are consequential to and build on the amendments made in Bill C-42, the Criminal Law Amendment Act, 1994. Bill C-42 has been in force for approximately two years, and experience with the changes that bill made has highlighted some areas where additional change would increase its benefits. For example, Bill C-42 allowed police officers to release arrested persons on certain conditions, in appropriate circumstances, without having to obtain a release from a judge. Experience with those sections has shown that if the police could also impose conditions restricting the use of weapons, alcohol and drugs, the Bill C-42 amendments could be used even more effectively. Bill C-17 proposes these kinds of improvements.

I should make it clear, honourable senators, that the purpose of this bill is not to fundamentally restructure or revamp our criminal justice system. However, the bill contains over 140 amendments that will significantly improve the ability of courts to handle their heavy caseload. The principal objectives of this bill are to streamline court procedures; take advantage of advances in computer, communications and video technology; and improve court proceedings, thereby ensuring greater fairness to participants in the process.

•(1610)

Bill C-17 achieves these objectives by making Criminal Code provisions more efficient and effective; adding new provisions or amendments to bring technology into the law; codifying or amending the law in light of recent court decisions; and filling perceived gaps in the Criminal Code.

The amendments in Bill C-17 will result in a more modern, more up-to-date and more workable system. By easing the ever-increasing burden on our courts and our law enforcement agencies, we will protect the capacity of our system to be fundamentally fair to all those who participate in the system.

Why is streamlining and modernizing our justice system so important right now? Over the past 10 years, the resources of the criminal justice system have been stretched increasingly thinner. One reason for this is that the system is being asked to deal with offences that, until recently, have been ignored or gone unreported.

The areas of sexual assault and domestic violence are good examples. These kinds of cases are now regularly dealt with by the courts whereas ten years ago they were not. While we are not dealing with increased crime in absolute terms, we are dealing with more cases going through the courts.

Another reason for the stretching of criminal justice resources is that, especially in the last 15 years, doing business in the courts takes more time and costs more money.

Senator Cools: Why is that?

Senator Milne: I did not coach Senator Cools, honourable senators, but I thank her for the question.

The Canadian Charter of Rights and Freedoms was enacted in 1982 to guarantee fundamental rights and freedoms for Canadians, but protecting these rights has added to the complexity and time requirements of criminal trials. Detailed judicial scrutiny of the way police obtained search warrants, gathered evidence and dealt with accused persons is now commonplace in our courts.

Our court system, however, was designed well before the complexities of Charter litigation were envisaged. The time has come to make the system adapt to the modern realities of criminal law.

A further compelling reason to improve criminal procedure is that this is an era of fiscal restraint. The system is being asked to do more without new resources and, in some cases, with fewer resources. It is crucial that scarce money and time be allocated wisely, and that we eliminate procedures that are no longer useful. Only then can the existing resources cover the increased volume and complexity of cases.

With this bill, the federal government will be taking some important measures to improve how criminal justice is meted out in this country. Provincial and territorial governments expect the federal government to ensure that the effective administration of justice is not frustrated by unnecessary procedures that impose unnecessary costs. In turn, these governments, who are responsible for the administration of justice, must prudently and fairly consider resources for this purpose.

I will give some examples from the bill to illustrate how the amendments will improve the administration of justice. As I have mentioned, one of the primary objectives of Bill C-17 is to streamline court procedure by eliminating unnecessary technical requirements and by reducing courtroom time. A number of the amendments in the bill will eliminate some of the unnecessary procedures, such as court appearances by police or experts where there is no need for personal appearance.

For example, presently, the Criminal Code, in some related statutes, allows the certificates of certain designated experts to be entered into evidence without requiring those experts to appear in court. Forensic scientists are often very useful to the prosecution of offences; however, forensic scientists do not fall within the scope of experts who can be designated. Currently, all such scientists must appear in court to give evidence in person. A new provision in clause 80 of Bill C-17 will allow the evidence of a broader range of experts to be entered by a report accompanied by an affidavit or solemn declaration, provided the conditions of that provision are met.

Another simple amendment will ease the burden of a task in which police must engage frequently — the task of serving notices or documents on an accused person or witness. As it stands now, a peace officer who gave notice or served a document must seek out a commissioner of oaths or, even more time-consuming, appear as a witness in court to testify to that routine procedure.

In clause 2, Bill C-17 simplifies the way in which a peace officer can prove service of a notice or document. It provides that a statement in writing to that effect will suffice. I should mention here that Quebec has estimated that this simple change alone can save up to $500,000 per year.

Yet another example is found in the amendments proposed to sections 620 to 622 of the Criminal Code. Clauses 70 through 72 will remove some of the technical difficulties of prosecuting corporations under those sections by providing for broader discretionary rules for the service of charging documents on corporations and for appearance by corporations to enter a plea.

A number of amendments facilitate the out-of-court resolution of cases. This is consistent with the general trend in the legal field to find alternatives to expensive litigation.

We all recognize not only that it is less costly to resolve issues out of court, but that there are also real benefits to parties to agree on issues in a less formal context. Bill C-17 will ensure that the criminal justice system also takes advantage of this trend toward alternatives to litigation.

In 1985, Parliament made it possible for parties in the criminal process to get together informally in a pre-hearing conference by enacting what is now section 625.1 of the Criminal Code. For cases heard before a jury, section 625.1(2) made pre-hearing conferences mandatory.

Pre-hearing conferences have many clearly recognized benefits for the administration of justice. For example, many preliminary and procedural matters can be dealt with before the trial begins. The trial will be shorter and more focused. Pre-hearing conferences create a process for the early sharing of information, reducing problems with disclosure as well as the amount of time required for pre-trial preparation. Bringing the parties together before the trial can also result in a resolution of the issue, for example, by encouraging the possibility of a guilty plea that may eliminate the need for a trial entirely.

The current provisions do not work as well as they might. As section 625.1 stands right now where the conference is non-mandatory, one of the parties can refuse to attend. Clause 73 of Bill C-17 removes this procedural impediment to pre-hearing conferences. It ensures that, if either the prosecutor or the defence lawyer requests a conference, or if the court thinks one is necessary, a pre-hearing conference will be held.

Another proposal in Bill C-17 — clause 78 — gives explicit authority to a judge to confer with the prosecution and defence on matters that should be explained to the jury. Judges' instructions to the jury are tricky. They are a technical matter that gives rise to a significant proportion of the appeals in our courts of appeal. There is nothing to prevent judges from conferring with counsel now, but it is not common practice. Yet, if judges were to engage in the simple act of asking both counsel how they think the facts and the law should be explained to the jury, that would have tremendous benefits. Not only would it reduce the number of objections in court to the judge's instructions to the jury, but it would also reduce the number and success of appeals after trial.

A significant number of the amendments in Bill C-17 relate to modern technology by either taking advantage of the improvements that modern technology offers to the administration of justice or by responding to the new kinds of crime that have arisen since the advent of computers and credit cards.

In fact, the improvements that modern technology will bring to the efficient administration of justice is one of the most important aspects of this bill. In 1994, with Bill C-42, Parliament made it possible for some procedures to be facilitated by the use of modern telecommunications equipment. In Bill C-17, we continue this trend.

For example, a number of clauses will permit more court proceedings to be carried out using video-conferencing technology. This is particularly beneficial where the accused is confined to prison.

•(1620)

Transporting prisoners to and from the courthouse for frequent pre-trial proceedings is not only an onerous burden on the resources system, it also increases the opportunities for escape. As a consequence of this bill, bail hearings and non-testimonial portions of preliminary inquiries and trials could be conducted using closed-circuit television between the place of confinement of the accused and the court.

Another set of amendments will remove a significant and unnecessary technical barrier to police efficiency by providing that more warrants can be obtained by using a fax machine or telephone where circumstances require it, instead of having to appear in person before a justice or judge. The less time our police officers need to spend in routine procedures in the courthouse, the more time they will have out on the street enforcing the law and protecting the safety of Canadians.

I have been speaking of modern technology, and the irony is that while we can take advantage of technology to make the justice system more efficient, criminals are also taking advantage of technology to commit new and ingenious crimes. Credit card fraud, as well as telephone and other telecommunications fraud, is proliferating across North America, and many Canadians have been victimized. It is important that the criminal law stay on top of emerging criminal trends and that our police officers have the tools to go where the criminals go.

In clauses 16 and 17, this bill will broaden the nature and number of offences in the Criminal Code relating to the theft of credit cards, fraudulent use of credit cards or credit card information, and the forgery of credit cards. Clauses 18 and 19 will criminalize more computer-related fraudulent or offensive conduct, such as using, possessing and trafficking in computer passwords. Finally, clause 41 will provide specific procedures when a warrant is obtained to search for information stored on, or available to, a computer system.

The last of the principal objectives of this bill that I referred to earlier is improved procedure, and the effect that will have in terms of greater fairness for participants in the system. It is important to emphasize that all changes that reduce the number and duration of procedures will benefit not only those who administer criminal justice, such as our police and our judges, but also jurors, witnesses and, especially, victims.

In addition, we must be able to get to trial within a reasonable time in order to adhere to the requirements of the Charter of Rights and Freedoms.

This bill makes several significant changes to the part of the Criminal Code that deals with search and seizure. This area of the law has become increasingly tricky since the advent of the Charter. The Charter guarantees every one the right to be secure against unreasonable search and seizure. In recent years, the courts have been engaged in detailed scrutiny of the actions of law enforcement officers in the investigation of offences. Often, a conviction or acquittal will depend on whether or not the police obtained the evidence in accordance with Charter requirements. A number of amendments will clarify the law and codify what the courts have said about search and seizure.

Some other amendments will add to the kinds of warrants that can be obtained. Finally, several amendments will reduce the administrative burden on law enforcement authorities in relation to property that was seized under a warrant or other statutory or legal authority. A justice will also have the authority to permit the sale or destruction of perishables or other things that can depreciate rapidly. All of these changes will eliminate procedural and technical complications in the law and permit law enforcement to act with greater efficiency and fairness.

There are some amendments in this bill that will change the way in which certain offences are prosecuted, in light of our experience with these offences and how the courts deal with them. Unlawful confinement, break and enter of a non-dwelling house, unlawfully being in a dwelling house, forgery and uttering a forged document are offences that currently can only be prosecuted on indictment. A great many of these offences actually result in sentences that are well within the summary conviction range — six months for most of them — yet the maximum punishment for these offences is 10 years or 14 years. This kind of disparity between statutory sanction and actual sentences handed down does not reflect well on the vitality and modernity of our law.

Moreover, indictable proceedings are more time-consuming and expensive. It can be difficult for the Crown to prosecute these offences with any semblance of effectiveness or efficiency, so it makes sense to give the Crown the choice of proceeding by indictment for the more serious cases or by summary conviction for the less serious cases. The Crown will be able to select a procedure more in line with a likely sanction. More cases will be kept in the provincial courts and court congestion in the superior courts will be relieved. The time needed to deal with these cases should be reduced and, perhaps equally important, witnesses, particularly victims, will only have to testify one time.

I have already referred to amendments that will allow for more pre-trial conferences, which should reduce the number and duration of criminal trials. These amendments will also have the important effect of reducing the burden on participants in trials, such as witnesses and jurors. Jurors, for example, are asked to sit through often lengthy trials and are required to resolve difficult and complicated matters of fact and law. The amendments will allow for greater simplicity in matters that do go to trial so the jury can focus on the critical issue of guilt or innocence.

