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(HANSARD)

Wednesday, April 16, 1997

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Wednesday, April 16, 1997

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

Prayers.

ROUTINE PROCEEDINGS

CANADA-CHILE FREE TRADE AGREEMENT IMPLEMENTATION BILL

REPORT OF COMMITTEE

Hon. John B. Stewart, Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

Wednesday, April 16, 1997

The Standing Senate Committee on Foreign Affairs has the honour to present its

SIXTH REPORT

Your Committee, to which was referred the Bill C-81, An Act to implement the Canada-Chile Free Trade Agreement and related agreements, has examined the said Bill in obedience to its Order of Reference, dated Thursday, April 10, 1997, and now reports the same without amendment.

Respectfully submitted,

JOHN B. STEWART
Chairman

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

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

TOBACCO BILL

FREEDOM IN ADVERTISING—PRESENTATION OF PETITION

Hon. Marjory LeBreton: Honourable senators, I have the honour to present a petition from Jacqui Hardtke of Richmond Hill, Ontario, which contains over 500 signatures of people who wish to express their opposition to the proposed Bill C-71, the Tobacco Act, specifically as it refers to the advertising and sponsoring of major sporting events.

QUESTION PERIOD

HUMAN RIGHTS

FAILURE TO CO-SPONSOR RESOLUTION ON CHINA AT UNITED NATIONS—REQUEST FOR PARTICULARS ON TIMING OF GOVERNMENT POLICY DECISION

Hon. A. Raynell Andreychuk: Honourable senators, again I shall ask my honourable friend about the resolution on China at the United Nations Human Rights Commission.

It was reported today by the media that Raymond Chan, Secretary of State for Asia-Pacific, had said, in a telephone interview from Ottawa, that the timing of the decision on this matter was not their choice, that the decision was forced on them, and that it was a very difficult decision to make. Could the Leader of the Government in the Senate advise who set the timing on this issue, and who forced the decision on the Government of Canada?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I should like to determine just what my colleague Mr. Chan said. I am not familiar with the choice of phrase, such as "things being forced upon us." A decision was taken, for some of the reasons that we have previously discussed, but not agreed upon, during Question Period. However, I should like to examine Mr. Chan's comments before I venture to tell my friend exactly to what he was referring.

Senator Andreychuk: I trust that we can soon begin to get answers, because the more people who speak on this matter, the more varied seem to be the views on what government policy is on human rights.

This is an important issue because, in this chamber as well as in the other place, we are always talking about our values, and about passing laws that are meaningful. Canadians deserve to know what the decision was, and who took that decision on the issue of human rights.

Furthermore, if Mr. Chan's rendition of events is accurate, I should like answers as to who imposed the time frames, and who imposed the decision on the Government of Canada. From that, perhaps we will be able to determine just who does direct the foreign policy of Canada.

Senator Fairbairn: Honourable senators, in response to the honourable senator's remarks, I am again tempted to give her a response that is reflective of the situation. However, I should like to find out exactly what were the words and the context within which my honourable friend is asking her questions.

Clearly, the Prime Minister directs our foreign policy, in concert with the Minister of Foreign Affairs and others. Nothing is imposed. I shall stop there because I do not know the context of the remarks that were made.

I would point out to my honourable friend — and she probably would have seen it — that a very detailed release was put out when the announcement was made this week on this matter, and if I recall correctly, it was put out in the names of both the Minister of Foreign Affairs and Mr. Chan, because of his obvious association with the Asia-Pacific region. This detailed document set out the situation, and I would again refer my honourable friend to it. However, I shall follow up on the basis of her concern over comments that were made, with which I am not familiar and would like to become familiar.

Senator Andreychuk: As my honourable friend was tempted to add, I am also tempted to ask a follow-up question. I am well aware of the press release and the fact that Mr. Chan was supportive of it.

I am also very well aware of Raymond Chan's personal commitment to the issue of the Tiananmen Square incident in 1989, and in fact he pressured the government of the day to take the action that they did on the resolution at that time. At that time, Mr. Chan happened to be leading the democracy movement in China as part of a Canadian NGO. I happened to be the permanent representative to the United Nations Human Rights Commission. I listened to him very carefully when he spoke. In fact, we did act on those comments.

Since then, I have heard through other channels that Mr. Chan has been heard to say that political dissidents are usually political opposition, and that that is not a true human rights issue. Therefore, since Mr. Chan is now part of the government, I weigh very carefully what he says.

My concern is that we speak with one voice on issues such as this — unless Mr. Chan is now attempting to rationalize his initial position on this matter with his political position today.

FAILURE TO CO-SPONSOR RESOLUTION ON CHINA AT UNITED NATIONS—MESSAGE CONVEYED TO OTHER COUNTRIES—GOVERNMENT POSITION

Hon. Consiglio Di Nino: Honourable senators, surely the Prime Minister and his colleagues must be aware that the Chinese are marketing and promoting the fact that Canada, one of the world's most respected nations on the issue of human rights, is now on their side. The fact is that, if Canada supports China, then it is viewed as being the case that whatever China does is being done with Canada's support.

Organizations such as Asia Watch, Amnesty International and others which participate in the analysis of human rights conditions in different countries, report from time to time on some of the horribly oppressive and inhumane treatment that is meted out to individuals in some countries. One of the most inhumane and oppressive in its treatment of dissidents is China. By making this decision at this time to support, in effect, the Chinese government, does this government realize the harm that it is doing to those people who are striving to gain some basic human dignity?

Does this government appreciate the kind of message that goes out to the millions of people hungering for a word of support from anywhere in the world, when a country such as Canada decides to support China in its oppressive and inhumane treatment of many of its citizens?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, Canada, of course, does not support any country's inhumane treament of its citizens.

In the last several days, I have attempted to indicate that the Canadian decision was certainly influenced by the progress that has been made between the two countries on the question of human rights. A number of agreements are being entered into that the Canadian government hopes will have a positive effect. My honourable friend is aware of these developments through the public statements that have been made by the Minister of Foreign Affairs.

My friend is also aware of the fact that Canada will be reassessing or reviewing the situation in the year ahead in order to determine whether the decision that this government has taken to work progressively on these bilateral human rights areas with the Chinese is bringing improvements. Next year on this occasion, the government will reconsider its position in light of those evaluations.

HEALTH

FUTURE PLANS FOR PROHIBITION OR RESTRICTION OF SUBSTANCES—GOVERNMENT POSITION

Hon. Duncan J. Jessiman: Honourable senators, Health Canada has identified tobacco use as the culprit in the deaths of more than 40,000 Canadians each year. This Liberal government initially responded by slashing tobacco taxes and making tobacco products more affordable than they had been for years. The recent attempt to partially undo the damage with Bill C-71 will surely be seen as the cynical ploy it is.

Health Canada undertook numerous studies over many years and concluded that MMT was not a danger to the health of Canadians. This Liberal government, however, responded by effectively banning a substance that is not harmful, and actually enhances our environment by reducing nitrogen oxide emissions, which are a significant contributor to smog.

This arbitrary and contradictory approach to dealing with different materials is creating concern and uncertainty about what the government will do next. Can the Leader of the Government give us some indication as to what other safe and useful chemical substances it plans to prohibit?

•(1350)

Hon. Joyce Fairbairn (Leader of the Government): I cannot answer that question, honourable senators. I am sure the honourable senator understands why I cannot answer it at this time. I shall have to look into it. I have no knowledge of any other substances at the moment.

Senator Jessiman: Perhaps the Leader of the Government can give us some indication as to other toxic and dangerous substances on which the government plans to reduce restrictions and give greater access.

Senator Fairbairn: Honourable senators, I shall take my friend's question as notice.

HUMAN RESOURCES DEVELOPMENT

FOCUS ON DEFICIT CUTTING—EFFECT ON POOR, UNEMPLOYED AND YOUTH—GOVERNMENT POSITION

Hon. Terry Stratton: Honourable senators, my question is directed to the Leader of the Government in the Senate. When Paul Martin announced his 1996-97 budget, he stated that there would be a $24-billion deficit. At the time, the unemployment rate was at about 10 per cent. The youth unemployment rate was at about 17 per cent. Nothing was done at that time to give any help or relief because of the high deficit figures. When the deficit figure dropped to $19 billion, there were cries to the government to do something to bring the high unemployment figures down, particularly those for youth and the poor whose numbers are skyrocketing in today's terms.

The United Way of Winnipeg tabled a report in the provincial legislature in which it warns of the imminent dangers that are approaching us as a society unless we do something about the missed generation of 15- to 24-year olds who are being completely left out of opportunities for employment. In today's *Globe and Mail* there is an article about the deficit dropping to $16 billion or, perhaps, even $13 billion.

When will the government recognize that it cannot wholeheartedly and callously reduce the deficit without recognizing the desperate needs of those young people and the poor who are being left out?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, the deficit figures are certainly encouraging. However, the final figures are not in yet. I believe Mr. Martin has indicated that he wishes to wait for that final accounting before commenting about the numbers that are being used at the moment.

The fact of the matter is that, while trying to stabilize our country's finances, the government has been trying to focus on the very areas that the honourable senator constantly raises in his concerns, and they are concerns I share with him. They include child poverty and assistance to young people, particularly in their efforts to bridge the gap between their education and finding and keeping a job.

The Minister of Finance has also tried to deal with small business in a selective way. In the last budget, he improved assistance for disabled Canadians who are also seeking transitional assistance to the workplace. As my honourable friend knows, he has announced additional help in the form of over $600 million to the national child benefit.

All these initiatives are being taken with care — and, my honourable friend believes, too much caution, perhaps — in the face of the fact that we have still a way to go in reducing the deficit. We cannot take comfort in any way from a figure of $13 billion, $16 billion or $19 billion. Those are incredible sums of money.

In terms of jobs, we take no comfort whatsoever in a 9.3-per-cent unemployment rate. The rate is moving down, albeit far too slowly. We hope some of the good work that the Minister of Finance has done will show an increase in the figures for job creation, in particular for young people, in the weeks and months ahead.

Senator Stratton: Honourable senators, it seems so callous and cold that the government would do what it has done to an entire generation. Coupled with that, the government has cut health care and education transfer payments to the provinces by some 40 per cent. The minister is talking out of both sides of her mouth. She says the government is giving to education. Yet, it has cut 40 per cent in transfer payments to the provinces. The health care system in this country is in dire straits. The minister should try to get on a waiting list in Manitoba. She will see just how long those waiting lists are.

The freight train has turned around and the deficit is gaining momentum for a drop to zero. The minister knows that it will not stop at zero, but go beyond that. Why not give some money to help the health care, education and the lost generation?

Senator Fairbairn: Honourable senators, I have listened to Senator Stratton's rhetoric. The Canadians about whom he is talking are the Canadians this government has been trying to assist. We have been trying to help the young people of this country. We did that in the last budget in terms of education. An array of youth programs has been announced, not just in the last budget but prior to that, over the last several years.

This government is not viewing that generation with callousness. It is viewing that generation with hope and an understanding that there is much more the government needs to do to assist the young people of this country in finding jobs, jobs for which they have been educated and are qualified to hold, and at which they can prosper.

BUSINESS OF THE SENATE

DELAY IN PROVIDING ANSWERS TO ORAL QUESTIONS— GOVERNMENT POSITION

Hon. Eric Arthur Berntson: Honourable senators, my question is addressed to the Leader of the Government in the Senate. On December 4 last year, I raised a question in the Senate regarding the legal costs of former minister John Munro. At that time, the minister stated that this was an important issue and that she wanted to discuss it thoroughly with her colleagues and to receive information to assist all honourable senators. She stated:

> Important questions have been asked. I should like to give them the time warranted by their importance to present an answer to this house.

On December 13, I raised another question on the same subject. The answer of the minister at that time was:

> Honourable senators, I am aware of the interest of Senator Berntson in obtaining answers as quickly as possible. I am attempting to do just that. I have conveyed the remarks of the honourable senator to my colleagues.

Then, on December 16, I raised another question relative to the same issue. The answer at that time was:

> Honourable senators, I am sure my friend will appreciate that I am awaiting information on this issue, and I am not inclined to comment on it until I receive that information. I am still seeking answers to my friend's questions and other public statements.

•(1400)

On the same day, my colleague the Honourable Senator Murray asked:

> ... I wish to ask the Leader of the Government if she would obtain and table a copy of the Treasury Board policy with regard to paying the legal expenses of public servants and whether she would inquire if there is a similar policy with respect to ministers of the Crown...

Then, honourable senators, on March 19, I asked a question on the same issue, and the answer was:

> I hope that by the time we return from the Easter break I shall have something for him. I am not promising answers until I have satisfied myself that I have made the necessary inquiries.

I followed the original question with a supplementary to which the answer was:

> ... I have no further comment at this time.

That brings us to yesterday, when my honourable colleague Senator Finlay MacDonald was asking questions relative to the Somalia inquiry, at which time the Honourable Leader said:

> Honourable senators, I choose to ignore the last remarks of Senator MacDonald.

I am sure most honourable senators will understand that, by now, I am starting to wonder whether the honourable leader is ignoring most questions that come from this side of the house, or at least more than the one that came from Senator MacDonald.

Here we are, if you can believe media comments and corridor gossip, on the eve of an election, and we are about to sweep Somalia under the carpet. We have swept Pearson under the carpet.

Senator Lynch-Staunton: They are getting out the broom.

Senator Berntson: My fear is that Mr. Monroe will be swept under the carpet as well.

Could the honourable leader indicate whether there is any hope at all of receiving answers to those aforementioned questions before Parliament is dissolved?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, first, I am not sweeping things under the carpet at all, certainly not on the Somalia issue. I do share an enormous degree of frustration with Senator Lynch-Staunton on the virtually inexplicable time delay that has taken place in answering his questions.

I am working on that daily, Senator Lynch-Staunton, in the hope that I shall get the whole group of them to you, certainly before events take place, if they take place at all.

My answer to Senator Berntson's question is that I am not sweeping anything under a rug. My answer is that I do not have the information to give him. Until I do, I have no comment on this case.

Senator Lynch-Staunton: The answer is no.

Senator Berntson: To say the least, I am surprised and disappointed. This issue has been hanging around since December 4. That is four and a half months. It is not a complicated issue. Why must we wait four and a half months to get answers to questions that do not appear, to me at least, to be terribly complicated? They may in fact offer some peace of mind to some ordinary folks out there in the real world. I perhaps ought not to complain about this because my colleague Senator Lynch-Staunton has been waiting for several more months than I for answers to some very important questions.

Perhaps I am dead wrong. Perhaps there will be no election call until the fall, in which case perhaps the leader will have time to get some answers to these questions. I am concerned. Perhaps this is the beginning of a pattern.

Senator Fairbairn: Honourable senators, I appreciate my honourable friend's concern. The question he has raised with me on a number of occasions is, as I have said, a very important question.

Senator Berntson: It is important but uncomplicated.

Senator Fairbairn: My honourable friend draws his own conclusions. That is fine. I am telling him it is a question that I have taken seriously. Because I have, I am not prepared to offer a response to him until I have something worthwhile to say.

Senator Berntson: Thank you very much.

TREASURY BOARD

FAILURE OF FEDERAL EMPLOYEES TO SECURE SENSITIVE INFORMATION—GOVERNMENT POSITION

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. It deals with the handling of sensitive personal information.

Honourable senators will have read in Monday's *Globe and Mail* an article that stated that a report prepared for the Department of Human Resources Development indicated that many federal employment offices lack proper authorization. It also stated that many employees at employment offices are currently working without proper security authorization and that employees have a limited knowledge of the different categories of sensitive information and the processes required to safeguard this information.

I find this appalling. My question to the Leader of the Government is this: What is the federal government's response to this report that was in *The Globe and Mail*?

Senator Berntson: Look under the carpet.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, that is a disturbing conclusion, and I shall try to get a response from the Department of Human Resources Development on that matter.

Senator Oliver: Honourable senators, you will know that the federal employment offices keep a great deal of sensitive personal data about unemployed Canadians. Files include social insurance numbers, financial status and medical conditions. The report indicates that security receives a low priority at employment offices, thereby threatening abuse and mismanagement of information. Perhaps the honourable minister could include a response to those queries as well.

Senator Fairbairn: I certainly will, honourable senators. Those are areas that have, historically, been subject to appropriate protection. I would hope that is still the case. I assure the honourable senator that I shall add that question to the list.

HEALTH

RESEARCH INITIATIVE ON BREAST CANCER—MATCHING OF FUNDS GENERATED BY PRIVATE SECTOR—GOVERNMENT POSITION

Hon. Mira Spivak: I have a short question for the Leader of the Government in the Senate. The Royal Bank of Canada and the volunteer-funded National Cancer Institute of Canada have extended their commitment for the five-year Canadian breast cancer research initiative, but the Canadian government has remained silent on this important initiative.

As you know, this research initiative was created in 1993 through the determined work of women parliamentarians and a ground swell of support from Canadian women. Medical research in preventative programs requires more than five years to realize the gains they can make in combating such a widespread, life-threatening disease as breast cancer. The figures are now one in nine women who will contract the disease in Canada.

My question is simply this: Will the government extend its research initiative to match the promises of the Royal Bank and the National Cancer Institute of Canada?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I shall certainly seek out that answer, with considerable interest on my part as well.

•(1410)

INTERGOVERNMENTAL AFFAIRS

LINGUISTIC SCHOOL BOARDS IN QUEBEC—DEMAND BY PROVINCE FOR AMENDMENT TO SECTION 93 OF CONSTITUTION—GOVERNMENT POSITION

Hon John Lynch-Staunton: Honourable senators, I should like to ask the Leader of the Government whether she can confirm that her government has agreed to support the resolution of the National Assembly of Quebec. Yesterday, that assembly unanimously urged the Government of Canada to exempt Quebec from certain provisions of section 93 of the Constitution in order that Quebec might implement linguistic school boards.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, the government has been reviewing the actions of the National Assembly, and the context of the support surrounding those actions. I believe the Minister for Intergovernmental Affairs, my colleague Stéphane Dion, will be making a statement on this matter very shortly.

Senator Lynch-Staunton: I am sorry, but the minister may be a little behind on this one. I understand that Mr. Dion has already made a statement to the effect that your government — and his government — will support the resolution, but hopes that there will be hearings, preferably by a joint committee of Parliament.

If I am ahead of the minister on this, I apologize, but it seems to me that it is becoming increasingly embarrassing to ask questions on topics that are apparently not brought to the minister's attention.

Senator Fairbairn: I am quite aware of the comments that the minister has made, Senator Lynch-Staunton. What I was referring to was his intention to make a formal comment in the other place. I believe that that would include consideration of parliamentary hearings.

Senator Lynch-Staunton: Surely this matter was discussed in cabinet, either yesterday or today? What is the government's position on the resolution of a National Assembly to allow, through a constitutional amendment, linguistic school boards in Quebec? That is the question. Will this government urge Parliament to pass the necessary amendment without hearings, or will it insist on hearings before the amendment is approved?

Senator Fairbairn: Honourable senators, as I said a minute or so ago, I would prefer to have my colleague Mr. Dion give his statement, and deal with those issues.

BUSINESS OF THE SENATE

FAILURE TO PROVIDE TIMELY ANSWERS TO ORAL QUESTIONS—
GOVERNMENT POSITION

Hon. John Lynch-Staunton: Honourable senators, are there any delayed answers?

Senator Doody: They are all delayed.

Senator Lynch-Staunton: As Senator Doody said, they are all delayed. Can we have confirmation from the government side that certain questions that have been on the Order Paper now for over 11 months will not be answered? Why force me to ask questions when it appears obvious that we will not be getting the answers?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I should like to give my honourable friend confirmation that those questions will be answered.

Senator Berntson: When? Before the election?

Senator Lynch-Staunton: That is akin to being given confirmation that our Special Committee on the Somalia Inquiry will be reconstituted in the fall. What we want to know is: Will these questions be answered before we must leave this place because of an election call?

Senator Fairbairn: Honourable senators, as I said, I am working on this problem each day since the honourable senator has turned up the heat, and I believe I can answer that question in the affirmative.