I have also mentioned clause 78, which will allow judges to confer with the prosecutor and defence counsel for their views on the instructions that should go to the jury. For jurors, this should result in some simplification in the facts and the law they are asked to consider.

Another amendment would directly protect the interests of jurors and reduce the inconvenience of jury duty. Currently, if during a trial a juror becomes indisposed or for some other reason becomes unable to act as a juror, the Criminal Code provides that the trial can continue provided that the number of jurors does not fall below 10. However, if the number does go below 10, the trial will have to be stopped, the jury will be dismissed and their time will have been wasted. Bill C-17 will help to prevent this from happening by allowing jurors who are unable to continue to be replaced, so long as a jury has not yet begun to hear evidence.

Another amendment would apply to juries considering an application for a reduction in the parole ineligibility period of an offender who has been convicted of high treason, first degree murder or second degree murder, where the ineligibility period is set at more than 15 years. The amendment would clarify that the victim impact information is to be considered by juries immediately in all hearings that are held after Bill C-17 comes into force.

The conditional sentence is a new sentencing option that came into force on September 3, 1996. The conditional sentence is intended as an alternative to those who might otherwise receive prison terms of less than two years, who do not pose a danger to the community, and for whom serving the sentence in the community under conditions would be appropriate, having regard to the purpose and principles of sentencing.

Honourable senators, in the little over seven months that the conditional sentence option has been available, courts have taken somewhat different approaches to determining the appropriateness of conditional sentences. In the face of these conflicting approaches, this amendment is designed to clarify what was always Parliament's intention, that is, that the purpose and principles of sentencing have to be considered not just in setting the quantum of the sentence but in determining the appropriateness of imposing a conditional sentence in all the circumstances of the case before the court. In other words, respect for the law and the maintenance of a just, peaceful and safe society may require a jail term even if the offender being sentenced is unlikely to re-offend and his or her serving the sentence in the community would not endanger public safety.

Earlier, I mentioned several reasons why streamlining and improving our criminal law is so important right now. I discussed the greater volume and complexity of cases in our courts. I have covered the need to become more efficient in this era of fiscal restraint.

•(1630)

Honourable senators, the ultimate objective of Bill C-17 is to provide Canadians with a system of criminal justice that will continue to protect their rights and interests. This is what they want. This is what they are entitled to. I firmly believe that this bill will go a long way to freeing up human and monetary resources in our law enforcement agencies and in our courts by getting rid of procedures we no longer need, by putting in technological improvements and by building on the advantages that were begun in Bill C-42. This bill will help to restore public confidence and give Canadians a smaller, more focused and more effective system of criminal justice.

This bill is keenly desired by the provinces and territories, which are responsible for the administration of criminal justice, and I hope that we will be able to ensure its speedy passage in this place.

On motion of Senator DeWare, for Senator Grimard, debate adjourned.

TOBACCO BILL

THIRD READING—MOTIONS IN AMENDMENT—
VOTES DEFERRED—DEBATE ADJOURNED

Hon. Derek P. Lewis moved the third reading of Bill C-71, to regulate the manufacture, sale, labelling and promotion of tobacco products, to make consequential amendments to another Act and to repeal certain Acts.

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, before we begin the third reading debate of this legislation, I should like to advise honourable senators that there has been discussion between the leadership of both sides in which we agreed that all votes necessary to dispose of Bill C-71 will be taken at 5:30 tomorrow. Those votes will be taken seriatim.

Honourable senators who wish to participate in the debate, of course, will move any amendments at the time they are speaking, with the understanding that those amendments will be voted on tomorrow at 5:30 p.m., with a bell at 5:15 p.m. I believe that is our understanding.

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I wish to confirm the statement made by the Deputy Leader of the Government. For clarification, a couple of senators from this side may speak tomorrow on this bill. However, I expect that all of the amendments that will be coming forward will be made this afternoon.

Hon. Colin Kenny: Honourable senators, is it part of the agreement that amendments can only be made today, that no amendments will be accepted tomorrow?

Senator Graham: No.

Senator Kenny: Will amendments still be accepted tomorrow?

Senator Graham: Yes. My understanding is that we did not agree to any restrictions with respect to the time that amendments might be proposed. However, all necessary votes to dispose of Bill C-71 would be taken at 5:30 p.m., with the bells to begin ringing at 5:15 p.m., as is our custom.

Senator Kenny: Honourable senators, I mention that point because I have knowledge that there are other senators who may wish to make amendments but who are not in the chamber at this time. I am not sure how we would inform them of this agreement.

The Hon. the Speaker: It is agreed, then, honourable senators, that once we go into the debate on Bill C-71, I shall accept amendments from any honourable senator, deferring all votes until tomorrow. Simply, the debate will be on the general purpose of the bill, or on the amendment, but, in any case, there will be no limiting the debate purely to the amendment before us. Tomorrow at 5:30 p.m., we will vote on all of the amendments and the main motion in sequence starting with the last amendment proposed, as is our practice. That is the understanding.

Senator Lewis: Honourable senators, in past weeks, the Standing Senate Committee on Legal and Constitutional Affairs has carefully considered the presentations of many groups representing a broad range of views on Bill C-71, the proposed tobacco legislation.

In his first appearance before the committee, the Minister of Health, emphasized that Bill C-71 is first and foremost a health bill and that it is about protecting the health of Canadians, particularly young people, and the predictable and preventable consequences of tobacco addiction. Virtually all witnesses prefaced their remarks by agreeing that the government's health objective is legitimate and important. With the exception of tobacco industry spokespersons, witnesses also agreed that there is a compelling need for strong, comprehensive tobacco legislation in Canada.

This proposed legislation is vital. Even though tobacco is a legal product, it is, more important, lethal. Smoking kills. More than 85,000 young people have started smoking since this bill was tabled on December 2, 1996. More than 13,000 Canadians have died of smoking-related diseases. While this bill is being debated, there will be more than 100 Canadian deaths every day.

A senior representative of the Canadian Tobacco Manufacturers Council was surprisingly frank about the hazards of smoking. He told us that there are health risks associated with smoking cigarettes. There is a list of diseases as long as your arm related to smoking. The risk of contracting them rises as you smoke. Every one in Canada knows this is true.

Let me first address the concerns with this bill expressed by spokespersons and counsel for the tobacco manufacturers. They told us that they have no quarrel with responsible and legally acceptable restrictions on the manufacture, promotion and sale of tobacco products, as long as they are workable. They then expressed objections to Bill C-71. They said that it contains provisions clearly in violation of the Canadian Charter of Rights and Freedoms and that it imposes the very total ban on advertising that the Supreme Court found to be unconstitutional. They also claim that the wording of the bill is vague and does not provide certainty, that the legislation's proposed regulatory power and penalties are excessive.

•(1640)

Let us consider, first, the issue of constitutionality. In developing this bill, the government fully recognized the freedom of speech issues that control of tobacco promotion raises. The health minister has told us that the drafters followed carefully the guidance provided by the Supreme Court of Canada in its 1995 ruling on the Tobacco Products Control Act to ensure that Bill C-71 respects the Charter of Rights and Freedoms. Constitutional experts who appeared before the committee clearly recognized that fact. For instance, Professor Lessard of the Faculty of Law at the University of Victoria said:

> The drafters of Bill C-71 clearly took their directions from the court's decision and basically redesigned the act so that now we have partial bans and partial restrictions. So you have a direct response to what the Supreme Court of Canada said in *RJR-MacDonald*.

In that decision, the Supreme Court recognized a link between tobacco advertising and consumption and clearly confirmed that the federal government can control tobacco advertising under the criminal law power. The court held that Parliament can validly employ the criminal law to prohibit tobacco manufacturers from inducing Canadians to consume these products, and to increase public awareness concerning the hazards of their use.

The court further held that even a small reduction in tobacco use may work a significant benefit to the health of Canadians and justify a properly proportioned limitation of freedom of expression.

I share the view of the Minister of Health and that of several constitutional experts who appeared before the committee that this bill respects the Canadian Charter of Rights and Freedoms.

The tobacco industry argued repeatedly that the bill amounts to a de facto ban on advertising and event sponsorships. This is simply inaccurate. The argument does not stand up to scrutiny because the proposed legislation does not ban tobacco promotion. On the contrary, it allows product advertising; it allows the display of tobacco products at retail outlets; it allows tobacco companies to communicate information about their products to adult consumers; it allows the tobacco companies, with some restrictions, to continue to associate the brand names of tobacco products with sponsored events; and it allows the broadcasting of those events.

With respect to the manufacturers' third charge, independent legal expert witnesses who appeared before us confirmed the views of the government's own constitutional experts. The proposed legislation may be technically complex, but it is not vague. The bill is clear in setting out what will and will not be permitted. Details specifying the time, place and manner in which these permissions and restrictions will apply will be spelled out in regulations.

The Minister of Health is also on record as being willing to work with the industry to set up some kind of pre-clearance mechanism that would provide greater certainty with respect to potential contraventions.

On the issue of regulations, concern has been expressed that this legislation would confer excessive regulatory authority on the government. The regulatory powers in Bill C-71 are neither unusual nor unique. They are consistent with the powers in other statutes pertaining to, for example, food, drugs, hazardous products, transportation and the environment.

Furthermore, the government will consult with all affected parties in a meaningful and transparent fashion as it develops regulations pursuant to this bill. There will be ample opportunity for stakeholders to comment, both before and after the proposed regulations have been published in *The Canada Gazette*. The transparency of the regulatory process would be further enhanced by the requirement in Bill C-71 that proposed regulations be referred to an appropriate parliamentary committee for study and consideration.

Much has been made of the issue of excessive penalties and of the search and seizure provisions of the bill. I want to be clear on these points, honourable senators. The search and seizure provisions here do not violate the Charter. They are common to other federal and provincial regulatory schemes that have been upheld by the courts. The Supreme Court has clearly defined the appropriate threshold for the expectation of privacy and warrantless inspections of commercial regulatees, and the bill respects that threshold.

Seizure without warrant is only contemplated where a product or promotion contravenes the law, but prosecution will not occur in relation to such a seizure. Where the purpose of any seizure is to gather evidence for a prosecution, inspectors will be required to obtain a warrant under the Criminal Code. Here as elsewhere, the government will work with affected parties to ensure that they are aware of their obligations.

The government will also continue to encourage voluntary compliance. It is therefore anticipated that most contraventions will be dealt with, as they have been in the past, through warnings and tickets, with prosecution a last resort reserved for repeat and serious offenders.

On the issue of nicotine addiction, industry spokesmen told us that whether smoking is addictive or not is a matter of opinion, not of fact. They also said that there are definitions under which smoking is clearly addictive. They went on to say that coffee is addictive, chocolate is addictive and potato chips are addictive. These analogies do not do justice to the gravity of the issue before us.

The 1988 United States Surgeon General's report found that cigarettes and other forms of tobacco are addicting, that nicotine is the drug that causes addictions, and that the pharmacological and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.

A 1989 Royal Society expert panel convened by Health Canada similarly defined addiction as a strongly established pattern of behaviour characterized by, first, the repeated self-administration of a drug — that is, nicotine — in amounts which were likely to produce reinforcing psychoactive effects and, second, great difficulty in achieving voluntary long-term cessation of such use even when the user is motivated to stop. The expert panel concluded that "addiction" was the most appropriate term to convey the serious public health risk associated with tobacco use.