THE SENATE

POSSIBLE APPOINTMENT OF FORMER
PREMIER OF NOVA SCOTIA—GOVERNMENT POSITION

Hon. J. Michael Forrestall: May I raise a point of order?

The Hon. the Speaker: On delayed answers, yes.

Senator Forrestall: I wonder if the assurance given to my leader might include an equal zealousness with respect to the fate of Dr. Savage. Will he be joining us in January?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, what can I say? I know Senator Forrestall is his staunchest supporter and has been for some time. Naturally, one would be delighted to have Mr. Savage here, but I must tell you that I personally have no knowledge on that issue. I, as always, will pass on the senator's enthusiastic endorsation of that prospect.

BILL CONCERNING KARLA HOMOLKA

FIRST READING

Leave having been given to revert to Introduction and First Reading of Senate Public Bills:

Hon. Anne C. Cools presented Bill S-16, concerning one Karla Homolka.

Bill read first time.

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

On motion of Senator Cools, bill placed on the Orders of the Day for second reading two days hence.

ORDERS OF THE DAY

TOBACCO BILL

THIRD READING—MOTIONS IN AMENDMENT—
VOTES DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Lewis, seconded by the Honourable Senator Landry, for 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;

1.—On the motion in amendment of the Honourable Senator Lynch-Staunton seconded by the Honourable Senator Stratton, that the Bill be not now read the 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.";

(*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".

2.—On the motion in amendment of the Honourable Senator Lynch-Staunton seconded by the Honourable Senator Berntson, that the Bill be not now read the third time but that it be amended:

1. 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".

2. 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".

3. on page 15, by adding after line 31 the following new clause:

"**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.".

3.—On the motion in amendment of the Honourable Senator Nolin seconded by the Honourable Senator Lynch-Staunton, that the Bill be not now read the third time but that it be amended:

1. 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.".

2. 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."

3. 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 or recognition 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.".

4. 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 promotional 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; and

(*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.".

5. 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.".

6. in clause 28, on page 10, by replacing line 33 with the following:

"criteria described in section 27.".

7. 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

8. in clause 25, on page 10, by replacing lines 4 and 5 with the following:

"element may appear on the facility.".

9. in clause 33, on page 12,

(*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.

10. 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.".

11. 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;".

12. 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.".

13. 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 the Governor in Council may fix by order.".

4.—On the motion in amendment of the Honourable Senator Haidasz, P.C., seconded by the Honourable Senator Robichaud, P.C., that the Bill be not now read the third time but that it be amended:

1. 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."

2. 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."

3. 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.".

4. 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;".

5. 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.".

6. in Clause 21

(*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.".

7. 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."

8. 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.".

9. on page 17 by replacing the heading of PART V.1 with the following:

"LAYING OF PROPOSED REGULATIONS AND REPORTING".

5.—On the motion in amendment of the Honourable Senator Kenny seconded by the Honourable Senator MacDonald (*Halifax*), that the Bill 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.

(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.

(7) Subject to subsection (14), the amounts raised under subsection (6) and all voluntary contributions shall be used by the Administrator to finance the attainment of the objective set out in paragraph (3)(*a*).

(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*).

(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*).

(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.

(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."

Hon. William M. Kelly: Honourable senators, I have decided to take this opportunity to speak on Bill C-71. As many of you know, I am on the board of directors of a tobacco company, and have been for some 15 years. I am currently the Chairman of the Board of Rothmans. Our operating company, Rothmans-Benson & Hedges — RBH as we call it — is Canada's second-largest tobacco manufacturer. Because of these private interests, I have abstained — and shall continue to abstain — during all votes on Bill C-71 in this place. For the same reason, I have absented myself from all caucus meetings on this side when Bill C-71 was to be discussed.

I have decided, however, to exercise my right to speak to the chamber as a whole, because I am an insider in a tobacco company. I thought it might be helpful to share with you some of my insider's concerns and perspectives as you try to come to grips with this bill. My concerns and perspectives, honourable senators, have less to do with tobacco than with the process that is being considered where a legal entity is involved.

It is important to state at the outset that I have absolutely no quarrel with the objectives of this bill, which are to reduce the attraction of smoking to youth and youth's access to tobacco products. I believe this bill is, however, seriously flawed. I believe it is flawed from a drafting perspective — which is technical — flawed from a constitutional perspective, and flawed from a public policy perspective.

Having said that, I have decided to limit my comments on this bill to four specific issues. The first issue relates to the prohibition contained in clauses 19 and 21. Once enacted, these clauses will prohibit any person from speaking on behalf of a tobacco company or tobacco product. This prohibition will have several implications: It will mean that beneficiaries of tobacco sponsorship will not be able to thank their sponsors publicly for their support. For example, if Jacques Villeneuve wins the Montreal Grand Prix, which I hope he does, and if he thanks his sponsor, Rothmans, during the post-race ceremonies, he will be liable for a fine of up to $300,000 and a prison term of up to two years. That does not seem to me to be reasonable in our society, but it does not stop there.

Some of you may recall that when Bill C-71 was introduced in the other place, the minister, in a televised press conference, and later on *Canada A.M.,* displayed a tin of chewing tobacco. He quite properly claimed — properly in that he had been advised; he did not make this up — that it contained minute pieces of glass designed to lacerate the interior of the mouth to speed the intake of nicotine. He claimed this as partial justification for the extraordinary powers in Bill C-71. Please understand, honourable senators, that I am not suggesting he was knowingly telling an untruth; I think he was given that information. The manufacturer of this particular brand of chewing tobacco initiated libel action against the minister and others, and the minister eventually recanted, as did the deputy minister, on behalf of Health Canada. There was no glass in this or any other tobacco product.

•(1420)

The relevance of this anecdote to Bill C-71 is this: If Bill C-71 had been in force when this incident occurred, the manufacturer could not have defended itself. It could not have issued a press release or been interviewed by the media in order to try to set the record straight and defend its interests. The bill would prevent that. Doing so would have risked a fine of up to $300,000 and a prison term of up to two years.

The minister has said that Bill C-71 will be enforced reasonably and responsibly. I believe he means that. The fact is that enforcement will largely be out of his hands. Once this bill in its present form is proclaimed, anyone can make a complaint under this act, and it will be up to the police and Crown prosecutors, not the minister, to decide whether to lay charges. Policemen will have to do their duty and the Crown will have to do its duty. Upon proclamation of Bill C-71, that kind of Pandora's box will be opened.

Another issue I should like to raise relates to the search and seizure powers set out in clauses 35.(1) and 39.(1). These allow entry into businesses and the seizure of tobacco products, business records and "anything that is relevant to the administration or enforcement" of the act, without a warrant. Clause 53 also contains a reversed onus provision where the accused must prove his or her innocence rather than enjoying the presumption of innocence.

I believe that these provisions go far beyond reasonableness and balance when dealing with a legal product. I do not believe that they have a place in a statute that is essentially regulatory in nature.

The minister has said, time and again, that Bill C-71 does not ban sponsorships or advertising. I can assure you that its effect will be a de facto ban. Consider for a moment the bill's definition of "lifestyle advertising" as "advertising that evokes a positive or negative emotion about or image of a way of life." How on earth can anyone predict the effect of any advertisement on a person's emotions? The definition of "tobacco product promotion" in clause 24.(1) is equally vague.

I make that point because laws, particularly when involving criminal charges, fundamentally, over many years, have had to be so clear that one's actions would have to be intentional to break them. It is the vagueness of this measure that worries me a great deal, not the issue or the intent.

This vagueness in definition, coupled with the penalties for contravention, injects an enormous chill effect into this bill that will amount to a de facto ban on sponsorships and advertising. No one can possibly know with reasonable certainty what contravenes these provisions. Rather than risk contravening the act in a good faith error, tobacco executives, advertisers, event organizers and recipients of tobacco sponsorship will likely err on the side of caution and back away from all advertisements and sponsorships.

The final point I should like to raise — and this is the most significant one to me — relates to transitional provisions. Bill C-71 contains no transitional provisions for the advertising restrictions, but the original TPCA, Bill C-51, did. This means there are no mechanisms to comply with this bill without breaches of contract and, probably, substantial financial cost. It will mean the conduct specifically allowed the Supreme Court in the TPCA case becomes illegal the day this bill is proclaimed, right at that moment. There will be millions of packs of tobacco products in the wholesale and retail pipeline that are entirely legal under today's laws but will break the labelling requirements of Part IV on the day the bill is proclaimed. That could happen consecutively in one day.

Across Canada, there are approximately 45,000 retail outlets that sell tobacco products. Many are small, family-owned "mom and pop" operations. Many are owned and operated by people whose first language is neither English nor French. Most have yet to appreciate the value of reading *The Canada Gazette* to discover the latest regulations, to watch debates and committee hearings on CPAC, or even to read the mainline newspapers.The access provisions of Bill C-71, Part II, will already impose a substantial financial burden on many of these small operators to reconfigure their operations, which will be required by the bill.

More worrisome from my perspective is that with the proclamation of this bill, many of these operators will instantly and unwittingly fall afoul of the provisions of Part II and sections of Part IV and will be subject to some extensive search and seizure powers, a reverse onus in terms of innocence, and some stiff penalties. Under clauses 45 and 46, the penalty is $3,000 for the first offence involving a corner store and $50,000 for a second offence, but both might be totally unwitting without some transition period.

Health Canada says that it looks to the tobacco industry and the retail associations to inform retailers of their new requirements, but there is little that can be done until the act is actually passed by Parliament and the requirements for retailers are clear. Even then it takes time — months, in fact — to bring people up to speed. I do not think this comes even close to being fair or reasonable.

I urge this chamber, if it does nothing else, to amend this bill by attaching reasonable transition provisions. I am confident that a transitional amendment could be crafted that would be quickly approved by the other place to allow this bill to obtain Royal Assent before prorogation. I am confident. I am not trying to delay or say "kill this bill." I believe that transitional element is sadly missing and should be looked at with great seriousness by colleagues here.

Honourable senators, I do not wish to belabour my case any longer. I thank you for your courtesy and attention. I do not feel that, in my situation, I am entitled to join debates, but I wanted to place these remarks in front of you.

Hon. Wilbert J. Keon: Honourable senators, I should like to formally go on record supporting 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.

As you are well aware, there has been much controversy and debate concerning certain aspects of the bill. While in the House of Commons, a number of amendments — editorial and otherwise — were made to specific clauses of the legislation. While the bill may not be perfect, I am convinced that there is overwhelming evidence to support the passing of the bill without amendments.

I should also like to remind senators that Bill C-71 is a compromise. Regulating, not banning, tobacco is the issue here. The bill restricts the access young people have to tobacco products, places reasonable limits on the marketing and promotion of these products, increases health information on tobacco packaging, and establishes powers needed to regulate tobacco products. From my perspective, this represents, quite simply, good health policy.

The bill does not include a total ban on tobacco sponsorship advertising, as has been the practice in a number of other countries, including Australia, Italy and France. It is also important to note that the World Health Organization has, on a number of occasions, urged a total ban on all direct and indirect advertising and promotion of tobacco products. The United States itself has adopted a law that will ban all tobacco sponsorship advertising effective August 1998.

In many respects, the bill is weaker than the tobacco control blueprint released by the government on December 11, 1995. For example, the blueprint called for a total ban on advertising, a total ban on the use of trademarks on non-tobacco goods and a limit on point of sale package displays to one package per brand. None of these provisions are found in Bill C-71 as they were initially proposed by the government.

•(1430)

I shall not take the time here today to recite the long list of statistics that you have all heard many times before related to the incidence and prevalence of premature death resulting from tobacco use. Indeed, I am aware of some 700 scientific publications on this subject, all leading to the same conclusion.

Suffice it to say that tobacco use is the cause of about 30 per cent of cancer deaths and more than 80 per cent of lung cancer. Of the 45,000 smoking-related deaths per year, almost 40 per cent are from cardiovascular disease. In my own medical career, I have seen, on a daily basis, the tragic damage done to patients' hearts, resulting in premature death and disability.

The overwhelming majority of new smokers are children. The direct and indirect economic social costs associated with tobacco use have been well documented in this house many times. It is said that it is a $3-billion health problem. I believe that number is far too low. If is a far bigger health problem than that.

Protecting the health of Canadians deserves special consideration. In 1996, the National Cancer Institute of Canada reviewed research on marketing and youth tobacco use and found that the weight and consistency of evidence strongly supported the conclusion that marketing plays a significant role in youth tobacco use. In a report entitled, "Tobacco Marketing and Youth: Examination of Youth Attitudes and Behaviour to Tobacco Industry Advertising and Sponsorship," an international team of 25 experts found that tobacco advertisements appeal to youth; that youth are aware of tobacco marketing; that awareness and perception of marketing are linked to smoking intentions and behaviour; that tobacco marketing campaigns increase tobacco use; and that youth are particularly likely to smoke highly marketed brands.

There have been several amendments suggested to the bill. All of these amendments have merit, to a greater or lesser degree. I should like to say a few words about Senator Kenny's amendment, which would create the Tobacco Manufacturers' Community Responsibility Fund. One of the goals would be to teach young people not to smoke; a truly commendable goal. I appreciate the enormous effort Senator Kenny has put forth. However, if this goal is to be achieved, it must be achieved through the direct instruments of government, with appropriate policies, strategies, funding and implementation. I have no confidence that tobacco manufacturers will ever seriously undertake or be associated with such an initiative.

Indeed, the tobacco companies must teach 45,000 Canadian kids to smoke each year in order to replace the 45,000 customers they kill with their own products. Having tobacco companies teach your children not to smoke is analogous to having a crocodile for a lifeguard when you take your kids to swim.

We will need further, stronger legislation as soon as possible. We must revise, update and strengthen our anti-smoking act, tobacco strategies and policies. The federal government must strengthen its role in health promotion and education in Canada. The current initiatives are simply not good enough.

This bill is our first step in the right direction. When we reconvene in the fall, we must go the rest of the way.

We were world leaders in anti-tobacco legislation following the Honourable Jake Epp's legislation. We had a serious setback when the Supreme Court overturned the legislation. We now must re-establish ourselves as leaders in the global community.

Honourable senators, about 30 countries in the world now have total bans on advertising. Dozens more have partial restrictions. The conclusions of legislatures from around the world that tobacco advertising increases consumption is self-evident. It is time that doing what is right for the health of Canadians becomes the primary focus of our intentions.

Honourable senators, I strongly support this bill and urge you to do likewise. There is no safe middle ground here. This is truly a matter of protecting and promoting the health of Canadians. Let us not stand in the way.

Hon. Raymond J. Perrault: Honourable senators, may I say at the outset how much I enjoyed Senator Keon's analysis of the bill. He has provided us with some valuable information.

This is not a political issue; it is a human issue. It relates to the health of Canadians, and I know we all agree that that must be paramount.

The bill is not perfect. All sorts of attractive amendments have been moved for us to either support or reject. The bill is, however, motivated by the view, supported by an overwhelming number of Canadians, that tobacco products are killers and that a concerted effort must be made to reduce tobacco addiction, especially by young people. We are in total agreement on that, regardless of how we vote. Our families have all been touched by this problem. I have lost relatives due to emphysema caused by smoking addiction. Almost without exception, we have been touched in that fashion.

The fact is, however, and this is one of the dilemmas we face, that the tobacco companies are engaged in a perfectly legal pursuit of consumer support. In order to enhance their market share, they associate their names with cultural and sports events. They do this on a very large and generous scale. The beneficiaries of many of these revenues are artistic groups from coast to coast in Canada and those interested in sports. They make a rather significant contribution to the lives of Canadians.

On the West Coast, for example, the Indy has become the number one sports event. It attracts literally millions of dollars every year. The Indy draws tourists from Mexico and all the American states. The Toronto Indy is equally popular. These events generate millions of dollars for Canadians in the leisure industries, including taxis and hotels.

It must be said that there have not been inordinate efforts to induce young people to begin to smoke. There is only a name on the side of the automobile. The allegation is that that offers an incredible temptation to the young. I dispute that.

•(1440)

We are attempting to restrict the tobacco companies from displaying their names at these events yet, when we turn on our television sets, we see them all. We all must cope with that. Perhaps the ideal would be to remove the names of "Player's" and "Molson" from cable vision and not allow them to be shown in connection with sports events. These companies have contributed millions of dollars to good causes. These causes have been assisted and, to a much less extent, marginal sales have resulted.

Honourable senators, I shall support the bill, but I believe it needs amendment. At meetings with the minister in the past two days, he has told us that he is working on alternative ideas which will make up for some of the revenue lost by deserving organizations. That is a move in the right direction.

Senator Berntson: Should we not know about that?

Senator Perrault: I hope we can provide more detail before the final vote is held, but the minister has given us the assurance that efforts are being made in that direction.

Let us be political realists. Given the parliamentary schedule, if we amend this bill today in any way, it will be impossible for the other place to deal with it before an election is called.

Senator Lynch-Staunton: What election?

Senator Perrault: Honourable senators, an election is widely rumoured to be in the offing. I know my honourable friend is very active on the Conservative campaign committee, so he knows what is on the horizon.

Senator Lynch-Staunton: Which comes first, legislation or election?

Senator Perrault: I believe the bill needs amendment, and I have said that. However, given the parliamentary schedule, it is obvious that the bill cannot be sent back to the other place with any reasonable hope it can be amended by Parliament.

Honourable senators, for these reasons, it is with some reluctance that I support the bill. I should like to see it in a more perfected form. I know we can do better. I also know that money is required to finance many good causes in our community.

Following vigorous representations from all parts of the country, the minister has stated — and I repeat it for the Leader of the Opposition — that other options will be pursued to make it possible for significant sports and cultural events to be sponsored by private and/or public sectors. I support this bill only with this assurance. I believe that, apart from commendable efforts to reduce tobacco and alcohol consumption, the arts in Canada and certain other events must be supported adequately. It is highly desirable that world-class events such as the Indy, worth millions of dollars to the western economy, should go ahead. The number of drama companies and symphonies across the country that are recipients of revenues from the private sector need and must have support, honourable senators.

[*Translation*]

Hon. Fernand Roberge: Honourable senators, let me start by stating that I fully subscribe to the underlying objective of Bill C-71, which is to discourage smoking, particularly among young people. There is no doubt in my mind that smoking represents a very serious health problem here in Canada, as it does everywhere else. The scientific documentation on this is very conclusive. The recent admissions by the Liggett company in the United States ought to convince those who still have any doubts about it.

I also agree that the government must, in particular, assume the responsibility for banning all advertising that could encourage young people to start smoking.

In fact, all Canadians ought to rejoice that their government is taking action where the national health is concerned. Since 1993, we have become accustomed to seeing the government shirk a number of its responsibilities in the areas of health, social programs and post-secondary education. Transfer payments to the provinces have been cut 40 per cent since 1993, which has had serious repercussions on health services throughout the country. Canadians have never been so concerned about the quality, accessibility and cost of their health care. For the first time in recent history, an entire generation of Canadians is wondering whether it will be entitled to the same quality of life as its parents' generation, particularly the same quality of care.

Might Bill C-71 be the signal that the federal government has finally decided to exercise the leadership it ought to show in the health field?

Unfortunately, no. Bill C-71 may be well-meaning, but it is ill-conceived and runs the risk of creating as many problems as it solves. Can it be improved by amending it? The government says no, and it does not even try to hide its motives for saying so. It is in a hurry to call a general election. Yet this bill is in crying need of amendment.

First, in Bill C-71, the Minister of Health has drawn conclusions that are not related to the connection between advertising and smoking.

In fact, the government's basic premise is that any form of tobacco advertising, including the sponsorship of sports and cultural events, necessarily creates an incentive for people to smoke. This relationship between cause and effect has never been measured scientifically. Since the government's argument is based on a false premise, it is not surprising that the result should be measures that are ineffective, unfair and even harmful.

In some cases, the government's remedies not only will prove to be ineffectual, but will also cause problems of an economic nature.

One example is the effective ban on tobacco companies' sponsorships of sports and cultural events. In the Senate Committee on Legal and Constitutional Affairs, we heard that Bill C-71 in its present form will eliminate more than $60 million in direct sponsorships paid by the tobacco industry to about 370 organizations and events in the arts, sports, fashion, entertainment and cultural sectors.