We now have in Canada some 7 million people who smoke day after day, month after month, despite the obvious health risks. Many of them try repeatedly, but in the majority of cases unsuccessfully, to quit. That reality is consistent with the commonly accepted definitions of addiction. In fact, smokers in treatment for other drug addictions have reported that quitting smoking is more difficult than quitting alcohol, heroin or cocaine.

Finally, industry spokespersons repeatedly told committee members that no one ever took up smoking after attending a tobacco sponsored event. That is misleading. Health experts have never suggested that the relationship between tobacco promotion and youth smoking is that simplistic. Attending a tobacco-sponsored event is just one instance of exposure to tobacco promotion. It is the cumulative impact of tobacco advertising and promotion that influences consumers.

Health Canada has released the tobacco research reference list of more than 150 studies and reviews, as well as industry marketing reports, that guided the drafting of the legislation and that document a link between tobacco promotions and consumer attitudes, beliefs and behaviours, including the beliefs and behaviours of young people.

Tobacco marketing strategies create and maintain the perception that tobacco use is desirable, socially acceptable, healthy and more pervasive in society than it really is.

Research also tells us that 85 per cent of smokers began smoking before they were 16 years of age. I will quote briefly from four of these 150 studies on the issue of whether tobacco advertising and promotion reaches and influences young people.

An 1988 Imperial Tobacco Limited report on overall market conditions notes:

> The industry is dominated by the companies who respond most effectively to the needs of younger smokers. Our efforts on these brands will remain on maintaining the relevance to younger persons.

A 1990 study in the *British Journal of Addiction* found that children are highly sensitive to cigarette brand advertising which promotes cigarettes advertising among the young. In 1994, the report of the Surgeon General of the United States similarly noted that tobacco promotion provides a conduit between a young person's actual self-image and his or her ideal self-image.

•(1650)

On the issue of sponsorship promotions, a 1996 report by an industry leader noted that sponsorship generally outperforms advertising. Sponsorship can suggest that the brand is sanctioned and approved. It provides a positive, emotional connection between people and product that cannot be achieved through traditional advertising.

A few weeks ago, a major United States cigarette company, the Liggett Group, admitted that tobacco was addictive and that it caused significant health problems. Liggett further admitted that the United States' tobacco industry has for some time specifically targeted teenagers through its advertising and promotions.

Whether Canadian tobacco manufacturers intentionally target young people is not the point. However, their arguments that they do not influence youth are wearing thin. Tobacco advertising and sponsorship promotion has become so pervasive that it cannot help but spill over into segments that are not the primary targets of tobacco marketers. That spillover affects children and youth.

Honourable senators, I am convinced that this bill respects the Charter, and that it is flexible enough to respond to changing marketplace conditions. I also believe that it is reasonable, balanced and warranted. The bill's objective is to protect the health of Canadians, particularly young Canadians, from inducements to smoke. It will achieve its objective by placing reasonable limits on tobacco marketing and promotion, while at the same time allowing companies scope to communicate factual information to adult consumers, as well as to associate the brand names of tobacco products with sponsored events.

Let there be no misunderstanding: It is primarily young people whom we are concerned about, and it is young people who will ultimately benefit from this bill. We are not restricting tobacco sales to adults, and we allow advertising that is clearly targeted to adults. We are, however, saying that tobacco products are inherently hazardous and addictive, and that young people are most vulnerable to taking up smoking and developing a lifelong addiction to tobacco.

Honourable senators, Bill C-71 is an important element of the government's tobacco control strategy, but it is only one element. It will be complemented by health education and awareness programs that will be developed increasingly by young people, for young people. Last year, the health minister created a youth advisory committee to advise him on smoking and other issues. This reflects the youth-oriented nature of the current tobacco programs. The minister is consulting and involving Canadian youth, and will continue to do so. They are best positioned to develop effective resources to resist peer and social pressures to smoke and to help counter the appealing images that tobacco promotions create.

I want to preface my concluding remarks by noting that this is the second time Parliament has debated tobacco control measures. In 1989, Parliament passed the Tobacco Products Control Act. While that act banned tobacco product advertising, it was by no means the end of tobacco promotion in Canada. The tobacco industry likes to say that the 1989 ban has not reduced smoking. What the industry neglects to add is that they continue to market tobacco products aggressively through sponsorship promotion. Since 1989, the industry has invested hundreds of millions of dollars in this effective marketing tool.

In some respects, our deliberations and debates over the past weeks have an element of déjà vu. Some things have not changed appreciably over the last eight years. Tobacco companies continue to vigorously promote their products in a pervasive and strategic manner. They continue to predict dire economic consequences if their activities are constrained in any way. Sadly, Canadians continue to take up smoking as children and teens, and continue to die as adults at the rate of 40,000 each year from tobacco-related diseases.

One important thing has changed, honourable senators: We know more than we did in 1989 about the health consequences of smoking. Medical science continues to advance our understanding of those debilitating and deadly consequences. We also know more about the link between promotion and the decision to smoke.

Some honourable senators have suggested that none of the experts who appeared before the committee were able to produce one single study pointing to one single factor that causes someone to start smoking. As the health minister and other witnesses emphasized, the smoking decision process is not just about starting to smoke; it is also about continuing to smoke, how much to smoke, and whether or when to quit. We also know that whether or not to smoke is rarely a decision taken by adults. Kids decide to smoke based on the cumulative impact of a number of factors that influence them.

In 1996, the National Cancer Institute of Canada found after extensive review that the weight and consistency of the evidence strongly supports the conclusion that marketing plays a significant role in youth tobacco use. The report reached the following conclusions: one, tobacco advertisements appeal to youth; two, youth are aware of tobacco marketing; three, awareness and perceptions of marketing are linked to smoking intentions and behaviour; four, tobacco marketing campaigns increase youth tobacco use; and, five, youth are particularly likely to smoke highly advertised brands.

Honourable senators, while the proposed legislation before us may not be perfect, as both its supporters and critics have charged, it is based on an extensive and growing body of international research that supports findings such as those I have cited.

My final point of comparison is that, in terms of public health priorities, very little has changed since this body last debated tobacco control measures. Smoking remains this country's most pressing public health issue. Tobacco is the most costly and relentless killer in this nation. It kills more people than drugs, car accidents, suicides, homicides and AIDS combined. It is responsible for one in every five deaths, and costs $3.5 billion per year in direct health care costs.

This bill will achieve the government's health objectives, but this will not happen overnight. The industry wants us to measure its effectiveness in terms of days and weeks and months. This is too simplistic.

Tobacco is our most insidious killer because the health consequences of smoking can take 30 or 40 years to manifest themselves. For example, we are only now seeing the results of the smoking surge among women during the 1960s and 1970s. The result is that lung cancer has overtaken breast cancer as the leading cause of cancer death among women. Within a few years, it has been estimated that smoking-related deaths in Canada will exceed 47,000 per year. By 2005, it is estimated that cancer deaths among Canadian women attributable to smoking will surpass those of men.

Honourable senators, at what point will we say "enough"? At what point will we say, "Yes, this product is legal, but it is addictive and lethal"? At what point will we acknowledge that a product containing more than 50 known carcinogens warrants regulation? I submit that the time has come. Today, let us keep in mind that this is not a cultural bill, a sports bill or a regional bill: It is a health bill, with health objectives.

As the Minister of Health said, tobacco control policy has never been easy, but these are measures that will help keep children from starting to smoke. Canadian children deserve politicians who will make the tough decisions that are essential for their health.

•(1700)

Honourable senators, I support these objectives, and I support this bill. I urge all honourable senators to do the same.

Some Hon. Senators: Hear, Hear!

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, before getting into the bill itself, I want to thank Senator Carstairs for the commendable way in which she chaired the hearings on Bill C-71, and for the selection of witnesses. A great variety of them gave views from both sides and the middle. I also want to thank her, in particular, and her colleagues on the committee for having allotted all the question time available with the minister on the last day of the hearings to the opposition side. It was a courtesy which all of us appreciated. I thank her and her colleagues for having extended that courtesy to us.

I would point out that once again the Standing Senate Committee on Legal and Constitutional Affairs has been called to take on major legislation. We seem to be continuing the unfortunate trend of burdening certain committees with much legislation, while leaving other committees, because of their mandate, with very little to do. For two or three years now, the government has conducted various studies on the committee system, how it can be improved and how mandates could be changed and brought up to date. I hope the government will look closer at those studies over the summer, no matter what the status of this Parliament, so that, in the fall, it can come up with some recommendations.

Senator Simard: That is if they are re-elected.

Senator Lynch-Staunton: They can come forward with some recommendations through the Standing Committee on Privileges, Standing Rules and Orders so that we can have, finally, an updated committee system that will at least allow the burden of legislation to be shared more equitably than it is now.

Senator Robichaud: We have been trying to do that for the last 25 years.

Senator Lynch-Staunton: We should keep on trying until we finally achieve something.

As for the legislation before us, I do not have much to add to what has already been said from this side. We agree with the intent of the bill. We agree with the thrust of the bill. We agree with the purpose as stated in clause 4 of the bill. We do have some concerns, however, with some of the wording in the bill. Much of it is vague and general, and lends itself to contradictory interpretations.

Also, for the implementation of the bill, the government asks for extraordinary regulatory powers. There seems to be a tendency again to include in major legislation the right for the government to implement it through regulations. Rather than regulations being a supplement to the bill, they seem to be becoming a substitute for the bill.

This bill is drafted, for the most part, in very general terms. It is a statement of intent. It has some specifics, but, overall, you cannot get from the bill itself exactly how it will be implemented; you must wait for the regulations. Parliament, once again — with one exception in this case — is being asked to abandon some of its powers to the Governor in Council, which will be able to carry out the intent of the Parliament, it is hoped.

I say that there is an exception here, because during the hearings in the other place, an amendment was brought to the bill that states that, before any regulation takes effect, it must be introduced in the House of Commons, which then refers it to an appropriate committee that may hear witnesses and make a public inquiry, and then report accordingly to the House of Commons.

A screening of the regulations then is included in the bill, but we do not feel it goes far enough. We feel that this provision, while highly laudable, can be improved. Hence, I shall move, seconded by Senator Stratton, the following amendment, which, in effect, would change the clause in the bill to refer regulations to the Standing Joint Committee for the Scrutiny of Regulations. Parliament already has in place a joint committee that has, through its membership and through its staff, great experience in the analysis of regulations already in place. That experience should be used in the examination of regulations to be put into place.

MOTIONS IN AMENDMENT

Hon. John Lynch-Staunton (Leader of the Opposition): The first amendment which I move, seconded by Senator Stratton, reads as follows:

> That Bill C-71 be not now read a third time but that it be amended in clause 42.1, on page 17,
>
> (*a*) by replacing lines 13 to 22 with the following:
>
> "proposed regulation before each House of Parliament on the same day.
>
> (2) A proposed regulation that has been laid before Parliament in accordance with subsection (1) is automatically referred to the Standing Joint Committee for the Scrutiny of Regulations, which shall conduct inquiries or public hearings with respect to the proposed regulation and report its findings to each House.";

I pause here to point out that, in the bill, the requirement to hold inquiries or public hearings is optional whereas, in our amendment, it is made obligatory.