The spin-offs of 20 of these events were evaluated at $240 million and 5,000 jobs. This is a small fraction of the total amount of financial support received by events or organizations from tobacco companies.

Organizations have already indicated that the very survival of certain events is threatened by the bill before us today. Obviously, neither the companies nor the government will be able to find a substitute for the $60 million in direct funding the tobacco industry provides at the present time. Today, the industry pays 30 per cent of the total amount spent on sponsorships by Canadian companies. The city of Montreal probably will stand to suffer most as a result of the advertising bans in Bill C-71, as Mayor Bourque explained to the Committee on Legal and Constitutional Affairs.

The situation is all the more distressing because Montreal is experiencing very difficult economic times. It is trying to maximize its tourist industry, which benefits hugely from certain major sporting and cultural events that would be the first to fall under the ban on sponsorships by tobacco companies.

I am very familiar with the tourist industry, having worked in the hotel industry for many years. I know for a fact that the major festivals and the sports competitions do more for a city and a country's national and international reputation than the majority of the government programs for the tourist industry. This sort of reputation, however, takes years to establish. I would ask all my colleagues to give serious consideration to the repercussions this bill could have on many of the performances and events that have made the reputation of our major cities in addition to providing Canadians with quality entertainment.

As I said, we agree that the government should act to protect the health of Canadians. However, we cannot support turning around and threatening the economic health of Montreal and a number of other communities.

Had it been conclusively shown that prohibiting tobacco company sponsorship would reduce smoking and save lives, we would be pleased to support Bill C-71 as it stands. The economic sacrifice would certainly be worth it. However, that is not the case. In fact, witnesses before the Standing Committee on Legal and Constitutional Affairs have shown that in a period of over two decades — from the mid-1960s to the mid-1980s — when there were only moderate or voluntary bans on advertising, billions of dollars were spent on advertising tobacco products.

However, during the same period, average consumption of tobacco products declined.

It was also pointed out that, since 1986, despite the ban on tobacco advertising in Canada since 1988, levels of smoking have not changed, as Statistics Canada confirms.

•(1450)

In addition, certain provisions concerning implementation of the proposed legislation are very worrisome. Certain offenses created by the bill are so vaguely defined that advertisers will have trouble complying. In certain cases, the penalties proposed are also needlessly and disproportionately severe.

If, for example, a brochure mentioning the sponsorship of a tobacco company were mailed to a minor, the organizer of the event in question would be liable to a fine of $300,000 and two years' imprisonment. The same penalties would apply to anyone disseminating tobacco advertising that could be construed to be appealing to young persons, a subjective definition to say the least.

The organizers of a festival, concert or sports competition will even be prohibited from publicly thanking the sponsor of the event, if it is a tobacco company. Does the health minister think companies are now going to sponsor in secret the way some people smoke in secret?

[*English*]

Among the many violations created by Bill C-71, it will now be illegal to sell T-shirts, posters or sweaters for title-sponsored events, and to wear helmets and clothing with tobacco names or logos on them. A former prime minister once said that the state has no business in the bedrooms of the nation. It is rather ironic that, 30 years later, we are now being told what T-shirt and helmet we are allowed to wear.

When we read about inside and outside advertising of tobacco products, sizes and placements of signs, how can we not recall a similar debate about language signs in Quebec which so disturbed so many Canadians?

The spirit seems to have inspired the drafters of this legislation when they decided to waive the usual procedures for the search and seizure of tobacco products. There is no requirement at all in this bill to obtain consent for a warrant for seizure of tobacco products elsewhere than in a dwelling place.

As the proposer of a law to fight organized crime, which was not received with much enthusiasm here, I am impressed with the urgency with which the government seems to be willing to suspend constitutional rights to find illegal tobacco products.

[*Translation*]

As legislators, we should also give thought to the impact of Bill C-71 on the freedom of expression guarantees contained in the Canadian Charter of Rights and Freedoms.

It will be recalled that in 1995 the Supreme Court of Canada struck down as unconstitutional the main sections in the Tobacco Products Control Act dealing with the ban on advertising. Several advertising provisions in Bill C-71 are at odds with the majority opinion of the Supreme Court at that time.

Sponsorships in particular were among the forms of advertising the Court refused to ban.

I also strongly deplore the government's approach, which seems more punitive than preventative.

It seems to me that the best way to stop young people from taking up smoking would be to educate them about the hazards involved. This bill contains no useful initiative for educating young people. Yet education is more effective than repression.

As a result of the observations I have just made, which touch on just some of the features of Bill C-71, I am forced to conclude that with this bill the government was aiming at the villain, but hit the good guy.

I think, however, that there is still time to get things right and I urge my colleagues to support the amendments moved by my colleagues Senator Lynch-Staunton and Senator Nolin, the purpose of which is to make sure that the bill is legal and fair and that it achieves its purpose.

[*English*]

Hon. Duncan J. Jessiman: I rise to speak on Bill C-71, entitled, "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."

I am not a smoker and I never have been one. My father smoked, my mother did not. I was the fourth child of a family of five boys. My three older brothers and my younger brother smoked in their teens, but I never did. I can remember a number of my friends at ages 14 and 15 smoking, yet, for whatever reason, I never did.

I was aware of the massive advertising that tobacco companies had in those days. Some of you will remember radio programs such as "Phillip Morris," "Lucky Strike" and others. I was also aware that the Macdonald Brier, Canada's premier curling event, was sponsored and paid for by the Macdonald Tobacco Company. Yet, at no time did I ever consider taking up smoking. I am satisfied it was not advertising that caused my father, my four brothers and my friends to start smoking.

This bill is about severely limiting the ability of tobacco companies to advertise or to sponsor cultural and sporting events on the basis that, by such restrictions, persons, particularly young persons, will not start to smoke.

There is no doubt that, once a person starts to smoke, the habit becomes addictive and I am told is that it is more difficult to stop smoking than to stop drinking alcohol or taking drugs such as cocaine or heroin. However, is this bill the answer? I have my doubts.

The difficulty I have with this bill is as follows: Will it stand up in court? That is, is it constitutional? The Minister of Justice and other legal scholars have told us that this bill is constitutional. However, from my experience with this minister, I am unsure.

There is no doubt that the federal government has the jurisdiction to pass criminal laws, including a law that would make it a criminal offence to advertise the sale of tobacco, even though the government has not made it a crime to smoke or use tobacco. In Canada, we have our Charter of Rights and Freedoms, which, in part, states as follows:

> 2. Everyone has the following fundamental freedoms:
>
> (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

Section 1 states:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

There is no doubt that this bill contravenes section 2(*b*) of the Charter because it does qualify and restrict the freedom of expression.

The next question, then, is: Can this restriction be demonstrably justified in a free and democratic society as provided in section 1 of the Charter? I raise some doubt because of what was said by the Supreme Court of Canada decision in the *RJR-Macdonald versus The Attorney General of Canada* case, reported in 1995. When a question of determining whether a similar restriction, somewhat more restrictive, was demonstrably justified, Madam Justice McLachlin stated, in part, as follows:

> First, to be saved under s.1 the party defending the law (here the Attorney General of Canada) must show that the law which violates the right or freedom guaranteed by the charter is "reasonable." In other words, the infringing measure must be justifiable by the processes of reason and rationality. The question is not whether the measure is popular or accords with current public opinion polls. The question is rather whether it can be justified by application of the processes of reason. In the legal context, reason imports the notion of inference from evidence or established truths. This is not to deny intuition its role, or to require proof to the standards required by science in every case, but it is to insist on a rational, reasoned defensibility.
>
> Second, to meet its burden under s.1 of the Charter, the state must show that the violative law is "demonstrably justified." The choice of the word "demonstrably" is critical. The process is not one of mere intuition, nor is it one of deference to Parliament's choice. It is a process of *demonstration*. This reinforces the notion inherent in the word "reasonable" of rational inference from evidence or established truths.

•(1500)

> The bottom line is this. While remaining sensitive to the social and political context of the impugned law and allowing for difficulties of proof inherent in that context, the courts must nevertheless insist that before the state can override constitutional rights, there be a reasoned demonstration of the good which the law may achieve in relation to the seriousness of the infringement. It is the task of the courts to maintain this bottom line if the rights conferred by our constitution are to have force and meaning. The task is not easily discharged, and may require the courts to confront the tide of popular public opinion. However, that has always been the price of maintaining constitutional

> rights. No matter how important Parliament's goal may seem, if the state has not demonstrated that the means by which it seeks to achieve its goal are reasonable and proportionate to the infringement of rights, then the law must perforce fail.

That is the problem I have with this particular bill. It infringes on the rights of these companies to freedom of expression. From what I have heard from the government, I do not think it will be able to convince five of the nine judges, because it will take at least five, that this law is constitutional. I hope it can.

Some say, and I would agree with them, that if we had known how harmful tobacco smoking is to the health of persons, then smoking would never have been allowed in the first place. However, we have a situation in Canada in which over 7 million people smoke, even though they know that 40,000, and some say 45,000, will die prematurely every year as a result of smoking.

No one who appeared before us, including members of the Canadian Cancer Society and members of the Canadian medical profession, has advocated that the government make it a crime or even make it illegal to smoke. Everyone stressed that the major problem was preventing young people, as young as six years of age and up to 18 years of age, from starting to smoke. The government says the bill will help achieve that purpose. I would like to think the government is correct. However, from what I have read and heard from several witnesses, I am afraid it may all be in vain.

I should like to refer to some of the evidence provided to members of the Standing Senate Committee on Legal and Constitutional Affairs respecting advertising as it relates to tobacco. Dr. Brian Smith, from the Department of Psychology, Concordia University, who gave evidence before the committee, said:

> Information about product class does not depend on advertising. The example that I give to you for that is marijuana. Depending upon the surveys that may have been done, anywhere from one-third to 50 per cent of youth have tried marijuana at least once. While I have no information or concrete data that I can give you, I would hazard a guess that the vast majority of adolescents are aware that marijuana is out there. They know it is there and what it is about. This is a product class. Yet, there is no marijuana advertising. We do not see marijuana billboards. Unless I have missed it, I have not seen a marijuana festival of the arts. Yet, information certainly is disseminated among youth in this regard. As well, somewhere in the vicinity of 16 to 19 per cent of youth are using marijuana regularly. Advertising in this particular case does not even exist; yet individuals are using the product, the effects of which are substantially different from tobacco. However, the fact is that they have this product awareness.

Dr. J.C. Luik, B.A., M.A., PhD., spoke at length to the committee. He referred us to a book which he and an M.J. Waterson wrote, entitled, *Advertising & Markets* in 1996. At page 13 of the book he concludes in respect to tobacco advertising bans in democratic societies as follows:

> Placed against the criteria of legitimate public policy it is clear that tobacco advertising bans are not reasonable and coherent reactions to the problem of tobacco in contemporary society. For one thing, there is no objective and substantial evidence that tobacco advertising leads to juvenile smoking initiation. Secondly, there is no objective and substantial evidence that tobacco advertising leads to increased tobacco consumption. Thirdly, given the above two points it would be incoherent to claim that an advertising ban would either stop juvenile smoking or reduce overall consumption — something that the empirical evidence of the failure of such bans makes abundantly clear. Finally, it is not simply that such bans are not supported by either logic or empirical evidence; it is also that they violate some of the core values that give democratic societies their particular character. In the end, tobacco advertising bans irretrievably fail each test of public policy: they are not based on sound empirical evidence; they are inconsistent and illogical responses; they fail to work; and they undermine the values of the society that employs them.

Because it has not been proven that advertising, in particular sponsorship advertising, increases smoking by persons, the Attorney General may have difficulty convincing at least five judges of the Supreme Court that this bill comes within the exception of section 1 of the Charter.

The bill, even if it withstands the constitutional challenge — and I personally hope that it does, but I have some doubts that it will — would not in any way stop young children from starting to smoke. However, if it in any small measure deglamourizes the image of tobacco companies in the eyes of our youth, it may have some merit. What must be done is to have the government spend the extra $60 million to $65 million per year it already receives from these tobacco companies to educate our children about the harm that smoking does to us all.

Honourable senators, I shall support some of the amendments, as well as the bill itself.

Hon. Richard J. Doyle: Honourable senators, this afternoon I want to speak briefly about the region I represent in this chamber. I am from Ontario. I was born in Toronto and I have lived in the province for all my civilian life. Ontario is a region of great beauty, spectacular wealth and, no matter what our critics say, a place of unlimited opportunity.

By way of getting your attention, honourable senators, I must tell you that in the last five years, tobacco has killed an estimated 60,000 Ontarians. That is like killing off the entire population of a city the size of Barrie or Kingston.

I shall introduce into this debate an official medical report that states that every day tobacco claims 33 more lives in my province. In the time it will take to complete this afternoon's Senate business, another person from Ontario will perish.

In the week that followed Easter, members of your Standing Senate Committee on Legal and Constitutional Affairs intensified their examination of Bill C-71, a mild package of legislation intended to limit the advertising, promotion, sale and use of tobacco in Canada.

•(1510)

You will appreciate my use of the adjective "mild" when you reflect on the nature of the beast we would battle.

Dr. Richard Schabas is the Chief Medical Officer of Health for the Province of Ontario. He told us about the industry:

> ...that knows it needs a steady supply of new tobacco addicts to replace those who die, and those who break their addiction.

He spoke of the many millions of dollars that the industry spends each year promoting its products, which account for 25 per cent of all fatal cancers in my province. The habit causes eight out of every ten cases of lung cancer.

> ...It is an important cause of cancer of the larynx, lip, tongue, oesophagus and bladder.

Take your pick while you are awaiting diagnosis.

One thing your committee learned very quickly in this exercise is that such descriptions from such sources as Dr. Schabas are what the tobacco industry would called "scare tactics;" lightening bolts intended to distract us into claiming all the other "it just might be's" of cancer's killing ways.

The only expertise that I can claim in this field is that of victim — victim of my own folly. Senate colleagues who, for the past seven years, have endured the growling and grating that pass for Doyle's speeches will understand the continuing debt that I owe to Dr. Patrick Gullane, Otolaryngologist-in-Chief at Toronto Hospital.

Just before Easter and the beginning of the hearings of the Standing Senate Committee on Legal and Constitutional Affairs, I signalled to Dr. Gullane my need for up-to-date, authoritative source material on the fight against cancer in Ontario. Gullane responded with a frightening catalogue — 19 pages from another report by Dr. Schabas and his panel of advisers.

Nothing in Dr. Schabas' armoury against the tobacco industry invites the postponement of legislative remedy that Bill C-71 still allows. Nothing demonstrates patience with the timidity of the Supreme Court of Canada in its balancing of the risks and rights of smokers. Says Dr. Schabas, echoing our own Dr. Keon:

> Until recently, Canada was a world leader in public policy on tobacco. However, the 1994 decision of the federal government to drastically reduce tobacco taxes has made cigarettes seductively cheap.
>
> On top of this, the Supreme Court of Canada has overturned all restrictions on tobacco advertising, posing a grave challenge to the health of Canadians.

Dr. Schabas would tax tobacco out of the reach of vulnerable adolescents.

When David Dingwall, the Minister of Health, made his second appearance before your committee to talk about this bill, senators were shown samples of cigarette advertising that might not be approved under the new law, and mock-ups of advertisements that would be acceptable after slight modifications. A senator called one of the permitted ads "pseudo-scientific." He said it boasted of full flavour, less irritation, a smoke with "dispersion qualities" — whatever they might be. The senator asked the minister whether he thought that this type of "This is good for you" ad should be totally run out of the business? David Dingwall replied:

> Unfortunately, senator, I must deal with the decision of the Supreme Court of Canada. The court has told me, our government and Parliament, that, within reason, you have to allow the manufacturers of the product the opportunity to present their product to the Canadian people.

Honourable senators, I said at the outset of these remarks that Ontario is a place of unlimited opportunity. The Chief Medical Officer of Health for Ontario has something to say about what we must allow in the way of opportunity, since the court turned its attention to the constitutional aspects of selling cigarettes. He said:

> We now allow the tobacco industry to advertise freely its deadly and addictive products. Tobacco companies use outdoor billboards, bus shelter posters and magazine ads. Direct advertising is only one facet of tobacco promotion. Tobacco companies also sponsor arts and sporting events.
>
> Sponsorship is even more insidious than direct advertising because it makes our arts and sporting groups partners in the promotion. The tobacco industry feeds off this prestige to buy respectability for its deadly, addictive product. This is not philanthropy. It is advertising in a pernicious form.
>
> A film shows Sharon Stone puffing languidly. The cover of *Saturday Night* magazine features David Layton with a cigarette dangling from his hand. The image is clear. Smoking is sexy and chic. Images of corpses, cancers, underweight babies and burned children are not as appealing, but they are more realistic.

•(1520)

Honourable senators, this is pretty heavy stuff, but we have heard a lot of it before. It is time to accept responsibility. Richard Schabas shouts at us, "Who is really at fault? Look in the mirror. It is time we stopped blaming the kids and looked to ourselves for an explanation."

I guess that is what we, on the committee, have been doing, namely, looking in individual mirrors, wondering what and how we can do some small thing to forestall what we have been told is inevitable — the increase in smoking and the epidemic of cancer that shadows it.

Honourable senators, texts are available of all our hearings. I might recommend that you catch the joint presentation of the Canadian Medical Association and the Canadian Cancer Society — a careful and frightening exposé, but not nearly as scary as the cheery-bys we got from the spokespeople who testified on behalf of the tobacco industry.

I do not know of a single member of the committee who argued that Mr. Dingwall had done all that he might have done. Some of us did not believe that he had gone as far as the Supreme Court of Canada would have allowed him to go. Some even believed that we should confront every member of that august chamber down Wellington Street with these lines from Dr. Schabas' report on the rights of children, which states:

> Young children are highly vulnerable to second-hand smoke. Studies have shown repeatedly that children whose parents smoke have consistently higher rates of lung imperfections. They also have reduced lung function, greater risk of ear infections. Exposure to second-hand smoke is strongly linked to asthma in children. Some studies have shown a high risk of sudden infant death syndrome.

I shall support Bill C-71, for it is vastly better than no legislation at all. I shall also consider amendments which would remove unnecessary powers of search and seizure. I agree that some better means must be found to persuade new sponsors to take on the interim financing of cultural and sporting programs.

The decision of the Standing Senate Committee on Legal and Constitutional Affairs was to bring Bill C-71 to this chamber without amendment, but on division, with the understanding that recommendations for change would be made. What was most unusual was the agreement of members from both sides to accompany the bill with a message to the minister. It would list, for the government's edification, directions and recipes for quick and effective initiatives to accomplish purposes like those genuinely expressed in the reports from Ontario's Chief Medical Officer of Health.

I wish to close this appeal with a matched pair of observations from Dr. Schabas, who said:

> In Ontario, tobacco causes four times as many deaths as motorcycle crashes, suicides, homicides and AIDS combined.

When a smoker quits, the health benefits begin immediately and increase steadily. The additional risk of heart disease drops by one-half within a year of quitting.

[*Translation*]

Hon. Jean-Maurice Simard: Honourable senators, I shall get straight to the point. I support the objective of this bill. I hope senators from both sides will consider this legislation and have the courage to support certain amendments.

I intend to support Senator Kenny's amendment, which is twofold. I shall also support the amendments tabled by Senator Nolin and Senator Lynch-Staunton.

I support the objective of this bill. I even hope that a majority of Liberal, independent and Conservative senators will support it, so that we can send back to the House of Commons a bill which was long in the making, but which was only discussed in the last three or four months.

•(1530)

I hope these amendments will be taken into consideration and approved. I should add, so as to be clear, that, even if an amendment is not accepted, I shall hold my nose and still vote in favour of the bill, and I shall tell you why later.

Since the bill was first introduced, on December 2, 1996, Minister Dingwall and his government have been praising the bill and repeating all these things that Canadians have known for years. They have been repeating well-known facts: Each year, smoking-related diseases kill more than 40,000 Canadians. The direct costs to taxpayers for related medical and health care amount to $2 billion, while indirect costs total $7 billion.

The government must have known that 40,000 Canadians die each year of smoking-related diseases. One wonders why the government waited until December 2, 1996. I think the government showed its true colours. The bill was introduced in the House of Commons on December 2. We all know that the government does not like pre-studies. The Senate could have looked at this bill as early as December 2.

No pre-study was done in the Senate. Only on March 10, about three or four weeks ago, did the bill arrive here from the House of Commons. On March 17, Minister Dingwall appeared before the Senate committee that reviewed the bill. He repeated, among other things, that smoking-related diseases kill people.

This bill was drafted by a hypocritical, careless and opportunistic government, whose only concern is to win votes. It is not the first time this government resorts to blatant hypocrisy, opportunism and carelessness to win votes.

Senator Maheu: That is not nice.

Senator Lynch-Staunton: Sometimes the truth hurts.

Senator Simard: I am known to speak my mind. As I was saying, a two-faced government did not have the heart to plan its legislative agenda. I was there in 1993 when Mr. Chrétien's Liberal Party made its promises, but this bill was not part of its Red Book promises. However, in February 1994, a few months after the election, in a onslaught of anti-smoking publicity, the Prime Minister outlined his $60-million tobacco demand reduction strategy, which was probably aimed at convincing young and old of the need to raise $60 million in extra taxes.

Very soon after the 1993 campaign, in February or a few months later, he discovered the harm done to Canadians by tobacco consumption.

He made another attempt in September 1994. The government published a document.

[*English*]

The document is called "Reduction Strategy: An Update," and the document lays out how $187 million will be spent over three years.

[*Translation*]

Another document was issued in January 1995.

[*English*]

Another document updating this information projected spending in fiscal 1994-95 of $32 million. Somewhere during those three years, the total to be spent on the tobacco reduction strategy was cut by $60 million, and the remainder went into general revenue.

[*Translation*]

The Chrétien government apparently came to this realization, as these statements made in February 1994, September 1994 and again in January 1995 seem to indicate.

If that is true, why did Mr. Dingwall, under the leadership of Jean Chrétien, wait until December 2, 1996? I think that the people of Canada will remember this kind of hypocrisy, carelessness and political expediency.

In 1994 or early 1995, the government announced yet another tobacco tax increase, concluded tacit or formal agreements with a number of provincial governments, including New Brunswick, and raised taxes.

Had it been serious about cracking down on tobacco use, it could have introduced this bill in 1994, 1995 or early 1996. The government announced a tax in 1995, but it kept pocketing the money, instead of asking police forces to crack down on smuggling. Again, it did not have the courage to take the bull by the horns. A year and a half went by before a tax reduction was finally announced, followed by another increase, as if the war on smuggling was over.

To get back to Senator Kenny's amendment, which I support, the purpose of this amendment is to establish the tobacco manufacturers' community responsibility fund.

•(1540)

I shall give you two reasons why I support this amendment. First, it is more than just a Liberal promise. It is a measure that will be part of a bill that will become the law of the land. It has the advantage of not being a Liberal promise that can be broken one or six months later. I therefore find it worthwhile to support this bill. I invite my colleagues on both sides of the house to support Senator Kenny's amendment. We know that the general levy would be used to help the tobacco industry to discourage young people from smoking, and to protect them from the incentive to smoke associated with these activities.

The amendments proposed by Senator Nolin clarify matters. They are in line with the spirit and the objective of the law. I am no lawyer, but I believe that these amendments help clarify the bill. I shall therefore support these amendments.

As for Senator Lynch-Staunton's amendments concerning seizures and police surveillance, and the government employees involved in enforcing the law, these too strike me as far from revolutionary, and worthy of acceptance by honourable senators.

Senator Kenny knows how to count, that is why he was elected to be in charge of internal economy!

[*English*]

•(1540)

Senator Kenny told us yesterday in this chamber that, starting April 15, both houses had eight days if the government should call a federal election for June 2. We need five or six more days if the government wants this legislation approved. If they should decide to postpone the election from June 2 to June 9, that would give them 14 days.

[*Translation*]

The Hon. the Speaker: Honourable senator, I am sorry to interrupt you, but your time is up. Does Senator Simard have permission to continue?

Hon. Senators: Agreed.

[*English*]

Senator Simard: Honourable senators, we have 14 days if the election is called for June 9. We all know that the last election was only three and one-half years ago. By convention and tradition, governments call federal elections every four years. We also know that a government can have a term of five years, although four years is the norm. That would give us another three or four months. We know that June 9 is not a magical date. Why can the election not be June 16 or June 22? Why the rush?

Honourable senators, this is an old trick. I have seen governments work, provincially and federally, for the last 50 years. I was here in the Senate at the age of 15. I was invited by Senator Jean-Francois Pouliot and other senators. When I sat in the New Brunswick legislature between 1970 and 1985, I was tempted to rush bills through at the last hour, but people are not fools. I have learned that from the last 25 years in politics. The government will be chastised, I think, for going early.

Coming back to June 2 or June 9, the government has plenty of time. Members of the House of Commons listen to the radio and watch television. They read the papers. They know that these amendments are being presented and debated today. They must have made up their minds. They must know that they can pick any date to call an election.

Do not bother me with a calendar. It will not work on me, and I do not think it will work with the rest of my colleagues or Senator Kenny's colleagues. At least, I hope not.

Honourable senators, as I said at the beginning of my remarks, I shall support this bill even if no amendment is accepted, but I wish you would consider the amendments to this bill.

I started smoking the year after I married, at the age of 28. It had nothing to do with my wife. I smoked on the weekends while attending university in Ottawa, but I packed it up on Sunday night. I am telling you, I did not need tobacco advertising to get me going. I believe the youths of this country are not impressed when they watch events sponsored by companies like du Maurier, such as the Grand Prix or the tennis tournaments.

[*Translation*]

We have spoken of sponsorship of sporting, cultural and artistic events, and I know that the bill includes at least two years' advance notice. Still, I would have liked to see the time period suggested by Mayor Pierre Bourque of Montreal and others, three to four years. The government has, however, decided otherwise.

Honourable senators, Bill C-71, even without amendments, merits my support, if even one life, or perhaps 100 lives, can be saved. I feel it is my duty to support this bill.

[*English*]

Hon. Mira Spivak: Honourable senators, I congratulate the Minister of Health and the government for finally introducing this legislation. It falls short of what was promised in the December 1995 tobacco control blueprint and, in some respects, it does not go as far as the previous Progressive Conservative government's legislation, the Tobacco Products Control Act introduced by Jake Epp, which I had the honour to bring forward in the Senate. In fact, as Senator Keon stated, this was among the best legislation in the world. Bill C-71 does, however, directly confront the problem of tobacco advertising masked as sponsorship and gives Health Canada new tools not found in the act which was struck down by the Supreme Court in 1995.

•(1550)

I listened attentively to the speeches made by my colleagues. Many of the issues have been closely examined. I merely wish to shed some light on this matter through production of some evidence of the behaviour of tobacco companies, that is, their claims that tobacco products are not addictive and that they do not promote their products to young people.

In the course of the Senate committee hearings, representatives of the tobacco manufacturers spoke of manufacturing a legal product which is sold to 7 million Canadians. They presented the industry as if it were blameless, and that the controls this legislation contemplates were excessive. For decades, this same industry denied that smoking caused lung cancer. Just this week, a tobacco company internal report surfaced in a U.S. court showing that their industry scientists and officials believed 39 years ago that there was an indispensable link — long before the U.S. Surgeon General declared that smoking causes lung cancer.

Most tobacco manufacturers, for their legal purposes, are, at this point in time, just as strongly denying that their products are addictive and that they deliberately promote them to young people. Last month in the United States, Liggett & Myers Inc., the makers of Chesterfield cigarettes, as part of its settlement with 22 U.S. states, admitted that smoking is addictive and that the industry markets cigarettes to teenagers. Arizona Attorney General Grant Woods, who announced the settlement, called it "the beginning of the end for this conspiracy of lies and deception."

Appearing before the Senate committee, representatives of the Canadian tobacco manufacturers equivocated on the question of addiction. Yet manufacturers print warnings on their packages that cigarettes are addictive, warnings required under the Tobacco Products Control Act, and which appear today despite the Supreme Court's decision.

On the question of promoting their products to young people, the committee also heard evidence that could leave any naive bystander to conclude that there is simply no connection between the $60 million that Canadian manufacturers spend on sponsorships and any desire on the part of the companies to attract new, young customers. The chairman and chief executive officer of the Canadian Tobacco Manufacturers Council baldly told the committee, "The manufacturers agree that youth should not smoke — period."

Compare that statement with evidence found in internal corporate documents made public only as a result of the RJR challenge to the Tobacco Products Control Act. Compare it with Volume 2 of Project Viking, a project supporting Imperial Tobacco Limited's proactive program, a project conducted through personal interviews with people 15 years or older in all Canadian cities of 50,000 or more population.

Compare it with the Youth Target Survey, 1987, obtained from RJR-Macdonald Inc., described in its forward as —

> the first of a planned series of research studies into the lifestyles and value systems of young men and women in the 15 to 24 age range.

That document specifically states its purpose as providing —

> ...marketers and policy makers with an enriched understanding of the mores and motives of this important emerging adult segment which can be applied to better decision making in regard to products and programs directed at youth.

Compare it to Project Plus/Minus, conducted for the Imperial Tobacco Company Limited, studying why young people start smoking, or to *Strictly Confidential*, an Imperial Tobacco Limited internal document which proposes having tobacco company —

> ...imagery reach those difficult to reach, non-reading young people that frequent malls in an impactful, involving, first-class way that makes them, us, and mall managers, etc. happy.

I would classify that as self-incriminating evidence.

Author Philip Hilts, former *New York Times* specialist on tobacco, wrote in his book, *Smokescreen*:

> ...on the subject of children, we also have a sheaf of papers giving concrete detail from the industry's direct work with children and what has come of it. The most complete set of papers has come from the Canadian sister companies of U.S. giants... in the hundreds of pages of advertising documents from two companies, Imperial and RJR-Macdonald, the targeting has not been hidden. They specifically target children above all other groups.

On sponsorship advertising, the tobacco manufacturers' representative told the committee that manufacturers regard such advertising "as quite a different category from product advertising." Again, let me cite an Imperial Tobacco Limited internal document, "A National Media Plan." Under "Sponsorship" — "Media," the objective is clear:

> To "Brand" the events we sponsor via media advertising so as to increase the level of awareness, particularly amongst smokers, and potential smokers, of our (trademarks') association with major world class sporting events and artistic productions.

One of these benign, benevolent ads was for live performances in Calgary of the children's Broadway musical *Annie*.

The committee also heard repeatedly that advertising, whatever its form, has one purpose — to convince smokers to switch brands at the expense of a competitor.

I have bibliographies of material presented to the Commons committee and Health Canada's research reference list. Here we find articles from such "disreputable" — quotation marks provided courtesy of the tobacco manufacturers — journals as *The Journal of the American Medical Association:* RJR Nabisco's Cartoon Camel Promotes Camel Cigarettes to Children; *The Journal of the National Cancers Institute:* Influence of Tobacco Marketing and Exposure to Smokers on Adolescent Susceptibility to Smoking; *The American Journal of Public Health:* Tobacco Promotion and Susceptibility to Tobacco Use among Adolescents Aged 12 through 17 years.

There are many more. The National Cancer Institute of Canada states:

> The cumulative evidence ... strongly supports the conclusion that marketing plays a significant role in youth smoking behaviour, both in terms of initial experimentation and brand preference.

The U.S. Surgeon General, in 1994, stated:

> Even though the tobacco industry asserts that the sole purpose of advertising and promotional activities is to maintain and potentially increase market shares of adult consumers, it appears that some young people are recruited to smoking by brand advertising.

Last year the U.S. Food and Drug Administration, in publishing regulations to ban logos and brands completely from sponsored events, stated:

> The effect of sponsored events on the young people who attend or see those events is enormous.... The agency finds that the evidence regarding the effect of advertising and sponsorship on children's smoking behavior is persuasive and more than sufficient to justify this regulation.

The World Health Organization, last year, stated:

> WHO and its co-sponsors, World No-Tobacco Day, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Olympic Committee (IOC) join forces in calling for all nations to end sponsorships which in any way associate tobacco products with sporting and cultural activities.

Frankly, there is evidence that young people come to the same conclusions as these institutions, that is, that sponsorship equals smoking, intuitively. When University of Toronto researchers showed Ontario students posters of the jazz festival and Grand Prix racing, having obscured the words on the posters, there was no doubt in students' minds what those posters were about. Some 53 per cent said the racing poster was about cigarettes; only 4 per cent saw it as a poster for Player's Racing. Some 20 per cent saw the jazz festival poster as an ad for cigarettes; only 2 per cent recognized it as an ad for the festival.

•(1600)

What did the students say about these ads? They said they "do not think about cancer, driving is more exciting." "Children idolize car racers and kids want to be like car racers and smoke." They also said, "If you are into music, you are into smoking." That is why the back-door route to advertising cigarettes to young people, through sponsorship posters and billboards, through television broadcasts that focus repeatedly on product logos, on time clocks and banners, or through T-shirts and other clever paraphernalia, must be restricted.

Cigarette manufacturers claim that sponsorship is just to increase market share, but the true story about the market comes from the manufacturers' reported sales. In the year following the Supreme Court decision, ads were permitted, taxes were constant and sales in Canada increased by 1.4 billion cigarettes. That is equivalent to the number of cigarettes inhaled by 150,000 new pack-a-day smokers.

Tobacco companies also profited nicely. Imasco, which controls two-thirds of this country's market, reported $1.5 billion in revenues last year, a nine-per-cent increase over the previous year.

Tobacco manufacturers also agreed to a voluntary code of conduct on advertising. Then they broke it by placing billboards near schools, distributing in-store posters and signs without health warnings and issuing life-style ads masquerading as trademarks. Self-regulation did not work.

Honourable senators, let me say a word about sponsorships. This bill does not ban sponsorships; it imposes restrictions. Tobacco manufacturers have a choice: to accept the restrictions in the bill or to withdraw their support from some or all of the 370 arts, cultural and sporting events that receive sponsorship funds. There has been a great deal of fear-mongering that the bill will lead to a total withdrawal of sponsorship and cancellation of events. Let us look at some of the facts. The Montreal Symphony Orchestra is one of those 370 organizations. It receives 0.3 per cent of its total revenue in donations and sponsorships from tobacco companies. Montreal's Centaur Theatre is another example. It receives 0.8 per cent of total revenues from tobacco sponsorship. There are many more examples across the country of organizations that candidly admit that loss of tobacco sponsorships will not be catastrophic, will not mean cancellation of any projects and can be replaced.

We have heard a great deal about other events, the Player's Grand Prix and the Montreal International Jazz Festival, for example. The facts are that the Jazz Festival receives only 12 per cent of its budget from the tobacco companies, a sizeable amount, but it is only 12 per cent. The Grand Prix receives 20 per cent of its revenue from tobacco companies. Assuming that tobacco sponsors withdraw their support, can we also assume that cancellation is inevitable? I do not believe we can. The other place amended this bill to give organizers two full seasons to find other sponsors. Simply put, the sponsorship argument has been blown out of all proportion, not to mention the moral side of the issue.

There is another compelling set of figures that we cannot ignore. The down-the-road costs of permitting sponsorship to continue unfettered. Our health care system now pays more than $2 billion every year to care for Canadians whose addiction to tobacco has damaged their lungs or hearts. Senator Keon has said that this figure is probably not accurate; that it is higher. The $60 million that tobacco manufacturers gave in sponsorships last year fell short of the $69 million spent in hospital treatment alone in the Province of Manitoba on tobacco-related illnesses. In Quebec, according to conservative figures published by the Canadian Centre on Substance Abuse, direct health care costs amount to $661 million.

Many other costs must be considered, the cost of house and forest fires and law enforcement, the cost of prevention programs and research, direct losses in the workplace and the tremendous toll in lost productivity of Canadians caused by tobacco related illnesses and premature death.

In total, combined costs rob the Canadian economy of an estimated $15 billion a year. That is a significant percentage of our GDP. Unless we act now to limit the ways tobacco companies encourage young people to take up smoking, including through sponsorships, we can only expect to see these costs increase year after year.

On the constitutional question, I am satisfied that the Supreme Court delivered clear guidance in its judgment, that the Justice Department has followed it to the best of its ability, and that independent experts believe that the bill will stand up. I also believe that what we are dealing with here is not a matter of trade-offs. This is a matter of finding the right delicate balance to satisfy promoters of events and retailers while minimally sacrificing the lungs and hearts of young people.

What we are dealing with are the threats and the assertions of a duplicitous industry whose product kills people. We are dealing with the sheer weight of evidence that this industry has been engaged in subverting through denial and deception through much of this century. As parliamentarians, it is time that we refuse to be cowed, bullied or expected to naively listen to them or to those they have hooked on their sponsorship dollars.

Again, I congratulate the Minister of Health for maintaining his stance. I would only hope that he or his successor can persuade the Prime Minister to honour the promise the government made when it rolled back tobacco taxes and reinstate that investment of $60 million over three years on smoking prevention. I would hope that the government would listen to one of its supporters, Senator Kenny, in establishing funds or making sure that funds come forth to promote the health of young persons, to do preventive work and to fund on a traditional basis arts groups, entities, events, activities and so forth; in other words, people who are creating events and rely on tobacco sponsorships.

Members of this chamber will need to keep watch on this legislation through its implementation, as Senator Keon said, to improve on it, to introduce new legislation to monitor it and to ensure that the regulations are effective and consistent with the bill's purpose, which, I need not remind you, is to provide a legislative response to a national public health problem of substantial and pressing concern.

The Hon. the Speaker: If no other honourable senator wishes to speak, that will conclude the debate.

Hon. Colin Kenny: Honourable senators, I rise, after consulting Senator MacDonald, to request permission of the house to withdraw the motion that I introduced yesterday.

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

Hon. Senators: No.

Hon. Senators: Agreed.

The Hon. the Speaker: I am sorry, I need unanimous consent. I have a no.

Hon. Anne C. Cools: Honourable senators, to the extent that Senator Kenny has made such a request of us, perhaps he could tell us why.

•(1600)

The Hon. the Speaker: Senator Cools, such a request is not subject to debate. If there is unanimous consent, then it is accepted; if not, there is nothing I can do.

Honourable senators, it is agreed that debate has concluded on this matter. Yesterday we agreed that we would vote at 5:30, and so the bells will commence to ring at 5:15. In order to settle the process of the vote, I wonder if I might have the agreement of the Senate to the following: There is a total of 27 amendments from four different sources. Would it be agreeable that the amendments be introduced for vote starting with Senator Kenny's, which was the last one proposed. We would then proceed with the amendments proposed by Senator Haidasz, and then those proposed by Senator Nolin, and then the amendments proposed by Senator Lynch-Staunton. Thus we would vote in four blocks. Is there agreement to that suggestion?

Hon. Senators: Agreed.

[*Translation*]

CRIMINAL LAW IMPROVEMENT BILL, 1996

SECOND READING

Leave having been granted to proceed to Order No. 3:

On the Order:

> Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Taylor, for the second reading of Bill C-17, An Act to amend the Criminal Code and certain other Acts.

Hon. Normand Grimard: Honourable senators, the members of this house become aware of the importance of individual legislation every time the Criminal Code is amended. Since 1982, the Canadian Charter of Rights and Freedoms has guaranteed new fundamental rights. The courts are asked to interpret all laws in terms of the Charter. However, Bill C-17 before us today, which is the subject of a government motion for second reading, is considered to be housekeeping legislation, designed to amend the Criminal Code and certain other acts. These amendments concern procedure and the administration of criminal justice rather than substantive matters.

My party is aware that a number of amendments reflect proposals made by the criminal law section of the Uniform Law Conference of Canada. Other amendments come from the former Law Reform Commission of Canada, from judges, lawyers and federal and provincial officials. That is what we are told in the explanatory notes. We have the benefit of the experience of hands-on practitioners.