The amendment continues:

> (*b*) by replacing lines 26 to 32 with the following:
>
> "(*a*) the House of Commons has not concurred in any report from the joint committee respecting the proposed regulation within the thirty sitting days following the day on which the proposed regulation was laid before each House, in which case the regulation may only be made in the form laid; or"; and
>
> (*c*) by replacing line 34 with the following:
>
> "a report from the joint committee approving the".

Reading it by itself like that, the amendment does not make very much sense. It must be read with the full text in order to understand where this amendment fits in. Basically, it is to refer the proposed regulations to the joint committee to oblige it to hold public hearings and hear expert witnesses, and then have its report tabled in the House of Commons but not in the Senate. Although it is a joint committee, out of respect for the will of the elected representatives — which is something we have always upheld here — the recommendations of the joint committee would be tabled in both houses. However, the decisions on their disposal would be taken only by the House of Commons.

This is a proposal that does not affect at all the intent of the bill. It is meant to see that Parliament's jurisdiction over the execution of the bill through regulations is maintained.

We have another concern. I might emphasize the importance of having Parliament overseeing the regulations to that extent by reminding colleagues of the title of the bill: It is an act to regulate the manufacture, sale, labelling and promotion of tobacco products. In other words, if this bill is passed, the government will intervene in every step of the tobacco manufacturing business from the make-up of the product right to its disposal at the retail end. The word "expropriation" may seem a bit strong, but I do not think the word "tutelage" is. In effect, the tobacco industry, through this bill, will go into tutelage and become a ward of the government. This is unheard of. It is perhaps well motivated, but is something that, it is to be hoped, does not create a precedent.

With such authority over an industry, Parliament must be there every step of the way to ensure that the bill's purpose through the regulations respects Parliament's intent.

I will put forward three other amendments, but they all relate to the same concern — that of search and seizure. In the bill, other than for a dwelling place, any inspector who, on reasonable grounds, feels that there is a violation of Bill C-71 not only can enter the premises but can seize the products without a warrant. In a place other than a dwelling place, an inspector can seize the products without a warrant.

•(1710)

It has been argued in front of the committee that inspectors enter dwelling places and commercial places to read meters for hydro or natural gas, and this is no different from the entry allowed here without a warrant. There is a major difference in that when one contracts with a utility, one also accepts the entrance of an inspector to read the meter or to inspect its facilities. In this case, what Parliament is being asked to do, without the shopkeeper or the tobacco manufacturer or anyone having a say, is allow an inspector to go into the commercial establishment or any other establishment other than a dwelling place and not only witness what he feels is an infraction of the act but also seize anything in the shop or in the place that he feels contravenes a section of the act. If anything, that is a contravention of the Charter of Rights and Freedoms and the right of the individual to be protected by our system of justice. The way he is protected from the excessive acts of a law officer in a case such as this is that the law officer must go before a judge, state the reasons why he feels a seizure should take place, and then receive and execute a warrant, so the law will have taken its course properly.

You cannot seize illegal drugs without a warrant. Why would you be allowed to seize a product that is sold legally in this country, or any element related to that product, just because it is tobacco?

Again, my amendments in no way affect the purpose of the bill. These three amendments, that are all related to the search and seizure provisions, are intended to maintain for every Canadian citizen the right to have his property protected by the law and to prevent any attempt to take from his property elements in it which an inspector — at his own discretion, for the law says "who may on reasonable grounds feel" — feels he has reasonable grounds to seize. Furthermore, once those goods are seized, the Crown need not lay a charge. It is then up to the owner of those goods to go before a court and give reasons why he should get those goods back.

If these amendments are accepted, those clauses will become less onerous because inspectors will be careful, before they enter premises, to arm themselves with a warrant. Perhaps then those clauses requiring the citizen to apply to recoup his own goods will be less unacceptable. The major correction we want to make is to ensure that any seizure of any good, whether in a dwelling place or in a commercial establishment, or any premises for that matter, is executed only after a warrant has been issued.

I have three amendments to present. They are a bit lengthy, but I hope that the house will be patient and allow me to read them in their totality.

I move, seconded by Senator Berntson:

> That Bill C-71 be not now read the third time but that it be amended in clause 36, on page 14,
>
> (*a*) by replacing line 19 with the following:
>
> "**36.** (1) An inspector may not enter or seize any thing from a";
>
> (*b*) by replacing line 27 with the following:
>
> "dwelling-place and to seize any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds this Act has been contravened, subject to any conditions"; and
>
> (*c*) by replacing line 36 with the following:
>
> "entry or the seizure, or that entry or seizure has been refused or there".

At the moment, the wording incorporated in this amendment is in the bill itself:

> ...any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds that this Act has been contravened.

That includes just about everything, and if we allow an inspector at his own discretion to use this clause as presently worded, he can close down a business. He can enter a small shop, feel that the display of a tobacco product contravenes the act and seize everything in the shop and force it to close down.

If he is forced to go for a warrant, he will at least have to give justification for that type of seizure, and the suspect — I will call him that — will be better protected, because he has no protection without this.

That is the first amendment.

Second, I move, seconded by Senator Berntson:

> That Bill C-71 be not now read the third time but that it be amended in clause 39, on page 15, by replacing line 20 with the following:
>
> "an inspector may, subject to section 39.1, seize any tobacco product or".

Finally, I present the third amendment, which is at the heart of the argument I have been trying to present. I move, seconded by Senator Berntson:

> That Bill C-71 be not now read the third time but that it be amended, on page 15, by adding after line 31 the following:
>
> "**39.1** (1) An inspector may not seize any tobacco product or other thing referred to in subsection 39(1), except with the consent of the owner of the thing or the person in whose possession it is at the relevant time, or under the authority of a warrant issued under section 36, in the case of a dwelling-place, or under the authority of a warrant issued under subsection (2), in the case of any other place.
>
> (2) On *ex parte* application, a justice, as defined in section 2 of the *Criminal Code*, may issue a warrant authorizing the inspector named in the warrant to seize any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds that this Act has been contravened, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath
>
> (*a*) that the owner of the thing or the person in whose possession it is at the relevant time does not consent to the seizure,
>
> (*b*) that seizure has been refused, or
>
> (*c*) that there are reasonable grounds for believing that seizure will be refused.
>
> (3) An inspector executing a warrant issued under subsection (2) shall not use force unless the inspector is accompanied by a peace officer and the use of force is specifically authorized in the warrant.".

These amendments in no way obstruct the right of an inspector to take action if he sees or feels that there is a contravention. What it forces him to do, however, before impulsively or on his own rushing in and executing the seizure, is present himself before a court, to make the argument and present the evidence under oath. We want to re-establish that protection which has been taken away. Many of us feel that if such a violation of the Charter is left as is, the whole bill could be challenged on that ground alone. We know it will be challenged anyway, or so we are told by those who are opposed to it, but I do not think we should be giving them more ammunition than they may have already, and removing this element will certainly remove one of the more disturbing aspects of the bill.

That, honourable senators, is all I have: four amendments on two topics. Again, I want to repeat that in no way do they affect the purpose of the bill. They are intended to ensure that Parliament can follow this bill through the regulatory process as directly as possible and that the citizen is afforded the minimum protection of the law, which the clause presently before us removes.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, this is, as Senator Lewis has said, a public health bill with a considerable criminal component. The federal government has chosen, on legitimate grounds, to use its power over criminal law to legislate — and with good reason — in an area of activity where public health is definitively, and undeniably, at risk.

This bill replaces two current acts, the Tobacco Products Control Act and the Tobacco Sales to Young Persons Act. The former was seriously damaged by its passage before the Supreme Court of Canada. The Government of Canada decided to replace this mortally wounded act with one that is more effective and more promising for the future.

I have no intention of going into the whole constitutional question here. During the committee hearings, we heard all the arguments that might be raised before the Canadian courts. I have no intention of raising any of these constitutional arguments.

I might have one comment. I understand that all of the committee members today received correspondence from the President of the Canadian Bar Association, in which he draws attention to the vagueness of some criminal provisions in this bill. He encourages us to amend the bill so as to render the offences far more precise and far clearer.

I intend to table before you today 13 amendments, which can be grouped under nine topics. I will come back to that in a moment.

Let us start by speaking of the intent and the purpose of this bill. As Senator Lynch-Staunton said, it is not the intention to modify the purpose of this bill. I believe that it would be important for us to read clause 4 of the bill once again:

> The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,
>
> (*a*) to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;
>
> (*b*) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;
>
> (*c*) to protect the health of young persons by restricting access to tobacco products; and
>
> (*d*) to enhance public awareness of the health hazards of using tobacco products.

I certainly have no desire to change this purpose. In fact, immediate action is urgently needed to ensure that a more comprehensive and sounder piece of legislation — considering the Supreme Court's decision — is implemented as soon as possible.

That is why, honourable senators, I think we should make this debate as brief as possible today and tomorrow so that we can vote on this bill tomorrow afternoon.

Speed is of the essence because federal statistics have shown that between the mid-60s and mid-80s, there was a sustained reduction in the use of tobacco by Canadians. Since the mid-80s, however, tobacco use has stayed at the same level.

What is urgently needed first of all is to give the government a legal instrument, but the government also needs to adopt a comprehensive strategy. We realized that when the minister appeared before the committee during consideration of this bill. We hope the minister and the government will get all the support they need to set up such a strategy. There is no easy solution. You will read as much in your committee report. There is no easy answer to such a huge problem.

The legislative stage is only one of many. You will read in the committee's report that we suggest the government take the route of public education, for instance. Experts who appeared before the committee all argued that education was definitely the key. We will have to push the government into making a start with this strategy as soon as possible.

In 1994, Prime Minister Jean Chrétien mentioned the existence of a similar strategy. To support this anti-smoking strategy, which is mostly aimed at young people, the Prime Minister announced an annual surtax of $60 million that will be collected from Canadian tobacco manufacturers. Canada has three tobacco manufacturers, which had to shell out a total of $60 million in additional taxes. In three years, the manufacturers contributed a total of $180 million.

Unfortunately, only $21 million of that amount was used to set up mechanisms for advertising and education to achieve the objectives of this strategy. I say unfortunately, because it seems to me that the entire $180 million and more should have been invested in this strategy.

•(1730)

When the minister says it is only a stage in a huge bill intended to fight the harmful effects of smoking, particularly among young people, I think the Minister of Health, Mr. Dingwall, should not be the only one trying to prevent the Minister of Finance from appropriating such a significant amount of money and should instead make an effort to get his colleagues on side. The honourable senators on the other side of the house should support the Minister of Health in his efforts to convince the Minister of Finance.

We heard a number of witnesses during our review of Bill C-71. Most of them were pleased at being asked to come and testify, since they had been unable to do so before the House of Commons committee. With the bill being introduced in the House of Commons in December and the committee's consideration of it starting so quickly after the bill's introduction, interested parties were unable to prepare effectively and thoroughly. We in the Senate committee allowed those lucky enough to manage to appear before the House of Commons committee, and most of the others, to present their views and express their concerns. I agree with Senator Lynch-Staunton that your committee acted very responsibly in considering — effectively, if not in depth — an issue that warranted 10 times the consideration.