Senator Milne, speaking on behalf of Senator Moore, gave an excellent summary of the impact of the bill. When the right to carry out such activities as searches, seizures and arrests, to serve documents associated with criminal proceedings or to benefit from interim release is at stake, no one can say that these are subjects to be taken lightly. However, we should remember, as I said earlier, that this legislation is mainly concerned with procedure and not with substantive changes.

Perhaps I may digress. This is an omnibus bill or a comprehensive bill. In the Joint Committee on the Scrutiny of Regulations, of which I am a member, we are told — I should say, we are asked — to wait until so-called minor legislation is tabled to correct any flaws we may have found in the regulations. I remember that former Prime Minister Trudeau made quite a reputation for himself in 1968, when he tabled an omnibus bill that also concerned the Criminal Code and certain other acts. He was Minister of Justice at the time. However, I can safely say there is no comparison between that and the bill before us today.

I am also aware of the views of Senator Kelly, who on February 11 suggested that bills that were not complex or controversial should go directly to third reading without being referred to committee.

The senator said at page 1493 of the *Debates of the Senate*, and I quote:

[*English*]

> My ex-associate Senator Frith and I used to debate this issue. He argued that this is the process and that we should follow it regardless. I believe that the work done by Senate committees is very important to this chamber; however, I think they should reserve their efforts for complex issues with multiple facets. This is not one of those.

•(1610)

Senator Kelly was then speaking on Bill C-53, to amend the Prisons and Reformatories Act. However, whatever the merits of his good argument, I suppose that Bill C-17 will follow the normal legislative route.

[*Translation*]

We are aware of the reservations made by the Canadian Bar Association on November 5 in the Commons committee.

[*English*]

The worries of the Canadian Bar Association dealt mainly with clause 15 of Bill C-17, concerning the occupation of a stolen vehicle by a passenger; and also with clause 45, authorizing a judge to issue a warrant of perquisition on application by telephone or by fax when most urgent circumstances occur. Another fear was that clause 48 could be seen as a green light for the seizure of any amount of extra goods not needed for the evidence at the trial.

The Canadian Bar Association had an interesting brief.

[*Translation*]

We therefore give our consent to second reading, but we intend to pay special attention to statements made at the committee stage by the Canadian Bar Association, or other intervenors, on the subjects I have just mentioned or any others. We will be on our best behaviour.

[*English*]

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

A BILL TO AMEND CERTAIN LAWS RELATING TO FINANCIAL INSTITUTIONS

SECOND READING

Hon. Michael J. Kirby moved second reading of Bill C-82, to amend certain laws relating to financial institutions.

He said: Honourable senators, it is my pleasure to express support for Bill C-82, legislation that, as many of you know, emanated from the discussion paper on financial institution reform which the Honourable Douglas Peters, Secretary of State for International Financial Institutions, released about one year ago. The primary thrust of the legislation will be to enhance protection for consumers of financial services as well as to contribute to improving the efficiency and competitiveness of financial institutions in Canada.

Our financial sector is world-class and vitally important to the overall Canadian economy. By itself, the sector employs more than a half-million people in Canada, which is about 3.5 per cent of all working Canadians. In addition, the financial services sector contributes about 7.5 per cent of Canadian GDP. Obviously, therefore, maintaining a vibrant, efficient and competitive financial services sector is essential to meeting Canada's full potential for economic growth and job creation. Bill C-82 is important in realizing that objective.

Bill C-82 involves amendments to many statutes, all of which impact in one way or another on financial institutions. Included in the acts amended in Bill C-82 are the Bank Act, the Cooperative Credit Associations Act, the Insurance Companies Act, the Trust and Loan Companies Act, the Canada Deposit Insurance Corporation Act and the Canadian Payments Association Act.

Bill C-82 contains a number of amendments designed to improve protection for consumers in their dealings with financial institutions. Important amendments are proposed in the area of privacy, for example. In this information age, consumers have ever-increasing concerns about the protection of personal information that they give to financial institutions.

To address these concerns, Bill C-82 provides the authority to require financial institutions to establish procedures governing the collection, retention, use and disclosure of customer information. It also includes provisions to require financial institutions to put in place complaint-handling procedures and to report annually on the number of complaints they have received, the subjects covered by those complaints, and so on. The legislation will also lead to improvements to the cost-of-credit disclosure requirements.

Recently, the federal and provincial governments, as you may have seen in the media, reached an agreement to harmonize disclosure requirements across jurisdictions. This legislation provides the authority to implement that federal-provincial agreement.

I comment parenthetically, honourable senators, that some of you will realize that there are a number of financial institutions, notably credit unions and trust companies, many of which are regulated provincially and not federally. Therefore, by putting in place common cost-of-credit disclosure requirements across institutions regulated provincially and federally, such as banks, the advantage to consumers is that exactly the same disclosure procedure will now be required, regardless of the financial institution with which the consumer is dealing.

The proposed legislation before us, Bill C-82, also deals with the issue of tied selling. Tied selling was the subject of considerable discussion last fall in hearings held on the white paper by the Standing Senate Committee on Banking, Trade and Commerce.

During those hearings, the committee heard stakeholders' concerns about the potential for financial institutions to exert undue pressure on consumers when selling financial products. In response to these concerns, Bill C-82 proposes an amendment to the Bank Act to prohibit coercive tied selling.

Let me emphasize, honourable senators, that this is not as easy to define as it sounds, because, clearly, one would like consumers to be in a position where they could get a complete package of services cheaper than they could buy each individual service, if sold separately. On the other hand, one does not want consumers to be in a position where they could be coerced or compelled into buying such a package.

Certainly, after the Senate Banking Committee's hearings six months ago, we were careful in our report to encourage the notion of package selling because that is clearly in the consumers' interests. We also stressed, however, how strongly we were opposed to coercive tied selling.

The amendment in Bill C-82 follows the suggestions made in the Banking Committee's report last fall on how to draw the fine line between tied selling in the consumer's interest and tied selling that is coercive.

The government's intention is to bring this amendment into force on September 30, 1998 — not 1997. In other words the government has deliberately given 18 months' lead time for institutions to put in place the systems required to ensure that coercive tied selling does not take place.

In the interim, all financial institutions have been asked to adopt a policy on tied selling that would include clear and effective procedures to address consumer complaints in this area. In addition, the government has asked the House of Commons Standing Committee on Finance and the Standing Senate Committee on Banking, Trade and Commerce to hold hearings next year on how the financial institutions' policies are working, and to recommend whether the government needs to proceed with proclaiming the amendment that is being passed as part of Bill C-82, or whether it is possible to simply continue with the self-regulatory scheme that is proposed to cover the next 18 months.

Another issue raised last fall before the Senate Banking Committee was access to basic financial services, that is to say, services to ensure that having a bank account of some kind would be available to all Canadians.

In the area of service charges, I am pleased to acknowledge recent commitments by major banks to improve access and to ensure information on service charges is both easy to understand and readily available in the public areas of branches.

Honourable senators, I would now like to highlight several proposals in the legislation that are aimed at easing the regulatory burden on financial institutions.

Some of the amendments have important implications for foreign banks. Regulated foreign banks, which are only Schedule II banks, will no longer be required to hold other financial institution subsidiaries through their Schedule II bank. For example, a regulated foreign bank will be able to hold its Canadian securities dealer affiliate as part of its foreign securities operations, separate from the banking subsidiaries it has in Canada.

Regulatory requirements will also be eased for what are called in the industry near banks, that is, entities that do not generally take deposits, that are not regulated as banks in their home jurisdiction, but provide one or more types of banking services in Canada.

The approval requirements for near banks will be reduced substantially. After they have been given an initial approval to enter the Canadian market, which can be done by ministerial approval and does not require legislation or an order in council, they will not require further approvals, provided that their unregulated services do not include taking deposits. Near banks will also be allowed to own non-bank financial institutions.

Honourable senators, the members of the Standing Senate Committee on Banking, Trade and Commerce are particularly pleased that the government has responded to our recommendations in announcing that it will develop a new framework for the entry of foreign banks into Canada, including a branching regime, which is exactly the method of allowing increased foreign bank participation in the Canadian economy that was urged by the Senate Banking Committee in its report of six months ago.

In the meantime, foreign companies offering a limited range of financial services, and now operating unregulated in Canada, as well as new entrants into the system that meet certain criteria, will be allowed to continue operations or to establish operations as unregulated financial institutions. I want to say, honourable senators, that the foreign banking proposals — which are not contained in Bill C-82, but were announced publicly by the minister at the time of the tabling of Bill C-82 in the other place — are exactly the foreign banking policy that the Senate Banking Committee recommended last fall.

There is another proposal in the bill of relevance to foreign banks which the Senate Banking Committee supported. Banks that do not take retail deposits — that is to say that do not take deposits from individual consumers but only take deposits in excess of $100,000 — will be allowed to opt out of Canada Deposit Insurance Corporation coverage, provided they are not affiliated with another CDIC member. The Banking Committee has been recommending this change for several years.

Bill C-82 contains a number of changes to streamline the self-dealing regulation within financial institutions, including streamlining the operations of the conduct review committee of the board of directors. The conduct review committee was established in the last revision to the Bank Act.

The changes contained in Bill C-82 narrow the range of the definition of related parties and allow subsidiaries of a federal financial institution to transact with each other.

Bill C-82 also adjusts the regulatory approvals process to make it considerably more streamlined. In addition, the legislation eases subsidiary requirements. It is proposed that financial institutions be permitted to carry on both information-processing and specialized financing activities in-house, rather than being required to have them in a subsidiary, as is the case under the current legislation.

•(1630)

Bill C-82 also introduces a variety of fine-tuning measures to keep financial institutions statutes up to date. Some of these measures relate to corporate governance. For example, the duties of the audit committee will be clarified to require that management implement and maintain appropriate internal control procedures. In addition, the audit committee will be required to review, evaluate and approve the internal controls of the financial institution.

Bill C-82 also contains changes to enhance the rights of policyholders of mutual insurance companies. It is proposed to limit the validity of policyholder proxies to the meeting for which they are solicited and to reduce the number of policyholders' signatures required to allow a proposal nominating directors on behalf of the policyholders to be circulated before a meeting.

In addition, regulatory adjustments will be made to provide more flexibility to financial institutions seeking to enter into joint venture arrangements.

The legislation also includes a number of amendments to enhance access to capital for mutual insurance companies, so-called demutualization. These companies will be permitted to issue participating shares as a step toward ultimate demutualization. Moreover, flexibility will be added to the demutualization regime itself and will be extended to all mutual life companies rather than a limited number, as is now the case. Large mutual insurance companies will have to remain widely held once they have been converted into stock companies, in the same way as banks have to be widely held at the present moment.

Honourable senators, in summary, many parts of the legislation before us are highly technical in nature. This bill does not have the drama of many other high profile issues, nor indeed does it have the drama normally attached to amendments to, for example, the Bank Act or the Insurance Companies Act. However, that should not obscure the vital importance of Bill C-82, nor should it obscure its real benefits — benefits to consumers, the economy and the competitiveness of all Canadian financial institutions.

Honourable senators, in light of the fact that virtually all of the amendments contained in this bill were recommended by the Standing Senate Committee on Banking, Trade and Commerce in its report last fall, and in two reports done earlier this decade, I hope that the bill will be referred to committee quickly and dealt with quickly once there. It is crucial, in my view, that these amendments be made before Parliament is dissolved. I hope that the bill will be referred to the committee today and that we can hold our hearing tomorrow.

Hon. Donald H. Oliver: Honourable senators, I welcome this opportunity to add my support to that of Senator Kirby's for Bill C-82. It is important that we take action to accommodate the needs of our financial sector. Bill C-82 addresses those needs and has the widespread support of the major stakeholders. It proposes a number of measures to ease the regulatory burden on financial institutions and to fine-tune the financial institutions legislation. I held meetings in my office last week with representatives of the insurance and the banking industries, and they expressed their support for this legislation.

I should like to comment on a few of the measures that have already been discussed ably by Senator Kirby. We recognize that the government must maintain an appropriate level of scrutiny over our financial institutions. To do that, regulatory approvals are required for certain transactions undertaken by financial institutions operating in Canada. However, many financial institutions have indicated that the level of authority required for certain approvals is too onerous and time consuming, especially when Governor-in-Council approval is required.

To speed up the process, Bill C-82 proposes to reduce the level of approvals required for certain provisions of the financial institutions statutes. This change will make the approval process under these provisions less cumbersome for some financial institutions. It will do so without compromising the integrity of the process.

The legislation also deals with the self-dealing regime. That regime implements controls over transactions between financial institutions and persons who are in positions of influence over or in control of the institution. Financial institutions have rightly argued that some aspects of the regime are awkward and impose unnecessary costs on many financial institutions. In response, the bill before us proposes several changes to the self-dealing regime, including streamlining the operations of the conduct review committee, narrowing the range of related parties and allowing subsidiaries of a federal institution to transact with each other.

In addition, the bill expands the in-house powers of our financial institutions. Currently, financial institutions can engage in certain types of business only through subsidiaries. The requirement to establish subsidiaries reflects various considerations, including the government's policy of maintaining a separation between the core activities of different types of financial institutions and the requirement for risk containment.

After reviewing the types of business that can only be carried out through subsidiaries, the government has decided to permit financial institutions, with the approval of the Minister of Finance, to carry on both information processing and specialized financial activities in-house. These changes are welcomed and they reduce the operating costs associated with these activities by promoting effective management.

Senator Kirby spoke a bit about the privacy provisions in clause 55. Section 459 of the Bank Act at present gives the Governor in Council the authority to make regulations governing the bank's use of any information supplied to it by its customers. Clause 55 would replace the section with more detail about the regulatory authority governing that information. Under the clause, as Senator Kirby has already stated, the government would be able to require a bank to establish procedures regarding the collection, retention, use and disclosure of any information about its customers or any class of customers and to establish procedures for dealing with customer complaints about the collection, retention, use or disclosure of information about the customer.

The government has had the power to regulate a bank's use of client information since 1992. It has not used that power, however. The white paper referred to by Senator Kirby discusses privacy safeguards in some detail at page 15, and notes the development of the Canadian Standards Association's new model code for the protection of personal information and the efforts of financial institutions to address privacy concerns.

What exactly is the problem that this amendment would address? Until we see specific regulations as proposed, this change will be hard to evaluate. When this bill goes to committee, that will be one of the questions that honourable senators will want to put to departmental officials.

The legislation also addresses an issue of major importance to the Standing Senate Committee on Banking, Trade and Commerce: the treatment of foreign banks in Canada. In Bill C-82, the government proposes to improve some of the rules governing the operation of foreign banks. In particular, the regulated foreign banks that own a Schedule II bank will no longer be required to hold their financial institutions through the Schedule II bank.

The present section 521 of the act empowers the Governor in Council to permit foreign banks to own a non-bank affiliate offering financial services in Canada. Clause 84 would make extensive modifications to this section, the goal, as stated in the white paper, being to reduce the regulatory burden foreign banks face and to ensure consistent treatment with domestic institutions. For example, clause 84(3) would eliminate section 521(2). New section 521(1.03) says that once a near bank has been given permission by the Governor in Council to enter Canada, it would not need to obtain further permission to undertake selected activities.

The basic goal of the proposed changes is to make it easier for certain types of foreign banks, those that would not be considered direct competitors of Canadian chartered banks, to provide financial services in Canada. What a foreign bank is and is not permitted to do in Canada is a relatively complicated issue that turns on the definition of "foreign bank" and the desire to maintain a level playing field for domestic banks and foreign banks operating in Canada. This change will provide more flexibility for regulated foreign banks to set up their operations in Canada and simplify their regulatory requirements.

Once near banks have been given an initial approval to enter the Canadian market, they will not need further approvals provided their unregulated activities do not include taking deposits. In addition, near banks must inform retail customers that their investments are not covered by CDIC deposit insurance and are being held by unregulated financial institutions.

Foreign banks will also benefit from the proposal in Bill C-82 regarding the opting out of insurance offered by Canada Deposit Insurance Corporation coverage. Banks that deal mostly in the wholesale market may not need insurance. Their deposits exceed CDIC insurance limits and are derived primarily from sophisticated investors such as large corporations. These banks have argued that membership in the CDIC imposes unnecessary costs that are inappropriate, given the small portion of the deposits that are insured. At the same time, the CDIC is of the view that unnecessary resources are being spent monitoring these institutions when exposure to loss is close to non-existent. As a result, the legislation proposes to allow banks that do not take retail deposits to opt out of CDIC coverage provided they are not affiliated with another CDIC member. This change will reduce the costs incurred by these banks and will streamline their regulatory requirements.

The financial sector operates in a fast-changing environment, and it is important that the legislation governing financial institutions keep pace. I would now like to focus briefly on the key measure of Bill C-82 aimed at updating the financial institutions statutes to reflect marketplace changes.

Honourable senators, changes are proposed in the area of corporate governance to encourage financial institutions to adopt appropriate processes to manage risks. The existing duties of the audit committee to ensure that appropriate internal control procedures are in place were determined to be too vague. Therefore, the duties of the audit committee will be clarified and the committee will be required to review, evaluate and approve the internal controls of the financial institutions.

The bill also addresses policyholders' rights. Although those rights were substantially modernized in 1992 and for the most part are working well, it is desirable to facilitate the disclosure of information and the participation of policyholders who are interested in the affairs of their companies. The bill introduces a number of changes to support those objectives.

Another element of the bill is access to capital for mutual insurance companies. Access to capital is key to the ability of mutual insurance companies to compete in Canada and abroad.

In 1992, two measures relating to this requirement were introduced. First, mutual companies were permitted to issue preferred shares. Second, small mutual life companies were allowed to "demutualize" or convert into stock companies. The legislation introduces new measures to allow mutual companies to respond to the changing needs and demands of the market. First, they will be permitted to issue participating shares; second, the demutualization regime will be made more flexible and extended to apply to all mutual life companies, not just the small ones.

In conclusion, honourable senators, I have given a brief thumbnail sketch of several elements of Bill C-82 designed to complement what Senator Kirby has already said. While many of the individual measures in the legislation may seem technical, together they form a significant package of changes.

The financial sector is the engine that drives our economy. The measures in Bill C-82 will go a long way towards ensuring that that engine stays in high gear.

In closing, honourable senators, I join Senator Kirby in endorsing this legislation and in encouraging passage of same in this place.

The Hon. the Acting Speaker: It is moved by the Honourable Senator Kirby, seconded by the Honourable Senator Maheu, that this bill be read the second time.

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

CRIMINAL CODE

BILL TO AMEND–SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Milne, for the second reading of Bill C-27, to amend the Criminal Code (child prostitution, child sex tourism, criminal harassment and female genital mutilation).

Hon. A. Raynell Andreychuk: Honourable senators, I welcome the opportunity to speak to the issues affecting children in our society and in particular those who are disadvantaged due to the actions and attitudes of adults committing crimes towards them. I join Senator Pearson in welcoming the fact that this bill has finally come to the Senate, and I look forward to further scrutiny of this proposed legislation in the Standing Senate Committee on Legal and Constitutional Affairs, if it should be referred to that committee.

I am disappointed to note that the length of time it took to introduce this bill indicates to me that the issue of youth and children is not high enough on the agenda of our society today. It seems to have more resonance at the time of an election than it has in our day-to-day lives. I would therefore join with senators who believe that the issues affecting children must be dealt with consistently and as a priority.

As to the specifics of Bill C-27, honourable senators, I accept and agree with the comments of Senator Pearson. I believe that the five areas were adequately covered.

It is interesting to note that the preamble to Bill C-27 symbolically states the targets we are attempting to achieve with the bill. However, I should like to signal my growing uneasiness that, when we come to deal with issues that affect the daily lives of children and youth in our society and those disadvantaged, including women who find themselves in situations of harassment and in situations of female genital mutilation, we seem to choose a criminal answer rather than a full, omnibus, social answer to these issues.

I do not believe that, even with the passing of Bill C-27, we will have done enough to attack the five areas of concern within the bill. They will give law enforcement some ability to deal more effectively with child prostitution, but I would underscore that these are limited tools. We must look to the root causes of why we have child prostitution in our society and, in fact, in our world. I wish to look at the root causes of why women find themselves living in fear from stalkers. I wish to know why, in a society that passes international covenants, we have yet to embody many of the issues that we ask our international colleagues to support, issues that we have not taken more seriously within our society.

Honourable senators, specific clauses merit closer attention. Certain clauses of the bill cover "child sex tourism" as it has been commonly referred to recently. Although I accept that that is a difficult issue and that this bill is a limited tool to get at the entire issue of child sex tourism, and while I would appreciate the government looking at development issues and strengthening the international machinery — I would implore the government to ensure that our international friends adhere to the international covenants — I believe that the clauses within Bill C-27 have some merit. However, I do share the concern of some critics that the process and method of attempting to prosecute Canadians in foreign, sovereign countries is a difficult if not impossible task. I look forward to further implementation strategies with targeted countries to ensure that these clauses will, in fact, produce the desired result. The bill clearly sends a signal that perpetrators who exploit children while availing themselves of tourism are not a segment of the Canadian society that we deem desirable.

Enforcing the law will be difficult. To receive the consent of the sovereign country extraterritorially, and to find a provincial Attorney General who is willing to prosecute sounds like a reasonable approach. However, from my years of practice, justice delayed is justice denied. This is an unwieldly process in countries where bureaucracy often overtakes the need for early detection and attention. I trust that we will take steps to ensure that the extraterritorial provisions are, in fact, legal, and not only comply with Canadian law but also have some merit in the international forum. I would also implore the government to start a process to have in readiness in Canada, and in targeted countries, the mechanisms to move quickly.

Turning to child prostitution, I support the clauses aimed at getting at the perpetrators of child prostitution and those who live off the avails — in other words, the pimps. These clauses will be tools that the police will be able to employ. I note, however, that the police forces have asked for further measures, and I hope that the government will continue to assess the effectiveness of the measures within Bill C-27.

When I consider child prostitution in Canada, I am struck by the thought that perhaps if we had first looked at poverty, and at solving some of the issues relevant to our aboriginal community, we might then be having a greater success rate than simply looking at the end run. Again, I would have wished the education to come first. I would have wished preventative services to have been in place, since they are sadly lacking. In other words, I wish we had taken the remedial action at the start of the process, rather than at the end, when it is all too late.

Too often, in my practice in law, in my non-governmental work, but more particularly as a family court judge, the children I saw were victims — the child prostitutes who had no attention, no resources, and no hope in our society. They are many, and they are a growing lot. We talk about the Young Offenders Act more than we talk about how we can prevent young people becoming part of the criminal process. Make no mistake: when you bring in the perpetrator of child prostitution and the one who lives off the avails, you are in many cases putting the child prostitute through a horrendous process involving fear for her or his life, and fear about retaliation to his or her family. You are taking the only source of affection, however negative, from that child prostitute without replacing or reinforcing, and without applying any rehabilitation techniques.

While I laud the fact that the child prostitute will not need to come before an open court and face those who have manipulated her — or him, videotaping and allowing children to testify from behind screens is of limited value. I know from personal experience what harassment of children can be, particularly from those who have some trust relationship already built up, whether that trust is negative or positive. Here, of course, we are speaking of negative influences.

While this bill starts to look at the criminality of child prostitution, and I believe it is a move in the right direction, it will not, and cannot, be effective. The public should not be misled that, with our conscience soothed, we will have dealt with all that is necessary in child prostitution. I shall not belabour the point with honourable senators, who are well aware of the fact that we should start looking at the problems long before we look at the end results of child prostitution.

I also wish to comment on the clauses dealing with female genital mutilation. This clause complies with the United Nations Convention on the Rights of the Child , although I do want to put on the record that article 24(3) of that convention does not specifically target female mutilation. In fact, article 24(3) of the convention stipulates only that:

> State Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

While I support this clause, I raise two concerns in relation to Bill C-27. Clause 5 puts the onus squarely on the medical profession, and I would hope that the medical profession is well attuned, understanding, and educated on the issue of female genital mutilation. It is a phenomenon that is found worldwide, but it is one that has not received the attention or scrutiny of the Canadian public. Many of today's new Canadians immigrate to Canada from areas of the world that, in the past, had sent no emigrants to this country. So much so that I am afraid many of our family support systems — and here I include the medical profession and other social services — have been more attuned to what I call a Northern European philosophy rather than embracing a full and adequate understanding of the backgrounds, the nature and the culture, of many of the citizens who now call Canada home.

The medical profession will have to determine whether the process that they enter into is, in fact, one that will not cause bodily harm. It is a sensitive issue. Therefore, my concern is twofold: First, are there guidelines that will guide individual doctors, or will their own value systems and their own understanding guide them as to whether a procedure that has been allowed under clause 5 can continue, or whether it should be prohibited because, in fact, it causes bodily harm.

We have not added a new section to the law. We are simply adding this issue to an already existing assault section within the Criminal Code. The burden will thus fall on the medical profession to give us the information, but also to determine whether, in fact, they have complied with the act.

I am mindful of the years that abortion — and I draw that parallel — was left to the medical profession, who, with their own best skills and their best medical professionalism, dealt with the issue. However, there was a distance between public opinion and interpretation and what the medical profession, in its wisdom, could or would do. Therefore, I believe there need to be guidelines in this area. There needs to be education of the medical profession, and of the personnel within the justice system, and also of the public at large.

•(1700)

My second fear regarding clause 5 of the bill is that this is a sensitive issue, and condemnation is not enough. The need to understand the complexity involved in eradicating this injustice is not served simply by passing a Criminal Code amendment. We must understand that, while this is an undesirable practice, if the practice is not thoroughly explored and understood, it will be driven underground and thereby render the victims even more vulnerable.

I support the clauses pertaining to harassment. Criminal harassment and stalking are growing phenomena in Canada. I do not know whether the fear of harm is greater than actual harm. Living day by day, not knowing what someone else might do to you, wilfully, consistently and continually, is a pressure that few of us understand or wish to be subjected to. Consequently, these clauses are desirable, and we should monitor them to see whether, in fact, they should be strengthened. The Standing Senate Committee on Legal and Constitutional Affairs will have a chance to go into the details.

In conclusion, I wish to reiterate that Bill C-27 has an admirable preamble to a more comprehensive strategy. I hope the government will set out an overall strategy that will deal with children at risk and that is broader than criminal solutions. It is too easy to believe that a law can answer every social ill. The answers are more complex. The answers lie within the community. It is incumbent upon the government to have an overall child strategy, including both domestic policy and international policy.

I again underscore my support for Bill C-27. I believe, however, that this bill should be passed in the context that children are our first priority, not our last or even our second thought.

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 Pearson, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

BROADCASTING ACT

BILL TO AMEND—THIRD READING

Hon. Rose-Marie Losier-Cool moved the third reading of Bill C-216, to amend the Broadcasting Act (broadcasting policy).

[*Translation*]

Hon. Jean-Maurice Simard: Honourable senators, we on this side of the house keep our campaign promises. I spoke at second reading, pointing out certain weaknesses and areas of concern in the bill. I shared those concerns with the Fédération des communautés francophones et acadienne du Canada, the Canadian Cable Television Association, and the Société des Acadiens et Acadiennes du Nouveau-Brunswick.

I have learned from Senator Bacon that these groups appeared before the committee. Incidentally, I would point out that we could easily have done without the thundering declarations by the MP who sponsored this bill, Mr. Gallaway. He will no doubt have realized that it does no good to threaten senators and MPs. He had promised in the House that the bill would be studied in detail. I must congratulate Senator Bacon for her excellent work in committee.

[*English*]

I should like to congratulate Senator Finlay MacDonald. Although he is a unilingual anglophone, he paid attention to the study of this bill affecting the cable companies and television in Canada. He did an excellent job. I have evidence that other people have appreciated his good work, and I should like to read two faxes that are in my possession. One is from the Specialty and Premium Television Association and the other is from the le Regroupement des services spécialisés de langue française.

Coming to the first fax from the Specialty and Premium Television Association, they write:

> Thank you for your tremendous support for French language pay and specialty television services last night. The attached statement was sent to all media this morning.

That was addressed to Senator Finlay MacDonald.

[*Translation*]

I want you to know that I second the arguments and the expression of gratitude this group presented to Senator Finlay MacDonald on April 9, 1997, and I quote:

> The Regroupement des exploitants de canaux spécialisés de langue française would like to express its gratitude to the Standing Senate Committee on Transport and Communications for approving the amendment to Bill C-216, an Act to amend the Broadcasting Act.

The spokesperson for the group, Michel Arpin, said:

> The amendment keeps the objective of consumer protection, which was the initial driving force behind the bill. It also provides for a response to their vital concerns on the use of French, namely on the availability and cost of specialty French language programming services. The amendment to the bill is a compromise that will facilitate the provision of services to francophones.

•(1710)

When I consulted the Fédération des communautés francophones et acadienne du Canada yesterday, I was informed that it totally agrees with and supports the amendment before us.

[*English*]

The Hon. the Acting Speaker: It is moved by the Honourable Senator Losier-Cool, seconded by the Honourable Senator Milne, that this bill, as amended, be read the third time now.

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

Hon. Senators: Agreed.

Motion agreed to and bill, as amended, read third time and passed.

BUSINESS OF THE SENATE

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, we have reached Motion No. 112 standing in the name of Senator Cools. I understand that Senator Cools wishes to speak today. However, we are rapidly approaching 5:15 p.m., when the bells will ring for the votes on Bill C-71. Therefore, if there is agreement, I would suggest that we adjourn to the call of the Chair.

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): That is agreeable.

The Hon. the Acting Speaker: Call in the senators.

•(1720)

TOBACCO BILL

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Lewis, seconded by the Honourable Senator Landry, for 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.
>
> 1.—On the motion in amendment of the Honourable Senator Lynch-Staunton seconded by the Honourable Senator Stratton, that the Bill be not now read the 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.";
>
> (*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".

2.—On the motion in amendment of the Honourable Senator Lynch-Staunton seconded by the Honourable Senator Berntson, that the Bill be not now read the third time but that it be amended:

1. 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".

2. 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".

3. on page 15, by adding after line 31 the following new clause:

"**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.".

3.—On the motion in amendment of the Honourable Senator Nolin seconded by the Honourable Senator Lynch-Staunton, that the Bill be not now read the third time but that it be amended:

1. 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.".

2. 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.".

3. 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 or recognition 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.".

4. 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 promotional 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; and

(*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.".

5. 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.".

6. in clause 28, on page 10, by replacing line 33 with the following:

"criteria described in section 27.".

7. 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

8. in clause 25, on page 10, by replacing lines 4 and 5 with the following:

"element may appear on the facility.".

9. in clause 33, on page 12,

(*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.

10. 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.".

11. 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;".

12. 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.".

13. 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 the Governor in Council may fix by order.".

4.—On the motion in amendment of the Honourable Senator Haidasz, P.C., seconded by the Honourable Senator Robichaud, P.C., that the Bill be not now read the third time but that it be amended:

1. 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."

2. 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."

3. 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.".

4. 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;".

5. 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.".

6. in Clause 21

(*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.".

7. 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."

8. 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.".

9. on page 17 by replacing the heading of PART V.1 with the following:

"LAYING OF PROPOSED REGULATIONS AND REPORTING".

5.—On the motion in amendment of the Honourable Senator Kenny seconded by the Honourable Senator MacDonald (*Halifax*), that the Bill 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.

(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.

(7) Subject to subsection (14), the amounts raised under subsection (6) and all voluntary contributions shall be used by the Administrator to finance the attainment of the objective set out in paragraph (3)(*a*).

(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*).

(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*).

(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.

(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."

•(1730)

The Hon. the Speaker: Honourable senators, the question before the Senate is the third reading of Bill C-71 and the amendments thereto.

By agreement, we will do the amendments in order, the last received being the first to be voted on, and we will do them in groups.

The first amendment was a motion in amendment by Honourable Senator Kenny, seconded by Honourable Senator MacDonald:

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...

Hon. Senators: Dispense!

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

Hon. Senators: Yes.

Hon. Senators: No.

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

Hon. Senators: Yea.

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

Hon. Senators: Nay.

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

And two honourable senators having risen.

Motion in amendment by the Honourable Senator Kenny negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Atkins	Murray
Charbonneau	Phillips
Doody	Rivest
Ghitter	Simard
Grimard	Spivak—11.
MacDonald (*Halifax*)	

NAYS

THE HONOURABLE SENATORS

Adams	Landry
Anderson	Lawson
Andreychuk	Lewis
Austin	Losier-Cool
Bacon	Lucier
Bonnell	Maheu
Bryden	Marchand
Buchanan	Mercier
Carstairs	Milne
Cochrane	Moore
Cools	Nolin
Corbin	Pearson
De Bané	Pépin
Fairbairn	Perrault
Forest	Poulin
Gigantès	Robichaud
Grafstein	Rompkey
Graham	Sparrow
Hays	Stewart
Hébert	Stollery
Hervieux-Payette	Taylor
Keon	Watt
Kolber	Wood—46.

ABSTENTIONS

THE HONOURABLE SENATORS

Beaudoin	Kinsella
Berntson	Lavoie-Roux
Cogger	LeBreton
DeWare	Lynch-Staunton
Di Nino	Oliver
Forrestall	Roberge
Jessiman	Rossiter
Johnson	Stratton
Kelleher	Tkachuk
Kenny	Twinn—20.

The Hon. the Speaker: The next set of motions in amendment was moved by Honourable Senator Haidasz, seconded by Honourable Senator Robichaud:

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

on page 2, by adding after line 16 the following:

"reconstituted tobacco" means —

Hon. Senators: Dispense!

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

Hon. Senators: Yea.

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

Hon. Senators: Nay.

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

Hon. Senators: On division.

Motions in amendment by Honourable Senator Haidasz negatived, on division.

The Hon. the Speaker: Honourable senators, the third set of amendments was moved by the Honourable Senator Nolin, 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 –

Hon. Senators: Dispense!

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

Hon. Senators: Yes.

Hon. Senators: No.

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

Hon. Senators: Yea.

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

Hon. Senators: Nay.

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

And two honourable senators having risen.

Motions in amendment by the Honourable Senator Nolin negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Atkins	Kinsella
Berntson	Lynch-Staunton
Buchanan	Nolin
Cogger	Oliver
DeWare	Phillips
Di Nino	Rivest
Doody	Roberge
Forrestall	Rossiter
Grimard	Simard
Jessiman	Stratton
Kelleher	Tkachuk—22.

NAYS

THE HONOURABLE SENATORS

Adams	Lavoie-Roux
Anderson	Lawson
Andreychuk	LeBreton
Austin	Lewis
Bacon	Losier-Cool
Bonnell	Lucier
Bryden	Maheu
Carstairs	Marchand
Cochrane	Mercier
Cools	Milne
Corbin	Moore
De Bané	Murray
Doyle	Pearson
Fairbairn	Pépin
Forest	Perrault
Gigantès	Poulin
Grafstein	Robichaud
Graham	Rompkey
Hays	Sparrow
Hébert	Spivak
Hervieux-Payette	Stewart
Johnson	Stollery
Kenny	Taylor
Keon	Watt
Kolber	Wood—51.
Landry	

ABSTENTIONS

THE HONOURABLE SENATORS

Beaudoin	MacDonald *(Halifax)*
Charbonneau	Twinn—5.
Ghitter	

The Hon. the Speaker: Honourable senators, we now come to the final set of amendments moved by the Honourable Senator Lynch-Staunton.

•(1740)

It was moved by the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Stratton:

That Bill C-71 be not now read the third time but that it be amended in clause 42.1, on page 17,

by replacing lines 13 to 22 with the following:

Hon. Senators: Dispense!

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

Hon. Senators: Yes.

Hon. Senators: No.

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

Hon. Senators: Yea.

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

Hon. Senators: Nay.

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

And two honourable senators having risen.

Motions in amendment by the Honourable Senator Lynch-Staunton negatived on the following division:

YEAS

THE HONOURABLE SENATORS

Atkins	Kinsella
Berntson	LeBreton
Buchanan	Lynch-Staunton
Charbonneau	Murray
Cochrane	Nolin
Cogger	Oliver
DeWare	Phillips
Di Nino	Rivest
Doody	Roberge
Forrestall	Rossiter
Ghitter	Simard
Grimard	Stratton
Jessiman	Tkachuk
Kelleher	Twinn—28

NAYS

THE HONOURABLE SENATORS

Adams	Landry
Anderson	Lavoie-Roux
Andreychuk	Lawson
Austin	Lewis
Bacon	Losier-Cool
Bonnell	Lucier
Bryden	Maheu
Carstairs	Marchand
Cools	Mercier
Corbin	Milne
De Bané	Moore
Doyle	Pearson
Fairbairn	Pépin
Forest	Perrault
Gigantès	Poulin
Grafstein	Robichaud
Graham	Rompkey
Hays	Sparrow
Hébert	Spivak
Hervieux-Payette	Stewart
Johnson	Stollery
Kenny	Taylor
Keon	Watt
Kolber	Wood—48

ABSTENTIONS

THE HONOURABLE SENATORS

Beaudoin
MacDonald (*Halifax*)—2

The Hon. the Speaker: Honourable senators, it is moved by the Honourable Senator Lewis, seconded by the Honourable Senator Landry, that this bill be read the third time. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Yes.

Hon. Senators: No.

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

Hon. Senators: Yea.

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

Hon. Senators: Nay.

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

•(1750)

And two honourable senators having risen.

Motion agreed to on the following division, and bill read third time and passed.

YEAS

THE HONOURABLE SENATORS

Adams
Anderson
Andreychuk
Atkins
Austin
Bacon
Beaudoin
Berntson
Bonnell
Bryden
Buchanan
Carstairs
Cochrane
Cogger
Cools
Corbin
De Bané
DeWare
Doody
Doyle
Fairbairn
Forest
Forrestall
Ghitter
Gigantès
Grafstein
Graham
Grimard
Hays
Hébert
Hervieux-Payette
Jessiman
Johnson
Kelleher
Kenny
Keon
Kinsella
Kolber
Landry
Lavoie-Roux
Lawson
LeBreton
Lewis
Losier-Cool
Lucier
Lynch-Staunton
MacDonald (*Halifax*)
Maheu
Marchand
Mercier
Milne
Moore
Murray
Nolin
Oliver
Pearson
Pépin
Perrault
Phillips
Poulin
Roberge
Robichaud
Rompkey
Rossiter
Simard
Sparrow
Spivak
Stewart
Stollery
Stratton
Taylor
Tkachuk
Twinn
Watt
Wood—75

NAYS

THE HONOURABLE SENATOR

Rivest—1

ABSTENTIONS

THE HONOURABLE SENATORS

Charbonneau
Di Nino—2

NATIONAL DEFENCE

SOMALIA INQUIRY—RESOLUTION CONCERNING RULING OF FEDERAL COURT JUSTICE—DEBATE ADJOURNED

Hon. Anne C. Cools, pursuant to notice of April 8, 1997, moved:

That whereas the Senate deemed it expedient to inquire into and be concerned with this matter connected with the good government of Canada and the conduct of this part of the public business, and was desirous of examining the Somalia affair in continuance and completion of the *Royal Commission of Inquiry into the Deployment of Canadian Forces to Somalia's* work, the Senate desirous of solemn inquiry into these grievous matters by Senate resolution on March 20, 1997 ordered and constituted a Special Senate Committee to investigate the Somalia Affair to satisfy the public's concern for judicious examination, and to authorize those persons unheard by the Commission of Inquiry to be heard by the Special Senate Committee; and further, that this resolution ordered its Senate Committee to call specified witnesses including one John Dixon to testify before it; and

Whereas on March 25 and 26, 1997, long after the Senate had passed its resolution, Madam Justice Sandra Simpson of the Federal Court of Canada heard an application brought by John Dixon asking that court to rule in respect of Orders in Council PC 1995-442, PC 1995-1273, PC 1996-959, and PC 1997-174 regarding Defence Minister Douglas Young's three extensions of time and his actions declining the Somalia Royal Commission of Inquiry yet another extension and yet another postponement of the Commission's report date; and further, that Madam Justice Simpson ruled on the same application and hearing on March 27, 1997; and

Whereas the issues and subject matter in Mr. Dixon's application to the Federal Court of Canada ruled on by Madam Justice Simpson are not matters for judicial determination, but rather are political matters and thus for political determination by the politics of responsible government, of which the Senate Committee's inquiry is such a political and parliamentary determination; and further, that Madam Justice Simpson took jurisdiction without common law, statutory or constitutional authority and ruled on this application, is by itself a political act and an interference; and further, that the Federal Court of Canada and its judges have no jurisdiction or

superintendence over the Senate of Canada or Senate proceedings; and further, that regarding the Senate's and Parliament's privileges, the courts and judges of Canada are directed by constitutional comity, by the Constitution Act, and by the Parliament of Canada Act, that "The privileges, immunities and powers ... shall, in all courts in Canada, and by and before all judges, be taken notice of judicially."; and "... it is not necessary to plead them ...".