All the members of the committee this morning received a list of all the studies written on the subject, which had been scrutinized by the peers of the authors. Considerable importance is given this sort of study. More is involved than just opinions, wishes and claims. These are academic studies that have been vetted by the authors' peers. They therefore warrant considerable attention.

This morning I received the complete list of these studies, whose number exceeds 700.

Although the subject-matter is vast and has been examined from all angles, academics cannot agree on the significance of advertising and sponsorship.

It is not my intention to talk to you about advertising. Clearly, the manufacturers of tobacco products will make their point through the legal system. It is certainly not my intention to touch on or examine the part of the legislation that concerns tobacco advertising specifically. I will instead talk to you about promotion through sponsorship.

Before dealing with this part of the bill, I would draw your attention to certain problems, which may seem minor to most of you, but which certain witnesses considered very significant.

The first of these amendments concerns clause 8 of the bill.

The Hon. the Speaker: Senator Nolin, I apologize for interrupting, but your 15 minutes are up.

Hon. Senators: Continue!

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

Hon. Senators: Agreed.

Senator Nolin: Honourable senators, I will try to keep it short and not get carried away. Clause 8 as it stands states that no person shall furnish tobacco products to a young person in a public place. The word "furnish" is used. However, this is the provision prohibiting store owners from asking a young employee to move tobacco products around in the store or storage area. The purpose of the amendment is to correct the wording of the provision, which seems a little extreme to me. Here is my amendment.

MOTIONS IN AMENDMENT

Hon. Pierre Claude Nolin: Honourable senators, I move, seconded by the Honourable Senator Lynch-Staunton:

> That Bill C-71 be not now read the third time but that it be amended in clause 8, on page 4, by replacing line 6 with the following:
>
> "access, unless the tobacco product is being furnished to the young person in the course of that person's employment and is not intended for personal consumption by any young person.".

My second amendment deals with vending machines. According to retailers and those who operate such machines, if

passed in its current form, clause 12 of the bill could seriously compromise the future of the industry as a whole. Fifty per cent of these machines are used to sell tobacco products.

The purpose of this bill is to restrict the use or operation of such machines to bars, taverns or beverage rooms, where customers under the age of 18 are not admitted, as long as they are equipped with a prescribed locking device. This amendment would allow the use of vending machines in places to which young persons do not have access and any other place, provided the machines are equipped with an appropriate remote control mechanism, which sounds much more reasonable to me. The lawmaker's intention was certainly not to destroy this industry but to maintain adequate controls, including identity control, particularly as far as the age of buyers is concerned.

Honourable senators, I move, seconded by the Honourable Senator Lynch-Staunton:

> That Bill C-71 be not now read the third time but that it be amended in clause 12, on page 5, by replacing lines 1 to 4 with the following:
>
> "(*a*) a place to which young persons do not have access; or
>
> (*b*) any other place and has a prescribed security mechanism.".

My third amendment concerns clause 21. Il would be possible for someone to express recognition for the support provided by a tobacco manufacturer without this recognition being construed as an endorsement of the manufacturer's product.

•(1740)

This provision, which currently prohibits even thanking a tobacco manufacturer for his support, strikes me as rather extreme and the wording should be changed. I will now read you this amendment.

Honourable senators, I move, seconded by the Honourable Senator Lynch-Staunton:

> That Bill C-71 be not now read the third time but that it be amended in clause 21, on page 7, by adding the following after line 42:
>
> "(2.1) For the purposes of subsection (1), a public expression of appreciation for a sponsorship of a person, entity, event, activity or permanent facility by a manufacturer is considered not to be a testimonial for, or an endorsement of, the manufacturer's product.".

My fourth amendment deals with the name of a permanent facility. Bill C-71 provides that the name of a permanent facility bearing a tobacco product-related brand is covered by the regulations. Under these provisions, the government, which denies seeking to impose restrictions on the names of such facilities, can still do so.

Regulating the names of buildings is not supposed to be an objective of this bill and should therefore not be part of the legislation. That is why I am proposing the following amendments to clauses 25 and 33.

Honourable senators, I, seconded by Honourable Senator Lynch-Staunton, move:

> That Bill C-71 be not now read the third time but that it be amended in clause 25, on page 10, by replacing lines 4 and 5 with the following:
>
> "element may appear on the facility.".

Honourable senators, I, seconded by Honourable Senator Lynch-Staunton, move:

> That Bill C-71 be not now read the third time but that it be amended in clause 33, on page 12,
>
> *(a)* by deleting lines 14 to 16; and
>
> *(b)* by re-lettering paragraphs *(d)* to *(j)* as *(c)* to *(i)*, and any cross-references thereto accordingly.

My sixth amendment deals with brands on products other than tobacco products. The provision prohibiting a tobacco brand from being displayed on a product other than tobacco, for example a T-shirt, is very vague and could lend itself to a broad interpretation. It could be interpreted as prohibiting any promotional element relating to an event, a shirt, a program, etc. The purpose of this amendment is to clarify the provision and to bring it in line with clause 24, which I will read to you later, and which provides restrictions on sponsorship.

Honourable senators, I, seconded by Honourable Senator Lynch-Staunton, move:

> That Bill C-71 be not now read the third time but that it be amended in clause 27, on page 10,
>
> (*a*) by replacing line 15 with the following:
>
> "**27**.(1) No person shall furnish or promote a"; and
>
> (*b*) by adding after line 25 the following:
>
> "(2) For the purposes of this section and section 28, "non-tobacco product" means a product, not being a tobacco product or its package, that is sold commercially, but does not include merchandise that displays the name of a person, entity, event, activity or permanent facility that is being sponsored pursuant to section 24.".

My next amendment deals with a commercial practice, which was explained to us at length by tobacco product retailers and wholesalers. Retailers, whose profit margin is very small, somewhere between one and one and a half per cent of their gross sales, get from manufacturers cash rebates that are already included in the sale price of tobacco products.

In order to get this rebate, a retailer must pay his bills as quickly as possible. When a retailer buys a shipment of tobacco products and pays for it within the time prescribed in the agreement with the seller, he is entitled to this rebate of about 2.5 per cent.

When the minister appeared before the committee, I raised this issue with him. He said that Part IV, which includes this

provision, also includes an exclusionary clause. The minister referred us to clause 18(2)(*c*), which reads as follows:

> (2) This Part does not apply to
>
> (*c*) a promotion by a tobacco grower or a manufacturer that is directed at tobacco growers, manufacturers, persons who distribute tobacco products or retailers but not, either directly or indirectly, at consumers.

This initially struck me as a good argument. We misread it. We did not do our homework well. In fact, a practice such as that described in section 29 would, in my view and in the view of retailers who appeared before the committee, prevent such a cash rebate. After hearing from the minister, I reached the conclusion that there is perhaps an exception and that it does not apply to dealings between retailers.

If you read the definition of promotion contained in Part IV, clause 18, it says:

> — "promotion" means a representation about a product or service by any means, whether directly or indirectly, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviours about the product or service.

This is from clause 18 (1) in Part IV about promotion in general

When the minister mentioned this as a valid exception to the objection raised by retailers, I am sorry, but it does not apply because what is involved is not a promotion between two retailers but a trade practice.

However, if the legislator's intention is in fact not to extend the ban on cash rebates to retailers carrying on business, why not amend the bill accordingly?

This is why I have moved the following amendment.

Honourable senators, I move, seconded by the Honourable Senator Lynch-Staunton:

> That Bill C-71 be not now read the third time but that it be amended in clause 29, on page 11, by replacing line 3 with the following:
>
> "lottery or contest, except where the consideration is between manufacturers and between manufacturers and retailers;".

•(1750)

My seventh amendment has to do with a topic similar to or very closely related to advertising.

It concerns the possibility open to tobacco manufacturers, if the bill is adopted as drafted, of using the American television, radio and print media to reintroduce their promotion into Canada.

According to certain witnesses, this clause would have trouble passing judicial scrutiny. Section 31 had a similar objective that Bill C-71 sets out to replace. This provision prevents tobacco manufacturers from getting around the restrictions in the bill by turning to foreign media to announce or publicize an event. The purpose of the proposed amendment is to clarify the scope of the clause, and it goes back to the wording of the Tobacco Products Control Act.

Honourable senators, I move, seconded by the Honourable Senator Lynch-Staunton:

> That Bill C-71 be not now read the third time but that it be amended in clause 31, on page 11, by replacing lines 29 to 38 with the following:
>
> "(3) No person in Canada shall, primarily for the purpose of promoting in Canada a tobacco product,
>
> (*a*) promote any product the promotion of which is contrary to this Part, or
>
> (*b*) disseminate promotional material that contains a tobacco product-related brand element in a way that is contrary to this Part,
>
> by means of a publication that is published outside Canada, a broadcast that originates outside Canada, or any other communication that originates outside Canada".

The tenth amendment applies to the implementation of this bill. The clauses in the bill will take effect the day Royal Assent is given. This raises difficulties, however, since a large number of the measures contained in the bill are governed by regulations. Numerous witnesses raised this matter, pointing out the need for a clear understanding of the regulations flowing from the new act.

The old act, if I may call it that, the Tobacco Products Control Act, called for a six-month delay before it came into force. It seems worthwhile to have a similar period for Bill C-71.

Consequently, I submit the following amendment:

Honourable senators, I move, seconded by the Honourable Senator Lynch-Staunton:

> That Bill C-71 be not now read the third time but that it be amended in clause 66, on page 23, by replacing lines 20 to 22 with the following:
>
> "**66.** (1) Subject to subsection (2), this Act comes into force on the day that is six months after the day this Act is assented to.

(2) Subsections 24(2) and (3) come into force on October 1, 1998 or on such later day as the Governor in Council may fix by order."

I draw your attention to the second paragraph of the amendment I have just read. We have heard a number of government representatives say that the government had agreed to defer the coming into force of two clauses, two subsections contained in the clause, which restrict promotion via sponsorships. If you read carefully clause 66, to which I refer, you will find the following:

"Subsections 24(2) and (3) come into force on October 1, 1998 or on such earlier day as the Governor in Council may fix by order."

What does this mean? It means that, once the bill is proclaimed, the Governor in Council can decide to bring subsections 24(2) and (3) into force the very next week. This strikes me as overdoing it. If we really want to set a time limit for the coming into force of the restrictions set out in clause 24, and if what we want is 18 months, then let us really put 18 months. That is why I have proposed: on October 1, 1998 or thereafter.

My final theme is sponsorships. I could explain at great length why these are important to the viability of 370 annual events in Canada. Without this support, according to a number of witnesses, they would have trouble surviving. We shall have the opportunity of reading about the pros and cons tomorrow in the newspapers. So I will hasten to read the amendment to you. This amendment I am proposing affects four clauses of Bill C-71: 24, 27, 28 and 33.

Honourable senators, seconded by the Honourable Senator Lynch-Staunton, I move:

That Bill C-71 be not now read the third time but that it be amended in clause 24, on page 9, by replacing lines 4 to 42 with the following:

"24.(1) Notwithstanding any other provision of this Act but subject to subsections (2) and (3), a person may display a tobacco product-related brand element in a promotion that is used in the sponsorship of a person, entity, event or activity if

(*a*) the person, entity, event or activity is not primarily associated with young persons; and

(*b*) the principal purpose of the sponsorship is the promotion of the person, entity, event or activity.