Whereas as the Upper Chamber of Parliament, the ancient and undoubted High Court of Parliament, the Grand Inquest of the Nation, the Senate of Canada deplores judicial lawmaking, judicial vanity, judicial mischief, curial government, and any and all judicial excesses, particularly judicial political activism in the spheres of public policy decision-making in Cabinet's lawful exercise of its powers by responsible ministers of the Crown, and in the Senate's exercise of its constitutional privileges and powers to conduct inquiries and to safeguard the public interest in good government; therefore

Be it resolved that the Senate of Canada uphold its constitutional conventions of judicial independence and constitutional comity, and assert its own privileges and powers to conduct its own inquiry without judicial interference or attempts at judicial government; and further, that the Senate declares Madam Justice Sandra Simpson's actions, orders and judgement of March 27, 1997, subsequent to and in disregard of the Senate's own resolution on March 20,1997 superseding the Commission of Inquiry's reference and assuming the subject matter, were an unlawful and undue political interference in Senate proceedings and Senate functions; and further, that the Senate expresses its just displeasure at Madam Justice Simpson's ruling and her failure to take judicial notice of the Senate's Orders and Committee of Inquiry and declares her ruling to be a breach of the Senate's privileges and declares that the judicial person, Madam Justice Sandra Simpson, is in contempt of Parliament.

She said: Honourable senators, I commend Senator Murray for drawing the Royal Commission of Inquiry into the Deployment of Canadian Forces to Somalia to our attention. I thank Senator Fairbairn for supporting his initiative and presenting her resolution on March 20, 1997. The forming of a Senate special committee to study this matter is necessary, because of the public disquiet that has been expressed, and because of the resignations of Chief of Defence Jean Boyle and Minister of Defence David Collenette during the Somalia Commission of Inquiry. Further, the Somalia matter is now where it should always have been, in a Senate committee, the High Court of Parliament, the Grand Inquest of the Nation, for public inquiry into the deployment of our forces in Somalia.

Former Prime Minister John Diefenbaker held strong views on the executive use of judges on royal commissions. On August 2, 1946, in a House of Commons debate with Liberal Minister of Justice, Louis St. Laurent on the Judges Act, Mr. Diefenbaker detailed the contentious matter of judges' participation on royal commissions. He listed many royal commissions and judges, including Chief Justice Duff, Mr. Justice Kellock and Mr. Justice Taschereau, all Supreme Court of Canada judges, whose credibility had been seriously damaged by their involvement with politically charged royal commissions. He rested heavily on the Kellock-Taschereau Inquiry into the Gouzenko Affair and the extensive criticism, in and outside Parliament, that was directed at the commissioners and their consequent defence of their positions. Mr Diefenbaker recounted that the justices used this commission report to respond to criticism, saying:

> This, to me, is a most unusual report — and I am referring only to section XI. Because of that criticism, the eminent judges who composed the commission have set out in a matter of forty pages an explanation of the course they followed, enunciating the law on the subject, and more or less advancing their defence to the criticism raised.
>
> They point out that they took hearsay evidence, and ... secondary evidence in the investigation. They said that such things could not have been done in a court of law, but that they were supreme as a royal commission.

Mr. Diefenbaker identified today's problems, that to justify their own position, the commission judges advanced the doctrine of irresponsibility, saying:

> ... they followed the system they had in mind to follow — to show that a royal commission will set up as its defence its responsibility to no body, ...

The doctrine of irresponsibility to no body is the polar opposite of the constitutional doctrine of ministerial responsibility to Parliament. Mr. Diefenbaker asked the minister to remove the possibility for judges' participation in royal commissions on politically controverted matters. Having judges on royal commissions by executive order has been well debated in Canada, particularly as to their remuneration, allowances, and moonlighting. The Judges Act, section 56, settled the salary aspect, but much remains unsettled, particularly judges' forays into political controversy. Mr. Justice Gilles Létourneau's recent actions to prolong the Somalia Royal Commission of Inquiry beyond the date ordered by the Prime Minister's Order in Council, PC 1997-174, after three previous lengthy extensions, are troubling, as is his political engagement of Defence Minister Douglas Young.

Honourable senators, all royal commissions, particularly of inquiry, are ancient instruments of the Royal Prerogative. Hugh Clokie and William Robinson, scholars also quoted by Mr. Diefenbaker, in their 1937 book *Royal Commission of Inquiry*, said:

> Royal Commissions are appointed by the Crown either by virtue of the prerogative or by authority of an act of Parliament; they depend, therefore, upon simple royal warrant or upon royal warrant issued in pursuance of parliamentary permission or instruction.

Canada's parliamentary approval of the ministerial exercise of the royal prerogative inquiry is the Inquiries Act, Part 1, which originates in an 1846 pre-confederation act entitled, "An Act to Empower Commissioners for Inquiring into Matters Connected with the Public Business, to Take Evidence on Oath." First a temporary measure, it was re-enacted in 1868 in the Dominion Parliament. Some of these words are still in force in today's Inquiries Act, An Act Respecting Public and Departmental Inquiries which states:

> The Governor in Council may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof.

My motion borrowed those words. The intention of these acts is to enable inquiry into public business for the goal of good government. The cleavage between Crown and Parliament has been completely reconciled by ministerial exercise of royal powers. There is no separation of powers, because the separation was long ago superseded by the harmonizing principles of the Cabinet system through the constitutional conventions of ministerial responsibility. With the establishment of ministerial responsibility in Canada, royal commissions became part of the executive governmental machinery. With proper use, royal commissions are a beneficial instrument. Whether the Somalia Royal Commission of Inquiry was a proper use is unclear. What is clear, however, is that the Somalia Commission has failed, and failed expensively, leaving fatigue, disappointment and suspicion in the public, and much frustration for persons such as John Dixon and former Defence Minister Kim Campbell. The proper use is not clear, and is a matter for parliamentary action, possibly, to amend the Inquiries Act to limit ministerial imprudence.

Honourable Senators, another anxiety is Parliament's lack of financial control over these commissions of inquiry. Their expenditure of tax dollars without parliamentary supervision defeats the principle of parliamentary control of the public purse. That is pertinent because these commissions predictably try to prolong their existence. Costs include the salaries and expenses paid, inflated by expensive legalistic trends and interests that have grown up like shrubbery.

•(1800)

Rumour tells us that the Somalia Commission employed 46 lawyers at $800 per day. The executive use of royal commissions must be examined by us in light of parliamentary exclusion, judicial activism, the commerce of lawyering, and the reluctance of modern parliaments and government caucuses to hold ministers responsible. The Canadian practice of creating royal commissions differs from the British, where cabinet may only create them after a resolution of both houses. The Somalia Commission's problems may have been averted had Minister Collinette submitted his proposal to examine the Somalia affair to the advice of Parliament. Parliament's debate would have guided him in this difficult matter and might have saved millions. Canadian ministers' reluctance to seek advice from parliament and parliamentary caucuses compels parliamentary examination. Some ministers do not even table commission of inquiry reports for debate in both chambers, as, for example, Justice Arbour's report on the prison for women events and Judge Ratushny's report on women in prison for killing their husbands. Some judges know that ministers ignore Parliament and conclude that so may they, and evidently they feel supported by ministers to do so.

I turn now to the issues of judges' active involvement in politics and in public policy decision-making, in judicial activism labelled by many as "jurocracy" and "judicial government." Judicial activism is the tendency by judges to use the courts to advance their political ideas and actions, usually relying on Charter and legislative protection of minority rights issues, by actively reading up, reading in, and striking down legislation. This judicial activism seeking constitutional domination and supremacy over Parliament is subverting parliamentary sovereignty and responsible government. It subverts the constitutional concept of consent of the governed and proposes government by the unelected judiciary. These judges shield their actions by advancing judicial independence and rely on politicians' timidity not to challenge them. Scholars of the judiciary, such as Professor Ted Morton, write extensively on this, urging its unmasking. Professor Peter Russell, in his 1987 book *The Judiciary in Canada,* wrote:

> ... such an unmasking is likely to be a somewhat scandalous activity. In fact, some members of the judiciary who in professional circles acknowledge the policy-making role of judges, believe that news of this judicial realism should not reach the ears of the public. In their view, public confidence in the impartiality of the judiciary requires that the perception of the judicial function as technical and non-political be maintained as a kind of Platonic "noble lie". ...it is surely not part of the task of scholars and teachers of political science to be co-conspirators in this project of public hoodwinking.

The Senate should overturn this public hoodwinking.

I turn now to Parliament's privileges, found in the *Constitution Act 1867*, Section 18, a constitutional reception into Canada of the *Lex et Consuetudo Parliamenti*, the Law of Parliament. It received the inquisitorial and judicial powers of the United Kingdom's ancient parliaments, and also the *Bill of Rights 1689*, that statutory declaration of pre-existing privileges whose Article 9 directed the courts and judges that:

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

Turning now to Madam Justice Sandra Simpson's judgment of March 27, 1997, and her Reasons for Judgement delivered on April 1, 1997, after days of media commentary on her judgment, I note that the day before she delivered judgment, she mused publicly about the outcome of her decision. The March 27, 1997, *Globe and Mail* article "Judge May Extend Inquiry" reported:

> A Federal Court judge indicated yesterday that she is leaning toward striking down the federal order-in-council that would end the Somalia inquiry.

> Madame Justice Sandra Simpson said she was mainly concerned about framing her decision so it did not further hobble the investigation, ...

Such public disclosure on decision outcome is inappropriate behaviour for a judge and is a potential ground for removal from the bench by Parliament. I read her judgment with great care, noting her efforts to find some justification in law. She failed to do so.

Madam Justice's justification relied on the Commission's irresponsibility, so roundly condemned by Mr. Diefenbaker and Parliament. Her judgement declared that Minister Young's, actually the Prime Minister's, Order in Council PC 1997-174 was *ultra vires* because, she said:

> It breaches the rule of law by not respecting the Commissioners' independence. They are entitled to determine how to investigate their Mandate and when their investigation is sufficient to support findings in their report.

She cited no laws transgressed. When judges of this nation uphold irresponsibility rather than statute for their decisions, all should pay attention. In ruling as she did, she waded into the cognisance and authority of the Senate. Madam Justice Simpson broke new ground in judicial activism and claimed pre-eminence and superintendence over cabinet, the Prime Minister and Parliament, the institutions of responsible government by her political decision not to hobble the Somalia Commission, which she had decided, politically, should continue.

Madam Justice Simpson assumed jurisdiction in the John Dixon case without authority in law and by her judgment ruled on a political matter that was not for judicial determination. She pressed a political decision as a court decision, which has serious political and constitutional ramifications for Canada's governance. First, she ordered the expenditure of public funds without parliamentary consent, breaching parliament's powers and privileges over expenditure. Second, her judgment, competing with the minister's own political decision, established her supremacy over the minister by bringing him into her summary penal jurisdiction, into her summary powers of imprisonment for contempt of court.

The Hon. the Speaker: I am sorry to interrupt the honourable senator, but I would point out that her time has elapsed.

Senator Cools: I would ask leave to continue.

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

Hon. Senators: Agreed.

•(1810)

Senator Cools: These non-statutory summary powers of imprisonment are Canada's only remaining criminal offences that are not statutes and not enumerated in the Criminal Code, but are common law. These judicial powers are absolute and deny fair safeguards to one cited for contempt. In other words, she could imprison Minister Young, the Prime Minister, and even the Governor General himself for their political actions by a summary committal for contempt.

Her judicial aggression revives the courts' aggression toward parliamentarians in the 17th century, an aggression that was settled in the Bill of Rights, 1689, which Lord Alfred Denning said "... is a direction to the courts of law..." That, Lord Denning said in his 1958 *Case of Parliamentary Privilege-Memorandum.* In parliamentary privilege lexicon, that is the intimidation and coercion of a member — in this case the entire Governor in Council, because that is the name cited in the judgment — to achieve a desired political decision by judges engaging their non-statutory common law summary penal powers. All common law offences, save this one, were abolished by the Criminal Code in 1955.

Honourable Senators, this is a serious matter. I assert that Madam Justice Simpson breached the privileges of the Senate of Canada by giving judgement in the Dixon application to overrule Minister Young's rightful and lawful Order in Council. Simultaneously, she overruled the Senate's own resolution. That Senate resolution of March 20, 1997, contemplated the minister's Order in Council, considered it, acted upon it and voted upon it and, by Senate order, settled the matter. Sir Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament,* 21st Edition states:

> By its orders the house directs its committees, its Members, its officers, the order of its own proceedings and the acts of all persons whom they concern; by its resolutions the House declares its own opinions and purposes.

Honourable senators, the Senate resolution superseded the Royal Commission of Inquiry and assumed the subject-matter of the Somalia inquiry unto itself. The Senate as the Upper Chamber, the highest court of the land, is now in charge of the inquiry and of the subject-matter, and has ousted all other courts inferior to itself, in particular the Federal Court, a creation of Parliament's Federal Court Act, formerly the Exchequer Court Act. The Senate expects judges of this land to obey the law, and to take judicial notice of the Senate's privileges per sections 4 and 5 of the Parliament of Canada Act, without any Senate plea. Senate privileges include the right to its exclusive cognisance. Sir Erskine May's 21st Edition also states:

> The courts have recognised the need for an exclusive Parliamentary jurisdiction, as a necessary bulwark of the dignity and efficiency of either House. The judges have further admitted that when a matter is a proceeding of the House, beginning and terminating within its own walls, it is obviously outside the jurisdiction of the courts,...

Honourable senators, judges of the Federal Court of Canada have equal judicial powers. If Justice Simpson had legal authority to overrule Minister Young's Order in Council, so has every Federal Court Judge. The absurdity of it is driven home by the fact that Chief Commissioner Justice Gilles Létourneau, himself a Federal Court judge, also had the same legal authority and, presumably, could have overruled the Minister's order himself by his own judicial hand and set the report date and references he desired.

Justice Simpson's judgment, while disregarding the Senate inquiry and the Senate's order respecting John Dixon's wish to testify, informed under her heading "The Independence of Public Inquiries," about the Somalia Commission stated:

> It is free from executive action and subject to the will of Parliament.

Executive action in this matter is free from judicial action, but also subject to Parliament.

Honourable Senators, the April 15, 1997, *Ottawa Citizen* headline read, "Chief justice urges extension of blood inquiry: Unusual move aims to sidestep thorny legal issue."

Supreme Court of Canada Chief Justice Lamer's statements yesterday about the Krever Royal Commission of Inquiry's April 30, 1997, deadline underscores my position. Extensions of royal commissions are political matters, not legal ones, and are not for judicial determination or opinion. All judges should refrain from politics and political opinion. Royal commissions are subject to the will of Parliament, as are judges for their conduct and behaviour on the bench. Any authority Madam Justice Simpson mistakenly believed she had to rule was unmistakably ousted by the Senate's order of March 20, 1997. I assert the judicial pre-eminence of Parliament, the highest court of the land. I assert that Madam Justice Simpson has committed a high breach of our privileges and is in high contempt of Parliament. Madam Justice Simpson should be given full and sufficient opportunity to explain herself and to be properly heard in here own defence. We must discuss whether or not we wish to bring her to the Bar here in this chamber to do so.

Hon. Jerahmiel S. Grafstein: Honourable senators, would the Honourable Senator Cools accept a question?

Senator Cools: Certainly.

Senator Grafstein: Is the honourable senator saying to the chamber that under no circumstances do the courts have a judicial oversight into matters before a Senate committee? Let me give a specific example. If the Senate committee chose, with intent and on the record, to breach a person's constitutional rights, do you believe that the courts would have no judicial oversight?

Senator Cools: The superintendence that has been taken over this particular matter, quite frankly, is not codified. This is not a breach of a constitutional right, because it is no one's right to appear before a royal commission of inquiry.

The witnesses and the proceedings are determined by the commission. What I am saying is that as a member of the Federal Court of Canada Justice Simpson believed she could proceed because Mr. Dixon brought the application. Perhaps the honourable senator could bring forward some of these issues since he seems to be following the subject-matter. She claimed to take jurisdiction under a section of the Interpretation Act and a section of the Federal Court Act, neither of which give her jurisdiction.

In any event, our learned friend, Mr. Pierre Elliott Trudeau in a recent speech expressed much concern about some of these matters. Basically, from what I can see, the justification is merely a fig leaf of legality. The issue here is that there is no statute or principle that she can cite that gives her authority over the Prime Minister or cabinet of this country in these decisions.

Senator Grafstein: Honourable senators, I take it from the answer of the honourable senator that the courts would have judicial oversight for a Senate committee if it, by its actions, breached the Constitution.

Senator Cools: That is not so. Let us clarify this because we keep hearing all this nonsense about the courts, the courts, the courts.

Senator Grafstein: Let us agree to disagree and let me ask the honourable senator another question.

Senator Cools: There is no court in this country that has pre-eminence over this court, Parliament.

•(1820)

Senator Grafstein: I should like to ask the honourable senator another question dealing with judicial oversight with respect to royal commissions of inquiries. Is the senator saying to the Senate that the courts are exempt from a judicial oversight with respect to questions arising at an inquiry implemented by the executive? That is unheard of.

Senator Cools: No. I am saying that if courts and judges could have ruled on this particular issue, it would have been done a long time ago. The fact that this is the first time that any judge has taken it unto herself to rule in this way proves the point.

Hon. P. Derek Lewis: If I may inquire of the honourable senator, is she suggesting that Madam Justice Simpson should be brought before the bar of this chamber to answer these questions? I would say that is not without precedent.

Senator Cools: It has not been done for quite some time. Is the honourable senator suggesting that it should be done more often? I agree that it has been done before.

Senator Lewis: Is Senator Cools suggesting that we should ask Madam Justice Simpson to appear?

Senator Cools: I am suggesting that the Senate should give her full and sufficient opportunity to be heard.

Senator Lewis: Is the suggestion that we should call her here before the bar?

Senator Cools: That is a a determination to be made by the Senate.

I am asking for the Senate to look at this serious matter. Is Senator Lewis making a proposal that Madam Justice Simpson appear before us?

Senator Lewis: I was asking that question of Senator Cools.

Senator Cools: It is quite clear what I am asking. I was hoping that Senator Lewis would at least have shared some of the concern that I felt that a minister of the Crown and the Prime Minister have been superintended in this particular way. In any event, if the honourable senator has a speech to make, I would invite him to do so.

The public of this country is well aware that there is much that needs our intervention and examination. It is high time for us to stop hiding, and to face some of these issues head-on.

Senator Berntson: Right on.

Senator Lewis: I am not entering into a debate on this. I am simply asking if the honourable senator is suggesting that that action be taken. That is all.

Senator Cools: Let me put it this way: A serious and unusual event has taken place and we should inquire into it. Something terrible has happened. I sincerely believe that we must look at it, because the courts are reaching out more and more. Consider for a moment the number of politicians and political decisions that are being brought under the courts' summary powers.

I was hoping that Senator Lewis, who has the reputation of having an excellent legal mind, would have used this opportunity to expand on the concept of the common law summary powers of contempt of court. I would urge him to do so.

Senator Lewis: I was not arguing with the honourable senator, I was simply asking a question.

Senator Cools: Perhaps Senator Lewis will tell us about this anomaly in the Criminal Code that is going to be used against our own cabinet.

Senator Lewis: I agree with my colleague. I was merely asking a question.

On motion of Senator Sparrow, debate adjourned.