(2) Any promotion material that displays tobacco product related-brand elements in a promotion must not

(*a*) depict, in whole or in part, a tobacco product or its package;

(*b*) display the brand elements on more than 10 per cent of the display surface of the material, or appear in a size larger than the name of the person, entity, event, or activity being sponsored;

(*c*) be published in any publication that has an adult readership, or broadcast in any program that has an adult audience, of less than eighty-five per cent;

(*d*) be located within two hundred metres of any primary or secondary school property;

(*e*) depict a professional model under twenty-five years of age;

(*f*) in the case of outdoor material, be displayed for more than three months before the commencement of the event or activity and more than one month after the closure of the event or activity;

(3) Subsection (2) does not apply

(*a*) to signs or programs available on the site of an event or activity;

(*b*) to the clothing of participants, performers and competitors in the event or activity;

(*c*) to any material or equipment used during the course of the event or activity.

(4) The definitions in this subsection apply in this section.

"promotion" includes promotion by means of any printed material, event merchandise, advertisement, broadcast, sign, program or any other means of communication.

"sponsorship" means the support, financial or otherwise, of a person, entity, event or activity.".

Honourable senators, seconded by Senator Lynch-Staunton, I move:

That Bill C-71 be not now read the third time but that it be amended in clause 27, on page 10, by replacing lines 15 to 25 with the following:

"**27**. No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or is used with a service, if the non-tobacco product or service is primarily associated with young persons.".

Honourable senators, seconded by Senator Lynch-Staunton, I move:

That Bill C-71 be not now read the third time but that it be amended in clause 28, on page 10, by replacing line 33 with the following:

"criteria described in section 27.".

Honourable senators, seconded by Senator Lynch-Staunton, I move:

That Bill C-71 be not now read the third time but that it be amended in clause 33,

(*a*) by deleting lines 17 to 19; and

(*b*) by re-lettering paragraphs (*e*) to (*j*) as paragraphs (*d*) to (*i*), and any cross-references thereto accordingly.

[*English*]

The Hon. the Speaker: Honourable senators, when the Honourable Senator Lynch-Staunton proposed his amendments, I did not read them at that time in the interests of time. Similarly, I do not propose to read these amendments now, in the interests of time. They will all be before us tomorrow at 5:30 p.m.

•(1800)

Is it agreed?

Hon. Senators: Agreed.

Hon. Stanley Haidasz: Honourable senators, I rise this afternoon on a topic that I believe is very important to all Canadians and to our country, namely, the problem of tobacco in Canada, which is the cause not only of 45,000 premature, unnecessary deaths but also of hundreds of thousands of cases of chronic pulmonary and cardiac diseases — that is, 21 clinical entities — in addition to the economic loss to our country of $9 billion directly and, as estimated by health economists, $21 billion indirectly. This is a serious problem which should be dealt with more deeply than Bill C-71 treats it. That is why I rise to make a total of nine amendments, namely, to make the bill complete, acceptable and constitutional.

My first amendments deal with the tobacco content regulation in a smoking product under the definition of "reconstituted tobacco, salt of nicotine, tobacco additive and smoking." This proposed formula for a content regulation of a smoking tobacco product places an obligatory statutory formula in the legislation which is adjustable by regulation under a new clause 6.1.

The second amendment deals with the improvement of promotion and advertising as far as the definitions are concerned. My amendment will redefine "promotion" in clause 18.(1), to ensure that courts may look for a test and proof that a putative promotion, in fact, influences persons to use the products under discussion. This refers to the balance of probabilities and not merely evidence.

This amendment would also treat lifestyle advertising, which I will redefine as clause 22. For greater specificity, attracting the appropriate test that young persons are induced to see tobacco use as compatible with an attractive lifestyle, averting convictions for the innocent use of bandannas, toques, et cetera, during an event that is actually recreational for example, the Molstar skiing event.

The third category of my amendments deals with unwanted liabilities. Under this related head, I will propose an amendment to clause 21 in order to limit the liability of a participant in a public competition who may innocently thank a sponsor of the event where the sponsor happened to be a tobacco product manufacturer. For example, there was another winner at a race last weekend. What if he were to say, "Thank you, company that made Player's. You have allowed me to participate in this great event, the Grand Prix." If he were to say that, according to the present legislation he would either be put in jail or fined $300,000, or both. I consider that to be cruel and unusual treatment and punishment. Therefore, it is contrary because it violates clause 12 of the Charter of Rights and Freedoms.

The fourth category of amendments are ministerial responsibilities. There are four amendments there, namely, requiring a new clause 42.(2). The tabling of annual reports by the minister to both houses of Parliament was a disclosure of the process. The clause is self-explanatory.

Another amendment will be in relation to adding to the title of Part V.1 to include "reporting" and amending also clause 5, expressing the guidance that regulations must be pursuant to legislation rather than direct legislation as, for example, clause 22.(2) may otherwise imply.

The fifth amendment will be to clause 7. I am proposing to have it rewritten to declare that the minister's involvement in adjusting the statutory formula's parameters — that means by way of a new clause 6.1 — and distinctly to address snuff and chewing tobacco in terms relating to their associated vectors as a health risk.

Honourable senators, testimony in committee demonstrated the absolute necessity to characterize the Tobacco Act as legislation pertaining to public health standards rather than just a few paragraphs or sections which represent a raw exercise of criminal powers relating to promotions and advertising, but which totally neglect the crux of the problem of tobacco in Canada, which is nicotine — that addictive substance; the high levels of nicotine in tobacco products, as well as another content, namely, the toxic and carcinogenic tars which cause the 21 clinical disease entities and cancer — that is, cancer of the lungs, the larynx and the pancreas. Addiction to nicotine is the crux of the tobacco problem in Canada.

•(1810)

It is clearly unconstitutional to regulate the promotion of entertainment which is offered to the Canadian public by the tobacco manufacturing companies.

I will proceed to explain my amendment. The first amendment is to clause 2 pertaining to definitions. I will not take the time to read my notes. I have sent all honourable senators the explanations along with my amendments. They were also tabled in both official languages in committee.

MOTIONS IN AMENDMENT

Hon. Stanley Haidasz: Honourable senators, I move;

That Bill C-71 be not now read the third time but that it be amended in clause 2,

(*a*) on page 2, by adding after line 16 the following:

""reconstituted tobacco" means any substance that settles out by sedimentation when the contents of a tobacco product, not including paper or other wrapping material or filter material, are floated in acetone or other organic non-acid solvent, including water or the alcohols.";

(*b*) on page 2, by adding after line 19 the following:

""salt of nicotine" means any nicotinic substance, including nicotine and the alkaloids nornicotine,

mysomine, anabasine, anatabine, and 3,2-Bipyridil, or a substance that renders cotinine in human blood."; and

(*c*) on page 2, by adding after line 21 the following:

""smoking" means the intentional inhalation of smoke produced by the combustion of tobacco.

"tobacco additive" means any substance which is added to a tobacco product or which becomes part of the tobacco product as a result of the manufacturing process or by absorption from the packaging or storage of the tobacco

(*a*) that serves to enhance the bioavailability of nicotine in the human body,

(*b*) that serves to increase cotinine in human blood, or

(*c*) that, upon heating or combustion, produces substances that are detrimental to human health.".

My second amendment to Bill C-71 is to clause 5 which deals with regulating pursuant to an act.

Honourable senators, this amendment solves a secondary and related problem with the interpretation of regulations being made in a vacuum or at least without reference to the enabling legislation. The entire act or sections thereof suffer all of the constitutional weaknesses that may be found to obtain in a particular regulation. That could not have been the desire or intent of the minister in propounding this legislation in response to the *RJR-Macdonald* case. Rather, it seems clear from his testimony that it is anticipated that the statute-based stand of various regulations may be defeated from time to time to be replaced in short order by considered regulations where drafters have had the benefit of wisdom deriving from litigation, and without necessarily involving the whole parliamentary process again.

It was clear to the minister that there was no question of spirited and predatory litigation. His express desire was that whole sections and certainly the entire act may not fail because of constitutional weaknesses in one or other component. This leads me to believe that it is inadvisable to let the courts suppose that the drafters intend that interpretation of regulations hold sway over interpreting the entire statute.

Therefore, honourable senators, I move:

That Bill C-71 be not now read the third time but that it be amended in clause 5, on page 3, by replacing line 14 with the following:

"standards established by this Act and the regulations made pursuant to it."

My third amendment deals with a new clause that I should like to propose in the bill. It will be called clause 6.1 and it pertains to a formula regulating smoking products. It reads as follows:

That Bill C-71 be not now read the third time but that it be amended, on page 3, by adding after clause 6 the following:

"**6.1.** No tobacco product intended for use by smoking shall be manufactured unless every gram of the tobacco product, as expressed per gram of the tobacco product not including the weight of paper or other wrapping material or filter material,

(*a*) contains and produces on use not more than 0.3 mg of nicotine, including any salt of nicotine;

(*b*) contains not more than 2.0 per cent by weight of reconstituted tobacco;

(*c*) contains not more than 0.1 per cent by weight of tobacco additives; and

(*d*) produces, on being burnt, smoke that contains not more than 0.5 mg of cancer-causing tars when measured in accordance with test methods prescribed by the regulations.".

Honourable senators, as my fourth amendment, I move:

That Bill C-71 be not now read the third time but that it be amended, in clause 7, on page 3 by replacing lines 22 to 28 with the following:

"(*a*) establishing standards for a tobacco product, including but not limited to

(*i*) reducing the allowable amount of nicotine, including any salt of nicotine, or the percentage of reconstituted tobacco, or the percentage of tobacco additives, or the amount of cancer-causing tars contained in the smoke produced by the burning of the tobacco product, as set out in the formula in section 6.1,

(*ii*) prescribing the amounts of substances that may be contained in the tobacco product or its emissions, including the emissions conveyed by sneezing or by expectoration in the use of the tobacco product, and

(*iii*) prescribing substances that may not be added to the tobacco product;".

•(1820)

My fifth amendment is to clause 18(1) and defines the word "promotion." This also is explained in my explanatory notes to honourable senators.

Therefore, I move, seconded by the Honourable Senator Robichaud:

That Bill C-71 be not now read the third time but that it be amended, in clause 18, on page 6 by replacing lines 31 to 38 with the following:

"**18**. (1) In this Part, "promotion" means a representation about a product or service by any means, directly or indirectly, that, on the balance of probabilities, is likely to induce persons to use the product or service.".

My sixth amendment pertains to clause 21 which deals with liability in public competitions and the thanking of sponsors, to

which I alluded in my opening remarks. This amendment is designed to exculpate participants in a public and competitive event, such as a sporting event, including figure skating, who do not receive consideration for personal, albeit public, acknowledgement of a brand name tobacco product; and, second, express thanks to the sponsors of the event, even if they receive indirect benefit by way of a trophy, a prize or other award competed for, as the case may be, provided in part by the sponsor who may be a tobacco manufacturer.

I remind honourable senators that this is the measure about which I was very concerned when I read it in Bill C-71. A great hero from Quebec, Mr. Villeneuve, would be put in jail and/or fined $300,000 for thanking his sponsor. I think that is cruel and unusual punishment. As I said previously, that is contrary to section 12 of the Canadian Charter of Rights and Freedoms. Long live Villeneuve!

My next amendment is as follows. It, too, is seconded by the Honourable Senator Robichaud:

That Bill C-71 be not now read the third time but that it be amended

(*a*) on page 7, by replacing lines 34 to 37 with the following:

"**21.** (1) No person shall promote a tobacco product or tobacco product-related brand element by means of a testimonial, endorsement or public expression of appreciation, however displayed or communicated."; and

(*b*) on page 8, by replacing lines 1 to 3 with the following:

"(3) For the purposes of subsection (1), a person who participates in a public competition that is sponsored in whole or in part by a tobacco manufacturer does not promote a tobacco product or tobacco product-related brand element of the manufacturer by expressing appreciation for the sponsorship of the manufacturer if the person does not receive any consideration from the manufacturer

(*a*) for participating in the competition; or

(*b*) for the public expression of appreciation the person makes for the sponsorship of the competition.

(4) For the purposes of subsection (3), a person who is awarded a trophy or other prize in a competition in which the person competes does not receive consideration in the award of that trophy or prize.

(5) A manufacturer of a tobacco product shall not in respect of any trophy or other prize that is the object of a public competition of which it is a sponsor, other than a trophy or prize that was the object of public competition in Canada on or before December 2, 1996,

(*a*) by any means cause the title or name of a trophy or other prize awarded in the competition to incorporate any tobacco product-related brand element; or

(*b*) hold the entire intellectual property interest in a trophy or other prize to be awarded in the competition.

(6) This section does not apply to a tobacco product-related brand element that appeared on or was directly associated with a tobacco product for sale in Canada on December 2, 1996.".

My seventh amendment deals with clause 22(4) and it defines "lifestyle advertising". I will not waste the time of honourable senators reading my explanatory notes. Senators have received copies of them in their offices.

Therefore, I move, seconded by the Honourable Senator Robichaud:

That Bill C-71 be not now read the third time but that it be amended, in clause 22, on page 8, by replacing lines 36 to 41 with the following:

""lifestyle advertising" means advertising, including advertising that uses images of or allusions to glamour, recreation, excitement, vitality, risk or daring, that portrays as attractive a way of life and that is likely to induce in young persons the impression that the use of a tobacco product is compatible with or befits that way of life.".

My eighth amendment would bring a new clause into the bill. It would be numbered clause 42.2. It deals with the tabling of annual reports to which I referred in my opening remarks. It is self-explanatory. Senators have the explanatory notes.

Therefore, I move, seconded by Senator Robichaud:

That Bill C-71 be not now read the third time but that it be amended on page 17 by adding after clause 42.1 the following:

"**42.2** The Minister shall lay a report before each House of Parliament each year on or before the anniversary of the date on which the Act came into force on the administration and enforcement of the Act, on the administration and enforcement of the regulations and on the process of consideration and final adoption or rejection of any regulations proposed to the Minister together with the reasons for their adoption or rejection.".

My final amendment is my ninth amendment. It amends the title of Part V.1 which deals with reporting on the act. It is an obvious follow-up of the previous amendments. It is the part in which section 42.2 appears and bears the appropriate title, referring to the annual reporting by the minister on the act and its regulations.

Therefore, in conclusion, I move, seconded by Senator Robichaud:

That Bill C-71 be not now read the third time but that it be amended on page 17 by replacing the heading of PART V.1 with the following:

"LAYING OF PROPOSED REGULATIONS AND REPORTING".

•(1830)

Honourable senators, I hope you will give these amendments favourable consideration.

Hon. Colin Kenny: Honourable senators, I rise to speak to Bill C-71, the Tobacco Act, with a view to proposing an amendment. However, before I do that, I would like to pay tribute to Senator Carstairs who very ably chaired the committee studying the bill. I share Senator Lynch-Staunton's comments about her, and I must say that we on the government side were all impressed with how well she chaired a very difficult set of hearings.

I wish as well to compliment Senator Lewis, the sponsor of the bill, who spoke and summarized the bill and our debate very succinctly and very well.

Honourable senators, I stand before you today with two real concerns about this piece of legislation. Before I get to my concerns, I have to premise them with the facts that we all know, that tobacco kills 40,000 people a year and that it costs $3 billion in direct medical costs and $7 billion in indirect costs.

The bill as we have it today is a step forward. There is no question in my mind that it is a step in the right direction. However, the bill does not do two things which I believe it must do. I believe the report filed by Senator Carstairs was very good inasmuch as it highlighted some of the points that I am about to speak to. I will also be referring to a document that I have put on senators' desks to assist them as I go through my remarks.

My first concern is that there is insufficient provision in the legislation to actually get young people off tobacco. The bill focuses on a great many useful things, but it does not focus on the very complex things that go through an adolescent's mind relating to self-identity, peer pressure, role models and rebellion. These topics were related by the experts who came before the committee, and they are very important to solving the core of this problem.

The core of this problem is that we know 40,000 Canadians are dying each year. Who are the tobacco companies targeting to replace those 40,000 people? They are replacing them from the youth of Canada. My concern, then, is to set up something like a tobacco manufacturers community responsibility fund in order to provide resources to get at this specific problem.

My second concern is that the bill does not provide adequate transition measures and adequate help for those who are dependent on tobacco money to put on their events. I am talking about the arts groups, the sports groups and the cultural groups which exist across the country and which — I think it would be fair to say — have become addicted to tobacco money. They are now totally dependent on tobacco money for their continued functioning, and there is not sufficient provision in the bill for them to survive.

Two questions immediately come to my mind as soon as I begin to talk about how we will do this or how this chamber could do this if it chooses to. The first is how do we raise the money? Do we have the ability to tax? How can we get some money to go about this process?

I would draw the attention of honourable senators to a provision in Erskine May's *Parliamentary Practice*, Twenty-first Edition, at page 730, which provides for "Levies upon an industry for its own purposes." You are welcome to check that reference. The purposes I would refer you to are contained in the green folder before you. I will read some of the highlights.

The tobacco industry appeared before us, and its president, Mr. Parker, said:

> At the core of the issue before you is smoking by Canadian youth. The manufacturers agree that youth should not smoke — period.
>
> The member companies are prepared to work with any responsible agency on the issue of youth smoking to further reduce it.
>
> ...unlike most bills of this nature, Bill C-71 is absent the usual transitional provisions that would allow rational and practical implementation.

And it goes on. The quotations are all available you to. The final one I would read is:

> We are serious about wanting to help people stop smoking. If you can suggest productive ways that we can work with government, I would be happy to hear them.

What I am bringing forward for your consideration, honourable senators, is a productive way for us to assist the tobacco manufacturers in getting our youth off tobacco. I am also bringing forward a proposal for your consideration to provide for a transitional fund that would allow the sports, arts and culture groups to continue to be funded. The proposal I am bringing forward suggests that they would be fully funded for the first three years. In the fourth year, they would have two-thirds funding. In the fifth year, they would have one-third funding, and in the sixth year, no further funding would be provided.

The amendment I am about to go through with you calls for a general levy, which would go on in perpetuity, to educate our young people. It is designed to be run by physicians who will direct and administrate it. The second fund is a special fund which would only last for five years. It would be designed to get those groups now dependent upon tobacco funding off it and to do it in a rational way that would give them time to look for and find other sponsors to fill the gap as they are weaned off tobacco funding.

MOTION IN AMENDMENT

Hon. Colin Kenny: Therefore, honourable senators, I move, seconded by the Honourable Senator MacDonald (*Halifax*):

> That Bill C-71 be not now read the third time but that it be amended by adding, after line 36, on page 12, the following.

"Part IV.1
TOBACCO MANUFACTURERS COMMUNITY RESPONSIBILITY FUND

33.1(1) The Tobacco Manufacturers Community Responsibility Fund is established to assist the Canadian tobacco manufacturing industry to demonstrate its commitment to the health and welfare of Canadians, and of young persons in particular.

•(1840)

(2) Within thirty days after this Act is assented to and thereafter as needed from time to time, the Minister shall appoint a committee, composed of seven medical practitioners of whom four shall have a demonstrated expertise in child psychology, to choose an administrator of the Fund, referred to in this section as the "Administrator", and, within ninety days after its appointment, the committee shall select a non-profit body corporate, either currently in existence or whose creation for the purpose is proposed to the committee, and appoint it to administer the Fund.

(3) The Fund is established on behalf of the Canadian tobacco manufacturing industry

(*a*) to protect the health of young persons by engaging in and funding activities intended to discourage them from using tobacco products and to protect them from inducements to use tobacco products and the consequent dependence on them, and

(*b*) to fund, on a transitional basis, persons, entities, events, activities and permanent facilities financially sponsored by manufacturers where a decrease in such sponsorship occurs.

(4) In order to achieve the objective set out in paragraph (3)(*a*), the Administrator may, at the national, regional and local levels throughout Canada, commission and conduct research, develop and distribute educational tools, plan and execute communications strategies, run advertising campaigns, use the media and disseminate information through other means, hold and sponsor programs, conferences and peer and other group activities and engage in other activities that, in the opinion of the Administrator, will contribute to the achievement of the objective.

(5) The Administrator shall publish, assess and collect the levies payable under this Part and receive voluntary contributions for the purposes of the Fund.

(6) The Administrator shall raise for the Fund, by means of a general levy for each financial year of the Fund the first of which shall include the day that this Act comes into force, a revenue in a total amount equal to two dollars per person resident in Canada.

That works out to $60 million this year.

The next section refers to subsection (14), which I will address later; it deals with the handling of the Administrator's expenses.

(7) Subject to subsection (14), the amounts raised under subsection (6) —

That is the one I just discussed.

— and all voluntary contributions shall be used by the Administrator to finance the attainment of the objective set out in paragraph (3)(*a*).

That is, the health of youth in Canada.

(8) The Administrator shall raise for the Fund by means of a special levy

(*a*) for each of the first three financial years of the Fund, a revenue in an amount estimated by the Administrator to be necessary to replace all losses in financial sponsorship during those years of persons, entities, events, activities and permanent facilities financially sponsored as of April 1, 1997 by manufacturers;

(*b*) for the fourth financial year of the Fund, two-thirds of the average of the amounts raised under paragraph (*a*) for the second and third years; and

(c) for the fifth financial year of the Fund, one-half of the amount raised under paragraph (*b*).

That refers to full funding for the first three years, two-thirds funding in the fourth year, and then one-third in the fifth year.

The next section refers to subclause (14), which covers the expenses to be charged to the fund. I will get to that in a moment.

(9) Subject to subsection (14), the amounts raised under subsection (8) shall be used by the Administrator to finance the attainment of the objective set out in paragraph (3)(*b*).

That is the transition fund.

(10) Levies payable under this Part shall be on all manufactured tobacco produced in Canada and delivered to a purchaser and on all manufactured tobacco imported into Canada and shall be paid to the Administrator by the person manufacturing or importing the tobacco.

That refers not to farmers but to manufacturers or importers.

(11) The Administrator shall, after consultation with the Canadian Tobacco Manufacturers' Council, make guidelines providing for:

(*a*) the publication of levies to be assessed under this Part;

(*b*) the equitable assessment and collection of the levies;

(*c*) the manner in which the levies shall be paid;

(*d*) the evidence by which a person's liability to the levies and discharge of that liability may be established;

(*e*) the application and disbursement procedures for amounts to replace loss in financial sponsorship; and

(*f*) such other matters as the Administrator considers appropriate.

(12) The Administrator may appoint and remunerate an agent to collect for it the levies authorised by this Part and the Canadian Tobacco Manufacturers' Council may be appointed as such agent.

(13) A levy under this Part constitutes a debt payable to the Administrator, which the Administrator may sue for and recover as such in any court of competent jurisdiction, together with all costs associated with the recovery thereof.

(14) There may be paid out of and charged to the Fund

(*a*) all administrative costs of the selection committee established under subsection (2) and such remuneration and expenses of the members of the committee as are fixed by the Minister;

(*b*) the administrative costs of establishing the Administrator, if it is created solely for the purpose of administering the Fund;

(*c*) all costs of the Fund, including for the fees, charges and expenses of the Administrator.

(15) The Administrator shall keep proper accounts with respect to the Fund and prepare in respect of each financial year a statement of accounts which accounts shall be audited annually.

(16) The Administrator shall, as soon as possible but in any case within six months after the end of each financial year, submit to the Canadian Tobacco Manufacturers' Council a report on the Fund, including an assessment of the effectiveness of activities financed by it, financial statements and the auditor's report.

(17) Within fifteen days of receiving the report referred to in subsection (16), the Canadian Tobacco Manufacturers' Council shall submit it to the Minister, who shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen sitting days on which that House is sitting after the day on which the Minister receives it.

(18) In the event that

(*a*) the Fund is without an Administrator for a period of one year or more, or

(*b*) the Administrator of the Fund fails to submit the report required by subsection (16) for two consecutive years,

the Canadian Tobacco Manufacturers' Council may, with the approval of the Minister, apply to a court of competent jurisdiction for an order to wind up the Fund upon such terms as the court considers expedient, and any surplus that remains shall be distributed to the Canadian Tobacco Manufacturers' Council.

(19) A reference in this Part to the Canadian Tobacco Manufacturers' Council includes a reference to a successor named by it and, in the event that the Council or a successor refuses or is unable to act for any purpose under this Part, the Minister may appoint by order, after consultation with such persons liable to pay the levies as the Minister considers appropriate, a person or body to act on behalf of the Council for the purposes of this Part."

Briefly, honourable senators —

The Hon. the Acting Speaker: Honourable senators, I hesitated to interrupt the honourable senator in the reading of his amendment, but I must inform the house that his speaking time has expired. However, he may continue with consent of honourable senators.

Is it agreed?

Hon. Senators: Agreed.

Senator Kenny: Briefly, honourable senators, I want to touch on one point. This is perhaps the most important point of all.

I believe that there is a fair measure of support for the principles that are expressed in this amendment. However, I also believe that there is a great deal of concern amongst honourable senators that time is limited and that it is possible that an election may be called within the next two weeks. Honourable senators have quite properly expressed the concern: Can we do this in time? Can we pass this amendment, return the bill to the other place, and do they have enough time to return it to this chamber before the election is called and both houses and Parliament are dissolved?

Senator Haidasz: If there is political will and wisdom, we have the time.

Senator Kenny: I hear you, Senator Haidasz, and I agree with you.

Let me say this, honourable senators. Today is Tuesday. We have agreed to have a vote and to dispose of all matters relating to this bill tomorrow night at 5:30 p.m. That leaves Thursday, Friday, Monday, Tuesday, Wednesday and Thursday. I understand they do not have votes in the other place on Friday. That leaves six working days.

Senators who have been around here for a while have seen bills go down the hall and come back the same day. Once a bill is signed, it is sent down directly to the Speaker in the other place and, at the first opportunity, he reads the message from the Senate. They do not require notice to deal with a message coming from this place. The same procedure applies to this chamber. In the event that there is some form of disagreement in the other place, they can move to impose time allocation. That only takes two days in the other place. They have six days. They may accept, vary or reject our amendments.

They all know that this amendment may be sent to them. They are aware of the substance of the amendments moved by senators. We have publicized our intentions. They must make their own decisions. When the bill is returned to the Senate, we can deal with it expeditiously, in fact, that same day.

I want honourable senators to know that I, for one, will vote in favour of whatever they send back. If the House of Commons votes twice on a bill, I will defer, and I will accept their will. However, if we do not return this bill with amendments, then they will have no opportunity to decide whether these changes should be made, and these changes can save thousands of lives every year. It is incumbent upon us to think about the $60-million fund that would be administered by doctors who would have an administration under them that would work with the grass roots to address the real nub of the problem, which is not addressed in the bill.

I submit that we have lots of time. We have six days to deal with this. If the House of Commons wishes, they can return it to the Senate in one day and we can deal with it promptly. Can you imagine the Bloc Québécois voting against a $60-million fund to save adolescents from cancer? Can you imagine them being against that amendment for one minute? More to the point, can you imagine them being against a fund that will save the Just for Laughs Festival, the Grand Prix, the tennis tournament and the jazz festival? Do you really think the official opposition will block this amendment?

We have lots of time, if we want to make it happen. I ask honourable senators to give this amendment their serious consideration. I hope, at the end of the day, you will vote in favour of it.

Hon. John G. Bryden: Honourable senators, I rise not to speak on the merits of any of the amendments but to speak to the report by the Standing Senate Committee on Legal and Constitutional Affairs which was that the bill be reported without amendment but with very strong recommendations.

I do not think any of us should fool ourselves: Every single one of those amendments may have merit. Senator Kenny has just spoken on his proposed amendments, as have Senator Haidasz and others. There are a number of days left. Is it possible that something can be done? Honourable senators, anything is possible. All of us in this chamber have lived in a political world. A number of senators to whom I have spoken have said that, if we cannot improve it, this bill is still a considerable advance. Indeed, Senator Kenny said that just a moment ago and many others in this chamber believe it to be so.

We must take full responsibility for this. If whatever amendments have been proposed are passed and this bill, as amended, is returned the other place and dies on the Order Paper, we must take full responsibility for not having faced a real situation by being prepared to pass a bill that is a far advance over our present position.

I smoke. I would prefer that my teenage granddaughters and grandsons do not. Anything that we can do to advance that cause is important. This is not an issue about promotions and car racing. Surely, we do not have to sacrifice our children to promote either our arts or our sports figures. This is a health issue.

•(1900)

We have no control over whether Parliament is prorogued or whether it is possible to invoke closure and shut down everything else that is happening on the other side. If we walk away from this and this bill dies, then I hope all of us are prepared to take our responsibility and not calmly pass it off by saying, "But they could have done it if they had agreed with everything that we had said."

This is a significant issue. At issue is the health of young people who are feeding the tobacco industry and their tobacco addiction. I wish to go on record as saying that so we are all very clear on the situation. We carry a huge responsibility. Whether we get a whole loaf, or a loaf and a quarter, or what some of you may consider a half a loaf, from my point of view, when it concerns the interests of my grandchildren, I will take a half a loaf when it comes to nicotine addiction.

Hon. Jean-Maurice Simard: May I ask Senator Bryden a question?

Senator Bryden: Certainly.

Senator Simard: Senator Bryden told us on at least two occasions that we must live in a real political world. What is the political world for him? Does his real political world allow full study, debate and consideration of amendments, or is he prepared to live with half a loaf or a quarter of a loaf? I hope Senator Bryden can confirm that he and his caucus are prepared to study this bill and consider every amendment, including those from both sides.

Senator Bryden: Honourable senators, the bill received a very thorough study, as I understand it, before the Standing Senate Committee on Legal and Constitutional Affairs, with witnesses and documents and questioning. Amendments have been introduced here. Certainly I will review those amendments. I have already had an opportunity to look at some of them because they come from this side.

However, as a senator, a father and a grandfather, I must make a judgment at some point before we vote tomorrow night. I have been around a while, almost as long as Senator Simard. One is never absolutely sure what one will do, but, from what I have seen of the amendments and what I know of the recommendations of the committee and how strongly they bolster the bill that we now have, I do not think I will be prepared to roll the dice and bet that they will be able, in fact, to do all of the optimum things that we are suggesting.

Hon. Finlay MacDonald: Honourable senators, as the seconder of this amendment, I should like to be permitted a few brief remarks. Many of us have been approached by various groups with regard to this legislation. In my case, I was approached by the Atlantic Alliance, which is an organization that supports performing arts and cultural affairs in the maritime provinces. I sadly had to tell them that I could not help them. They were not talking big money — $10,000 in one case and $40,000 in another. I told them that I would be supporting this bill and that I would not support any amendments which would endanger the passage of this bill.

I am saying now that I will not support any amendments except the one proposed by Senator Kenny. I became aware of

his amendment only a few days ago, and it is a queer animal. I spent the weekend obtaining advice from legal people and procedural people and some hours with Senator Kenny in an attempt to fully understand it. I knew what the inherent problems were. Is it a tax? Is it a money bill? How can it be done? I became convinced that the amendment was in order.

I will not repeat what the amendment purports to do. However, in hindsight, the minister could have put one major component in the bill which is lacking, and that is provision for an educational fund to induce young people not to start smoking. When Senator Bryden refers to the excellent report of the Standing Senate Committee on Legal and Constitutional Affairs, he need only read the third paragraph to see that implicit in their report is that the committee believes that legislation such as Bill C-71 is only one aspect to the development of an integrated approach to prevent young people from starting to smoke.

That there would now be transitional funds to help the people who came to me is very good news. I will not go into the details; however, I congratulate Senator Kenny on his amendment. I told him that I would support it with one caveat, and that is that I had to be persuaded that this amendment, however commendable, would not prejudice, because of timing, the passage of Bill C-71. I am now persuaded that there is time, and I ask senators to support this amendment.

Hon. Herbert O. Sparrow: Honourable senators, it appears to me that if there are amendments that need to go back to the other chamber and there is not sufficient time, that is not our problem.

I do not think that senators should accept blame for trying to bring better health to Canadian people. That is our job. We are not responsible when an election is to be called. There is, in fact, a year and a half to go before an election is required, so why do we, all of a sudden, see some blame in our stand of making these amendments? That certainly is not an issue that we should be considering. We do not have any responsibility for calling that election. We must see that there is an election called within the five-year period, yes, but there is a year and a half to go.

If the health of Canadians is so crucial, surely we should not be the only ones looking at the issue. Surely those who make the decision of calling an election should see that this bill gets its proper due and is passed as it should be.

On motion of Senator Keon, debate adjourned.

•(1910)

A BILL TO AMEND CERTAIN LAWS RELATING TO FINANCIAL INSTITUTIONS

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-82, to amend certain laws relating to financial institutions.

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.

REFERENDUM ACT

LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE EMPOWERED TO REVIEW REGULATIONS PROPOSED BY CHIEF ELECTORAL OFFICER

Leave having been given to revert to Government Notices of Motions:

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*f*), I move that pursuant to subsections 7(6) and (7) of the Referendum Act, the Standing Senate Committee on Legal and Constitutional Affairs be empowered to review the regulations proposed by the Chief Electoral Officer.

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

Hon. Senators: Agreed.

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

Hon. Senators: Agreed.

Motion agreed to.

BROADCASTING ACT

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eighth report of the Standing Senate Committee on Transport and Communications (Bill C-216, to amend the Broadcasting Act (broadcasting policy), with an amendment) presented in the Senate on April 10, 1997.

Hon. Noël A. Kinsella, for the Honourable Senator Forrestall, moved that the report be now adopted.

Motion agreed to and report adopted.

The Senate adjourned until Wednesday, April 16, 1997, at 1:30 p.m.

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