CANADA MARINE BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-44, for making the system of Canadian ports competitive, efficient and commercially oriented, providing for the establishing of port authorities and the divesting of certain harbours and ports, for the commercialization of the St. Lawrence Seaway and ferry services and other matters related to maritime trade and transport and amending the Pilotage Act and amending and repealing other Acts as a consequence.

Bill read first time.

The Hon. the Acting Speaker: When shall this bill be read the second time?

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

CRIMINAL CODE
CORRECTIONS AND CONDITIONAL RELEASE ACT
CRIMINAL RECORDS ACT
PRISONS AND REFORMATORIES ACT
DEPARTMENT OF THE SOLICITOR GENERAL 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-55, to amend the Criminal Code (high risk offenders), the Corrections and Conditional Release Act, the Criminal Records Act, the Prisons and Reformatories Act and the Department of the Solicitor General Act.

Bill read first time.

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

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

SOMALIA INQUIRY

MOTION REQUESTING SPECIAL COMMITTEE
TO TABLE WORK PLAN—DEBATE ADJOURNED

Hon. J. Michael Forrestall, pursuant to notice of April 15, 1997, moved:

> 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.

He said: Honourable senators, I rise today to participate in a debate that is, with growing sadness for many of us, casting a pall over the rights and freedoms of the people of this country.

The necessity of the motion to give instruction to the Special Committee of the Senate on Somalia and to urge all senators to support this motion is borne out of a number of considerations.

On March 20, less than a month ago, Senator Fairbarin said that it is now time to start healing the wounds that have become synonymous with the events of Somalia and that, by working together, we in this chamber can assist this process through a balanced and meaningful examination of the issues placed before us.

It is unfortunate that Senator Fairbairn's words have rung so hollow in the ears of Liberal members appointed to serve on this committee.

Senator Kinsella: Shame!

Senator Forrestall: That they consider the reference of the Somalia affair to a committee a game is a bit of a surprise to me.

The Liberal senators on this committee wish to enlarge the alleged cover-up at the Department of National Defence to include the Senate committee itself. How will they do this? By forcing a four-day set of hearings on this committee before it has retained outside experienced counsel, before it has engaged the services of a research director, and before any research has been done at all, let alone shared with senators.

•(1830)

Yes, it is the plan of the government to force hearings on committee members who have not had the time to prepare properly in order to engage in a balanced and meaningful examination of this issue. Why does the government wish to do this? I know we are not to impute motives, but it is my belief, sincerely held, that the government feels it can hold quick, superficial hearings and then proclaim to the people of Canada in the imminent election campaign that there was no cover-up, and that the government was justified in its possibly illegal termination of the Létourneau commission.

We, on this side of the chamber, honourable senators, will not become involved in what surely would be termed a whitewash of an alleged whitewash. Mark that clearly. If you want to perpetrate this farce, you will do it on your own. You will carry the weight of responsibility for doing that.

When it set up the terms of reference of the Senate committee to inquire into the Somalia affair, the upper chamber of Canada's Parliament became involved in the investigation of the most serious allegations concerning Canada's military and the Canadian government itself. The investigation of the adequacy of the response of the chain of command of the Canadian forces is of the utmost seriousness. The management of this file must preoccupy us until the truth is known. We will only get at the truth with a reasoned approach.

How can the investigation of such a serious matter proceed without proper guidance from committee counsel and researchers? It cannot — unless the investigation was designed to fail at its appointed task because of lack of time to prepare, because of lack of time to hear from all of those involved in the file in the Canadian government, right from the time that the news of Shidane Arone's murder was received here in Canada. That is where we should start: We should start this inquiry with the first person to be seized here in Canada of that notification.

Honourable senators, if we are to conduct this inquiry, let us do it properly. We are told that the committee has received documents for study by honourable senators. Where do these documents come from? They have been vetted by the Somalia inquiry liaison team at DND, the very group that this chamber has asked the committee to investigate. Are you proud of that? It is not good enough. We must receive these documents from the Létourneau commission itself. They must be clean, and be seen to be clean. If the committee inquiry proceeds as the government wishes, the results are predictable. This is what shames me. It will be a four-day inquiry designed not to expose the truth, but, rather, to cover it up.

Honourable senators, if that is the case, we object to the use of this chamber and its committees in an attempt to blatantly serve the political ends of this government just a week prior to the call of a federal general election.

If I am right, and I believe that I am, we will not be fulfilling the hopes of the Leader of the Government. Instead, the government will have forced upon us what Senator Cogger so aptly called a cruel joke.

My dear colleagues, expert legal advice and research advice are available to this committee. These professionals have been well paid. They are totally and absolutely familiar with the files. There would be no need for members of the committee to go through lengthy questioning. They would tend to accept the advice of these people who are familiar enough and up to speed with the material. I do not know that you could manage to get outside counsel to come in and, in four days, accept the responsibility for advising members of the committee.

Honourable senators, a question was raised here a moment ago about precedent. I set a precedent tonight, a personal one. In 33 years of public life, I have never abstained from a vote. I did this afternoon. I shall never do it again. I am not all that sure why I abstained, but I shall never do it again. What I have never done is lend sanction or endorsement to this kind of farce. It is not fair to the members of the Canadian Armed Forces.

Senator Lynch-Staunton: Hear, hear!

Senator Forrestall: All of my political public life I have fought to sustain them, to help them. How many times have I asked the Leader of the Government in this chamber when will we get helicopters? When will we get good equipment? When will we get for our troops clothing that is not made of nylon, which simply melts on your body or burns and sticks to the skin? When will we do something simple like that? This is how we answer them. Is there any wonder that there is scepticism? Is there any wonder there is doubt?

Please, let us take the time during the general election to get proper counsel on board, to get proper funding. Let us obtain good researchers, and good legal counsel. Let us come back at this task fresh in the fall. Whoever the government and whatever its nature does not matter. This is within our purview here in this chamber. That is not important. Let us do it right, however long it takes. Nobody is suggesting that it will take two or three years, but let us start at the beginning of the mandate, from that point in time when the news was first received here in Canada. Let us start with the sergeant or the corporal or the major or the civilian who was first seized with this knowledge. Let us follow it through to its conclusion. Rather than calling the former Prime Minister Campbell, Mr. Fowler and others first, let us build the truth up to them and then hear what they have to say.

Hon. Bill Rompkey: Honourable senators, I am puzzled that the motion should be put. Senator Forrestall talked about precedents. It seems to me that there is some precedent here. It is certainly unprecedented for the chamber to set up a committee and then to proceed afterwards — after that motion has been passed — to introduce a further motion telling that committee how to conduct its business. It seems to me that that is relatively unprecedented. As a committee chair, I see that as objectionable, and the members of the committee likely do as well.

Senator Forrestall says that perhaps the course of action to be followed is to wait for a proper work plan, and until counsel is hired and research staff is in place. None of that was done in the case of the only precedent in living memory, and that is the Pearson inquiry. That inquiry was given no such instructions to table a work plan before it proceeded.

•(1840)

There was a motion in the Senate. The committee met. The committee designed its own work plan. It was master of its own fate and carried out its activities. That was the precedent set by the Pearson committee, which is the only precedent we have in the recent history of the Senate. I suggest that is the proper way to proceed in the case of this inquiry as well.

Senator MacDonald: It took us six weeks to find the washrooms.

Senator Bryden: That is because you had your eyes shut.

Senator Rompkey: Senator Forrestall has suggested that there has been an enlargement of a cover-up to include the committee itself. From a personal point of view, I take objection to that statement, although I accept some of what he said. He said that during his career he has always defended the men and women of the Canadian Armed Forces. I applaud and honour him for that. However, there is no monopoly on support or respect for the Canadian Armed Forces. During my career, I , too, have tried my best to do what I could for the Canadian Armed Forces. Therefore, I resent the suggestion that I am part of a cover-up.

I was not able to understand the allegation of a cover-up in the first place. As I understand it, the allegation was that the present government covered up activities that took place while the Conservatives were in power in 1993. Why that should be remains a mystery to me. No one has ever explained to me why the present government should cover up activities that took place in 1993, when the Conservatives were in power.

Senator Lynch-Staunton: Ask Doug Young.

Senator Rompkey: If someone can explain that to me, I would be happy to hear it. I have no intention at all of covering up anything. I want a fair, open and thorough process.

The people whose reputations have been called into question and who feel they need their day in court to tell their story should have their day in court, and they should have it now. We should not delay giving them that opportunity, because justice delayed is justice denied.

One can argue that if we put these proceedings off until the fall, in fact, we are delaying justice and denying them their day in the highest court of the land as soon as possible. They have asked for that publicly. It is incumbent on the Senate to give it to them.

How can we proceed without counsel? I have been around here for 25 years. I have never needed legal counsel to assist me in asking my questions. When I go into a committee as a parliamentarian, I make sure that Bill Rompkey is prepared. If I cannot do it myself, I get my staff to help me with it. I suspect that every parliamentarian does the same thing. We are responsible for our own actions and our own research. I have never in my parliamentary career depended wholly and solely on the research staff of any committee to help me.

As far as counsel is concerned, I have no objection to hiring outside counsel. However, I submit that we have adequate legal help in the Senate. We have parliamentary counsel. We are entitled to call upon them, and we should. Perhaps we should hire outside counsel as well. However, this is not a judicial inquiry. This is a parliamentary inquiry. This is a Senate committee. The strength of the Senate is in its committees. I submit that this committee can do as good a job as any other Senate committee can do, if it is allowed to get on with that work.

Senator Forrestall: In four days?

Senator Rompkey: Honourable senators, we have to show that we are serious. We have to show that we are prepared to go to work now. We are saying, clearly, that we cannot finish the work in the time allotted to us between now and the end of this month, whatever may happen at the end of this month. Clearly, we cannot finish the job. If there is any question as to what will happen next fall, I say, here on the floor of this chamber today, I am prepared to sit again next fall. I think that all my colleagues on this side of the house are prepared to sit next fall. If senators opposite are prepared to sit next fall, then we will have a committee next fall.

Senator Lynch-Staunton: That is not what your leader says.

Senator Rompkey: That is where I stand on the thoroughness of the hearings.

By no means is this intended to be a whitewash. I think we will have to complete the hearings in the fall. I do not see why we cannot start now. We know what the questions are.

Senator Lynch-Staunton: We do not know the questions.

Senator Rompkey: Is the honourable senator telling me that after two years of listening to the television and reading the papers, we do not know what the questions are?

Senator Lynch-Staunton: We do not even know who the witnesses are. How could we know the questions?

Senator Rompkey: We know what the questions are. We know who wants to appear. We are enjoined by the motion to invite them to appear. I think they should appear. The people of Canada want to hear what happened.

Senator Lynch-Staunton: Tell Doug Young that. He says that Canadians have had enough of it.

Senator Rompkey: I think they deserve to hear what happened.

Honourable senators, will we finish this matter in a week or so? No, we will not. However, I believe we must begin. As I said, I shall be there in the fall. My colleagues on this side will be there in the fall. If my colleagues opposite are prepared to join us, then we will finish the job at that time, but let us make a beginning now. There is absolutely no reason why we should not begin next week. We know who the witnesses are.

Senator Lynch-Staunton: No, we do not.

Senator Rompkey: They are named in the motion passed by the Senate.

Senator Lynch-Staunton: Are they all coming?

Senator Rompkey: There are eight of them named very clearly in the motion.

Senator Lynch-Staunton: For next week?

Senator Rompkey: The motion is very clear. Our mandate is very clear. These are the people to be invited. They deserve their day in court. We know what the questions are. I think we should be allowed to get on with our job.

Hon. Senators: Hear! Hear!

Hon. Lowell Murray: Honourable senators, we should be very clear as to what is expected of this committee. As my honourable friend says, it is not a judicial inquiry; it is a parliamentary inquiry. However, I remind honourable senators that our instructions from the Senate are to inquire into the generality of the Somalia mission to the extent that the Létourneau commission has not been able to do so. There is particular reference to the torture and beating death of Shidane Arone, but there is a generality to our mandate.

In any case, I remind honourable senators that the government has curtailed the mandate of the Somalia inquiry by two-thirds. It is that two-thirds which remain for us, for the Senate and the Senate committee to inquire into.

Among other things, honourable senators, the Létourneau commission will not have an opportunity to look into the allegations of cover-up of the March 4 shootings. It will not have an opportunity to look into any of the circumstances surrounding the torture and beating death of Shidane Arone. Nor will they have an opportunity to look into the allegations of cover-up of that monstrous event.

Honourable senators, the events of March 1993 have shocked, saddened, shamed and dishonoured our country. That it happened, as Senator Rompkey was quick to remind us, under a Conservative government is irrelevant, so far as I am concerned. To the extent that there is political responsibility attached for anything that happened between March 1993 and November 4, 1993, that political responsibility attaches to the government of which I was a member. Beyond 1993, other things have happened. They, too, must be inquired into.

•(1850)

It is painful to recall even now — and I think it will always be painful to recall — what happened in Somalia. The public record shows evidence of a Canadian officer instructing his men that looters were to be shot. The public record has evidence that another Canadian officer instructed his men that looters were to be abused. The public record shows that on the night of March 4, 1993, Canadians in uniform, under direction, deliberately cut a hole in the wire fence surrounding the compound and laid bait, in the form of food and drink, to try to entice looters into the compound. We know that in any event, that night, two Somalis were shot from behind, outside the compound — two unarmed Somalis shot, one fatally. We have on the public record the testimony of a medical doctor from the army that one of them, the one who was shot fatally, was dispatched execution style, with a bullet to the neck at close range.

We know that 12 days later, on March 16, bait was put out again. This time, a 16-year-old Somali boy went into the compound. There he was arrested, set upon, manhandled and told by a Canadian officer, "You are going to die tonight, boy," and then turned over and brutally tortured and beaten for three hours, sometimes in the presence of witnesses, and always within earshot of many others, until finally he died.

Honourable senators, it is only right, understandable, and natural and fair — I shall say it before Senator Forrestall and a number of others say it — that events of this kind are in stark contrast to the record of Canadian Forces in peace and war for a century. The thought must surely have occurred to Senator Bonnell and Senator Phillips when they were at Vimy last week, but we do not need to look that far back for examples of Canadian gallantry and heroism. We do not need to look as far back as the Second World War, or Korea, or Suez. We can look to the Somalia mission itself where, notwithstanding this grotesque and exceptional event, we know that the humanitarian efforts of Canadian servicemen on the ground were exemplary. We know it not on the basis of our own word but on what we have heard from people of other countries — and notably from the Somalis themselves, the people whom the Canadians were there to help. This incident, shameful as it is, is a stain on a record that is otherwise almost unblemished.

That being said, however, what happened in Somalia raises grave questions of accountability, responsibility and leadership. To some small extent, some of these questions will, I suppose, have been addressed adequately by the various courts martial that have been held over the past few years. One hopes that many other questions will be addressed in the report of the Létourneau commission. However, honourable senators, as I have said, the Létourneau commission has had its mandate curtailed by two-thirds.

We know, because the public record is pretty clear on it, that the lies and the cover-up and the disinformation began almost immediately. In the case of the March 4 incident, among many other examples, Ottawa arranged for one of the officers to give an interview to the CBC in which the two Somalis, the unarmed Somali thieves, if you want to call them that, were described as armed saboteurs and trained commandos. That was an absolute lie.

After the March 16 murder, at three o'clock in the morning a message went to Ottawa from Somalia, a message signed off obviously by the most senior person there, which was an absolute tissue of lies — a tissue of lies from start to finish. The cause of Shidane Arone's death, it said, was unknown. He had, according to a medical report, one contusion and one small bruise on his body. This stuff arrived in Ottawa, and in due course arrived, as we know, at the minister's office, together with a note signed off by the senior officer in the Armed Forces at headquarters to the effect that the death of Shidane Arone was mysterious, that it was perplexing, that the medical report showed that it was not believed that excessive force had been used, and that the medical doctor's initial report supported the assertion that Canadian troops acted properly. Of course, what they did not know is that the monsters in Canadian uniform who perpetrated this stuff had taken trophy pictures. I need not go into all the details: you have read about them. However, when the trophy pictures surfaced, the whole cover-up scheme started to unravel. It is unravelling yet.

The minister was told by the senior people that the medical history and health of the deceased may have been a factor. Can you imagine such a tissue of lies? One lie on top of another, compounded.

Honourable senators, as Senator Forrestall has said, I think we have to know, because the Létourneau inquiry is not looking into this aspect. I am dealing only with the March 16 incident, the murder of Shidane Arone: Who handled the messages, the Somali traffic, as it is called, at National Defence headquarters? How were they handled? Did officials try to control the flow of information? How high did the cover-up go? Did officials try to keep details of the Arone death from the then minister, as she and her staff swear is the case? What about the destruction and altering of Somalia-related documents? Did senior people interfere in police investigations?

All of these allegations have been made, honourable senators, and it is absolutely absurd to think that you will establish the truth or otherwise of these allegations in a four-day wonder, a parliamentary inquiry that calls the former minister, the former deputy minister and a couple of other eminent people, if there is time, to make their set-piece speeches about what they knew.

•(1900)

It is terribly important that we establish the facts. My bias would be to move up the chain of command to find out what information came in, how it was handled, what the response was up the line of command, and then work down the chain of command again to ascertain the truth.

I agree with those who say this inquiry should not take years. On the other hand, I have heard a quotation attributed to my friend the chairman that we could allow half a day for each of these witnesses. I rather doubt that that will be sufficient.

In any case, the sort of allegations that I have repeated here tonight are so serious, involving as they do a vital Canadian institution, that we must ascertain the truth in order to try to restore confidence. If we in the Senate and the Senate committee do not get at the truth, no one else will. This cloud will hang over the Department of National Defence and our armed forces for as long as memory lasts.

Yesterday, 18 volumes of documents were delivered to my office. These documents, as we speak, are being distributed to the offices of other honourable senators who are members of that committee. That is why we need counsel. Of course we need legal counsel. We are dealing with grave accusations. We need people who have some forensic expertise to help us draft a work plan, to establish the facts, and to work our way up to those who had the ultimate responsibility, including the former minister.

However, we have no legal counsel, no research staff, and no budget. We also have, by the way, no agreement that counsel and staff will be able to work during the expected dissolution so that we can revive the committee as soon as a new parliament meets.

Nevertheless, our friends opposite want to rush into hearings, to start Monday, without preparation, without staff, and without knowing exactly who the witnesses will be. All we know is that faxes have gone out to eight potential witnesses. Of course, if, as expected, a writ is issued, the whole exercise will be closed down with the dissolution of Parliament.

I do not know what the government is trying to put in the window. I do not think anyone will be fooled into believing that this will have been an adequate inquiry. People will understand that, by starting with one, two, three or four top people, we have not gone about our business in a methodical fashion to examine and to establish the facts.

The Hon. the Speaker: I hesitate very much to interrupt the honourable senator, but I have no choice.

Senator Murray: Thank you, Your Honour.

I would conclude by saying —

The Hon. the Speaker: Is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: Please proceed.

Senator Murray: I conclude by saying that such an exercise would be a travesty. I believe the Senate owes the people of Canada much more than that. For that reason, honourable senators, I emphatically support the motion that has been put forward by Senator Forrestall.

Hon. John G. Bryden: Honourable senators, I too wish to speak on Senator Forrestall's motion. Like my colleague the chairman, I am somewhat bewildered as to what could possibly have happened during the last two months that would have changed the urgency of demanding an inquiry by the Standing Senate Committee on Foreign Affairs into certain matters.

Senator Murray: They dragged their feet until March 20. That is what happened.

Senator Bryden: We had a situation which, as I understood it, was prepared to be pushed unless something was done on this side.

I hesitate to suggest that what happened was that Senator Murray poked something at us in fun and we took it seriously. In fact, when he started back in March or whenever it was —

Senator Murray: February 12.

Senator Bryden: — he was in the comfortable position of, perhaps, being able to score some political points on the basis that perhaps a federal election was imminent and we would not want to engage in this.

Senator Lynch-Staunton: Oh, come on.

Senator Bryden: As it turns out, we are prepared to engage in this exercise.

I remember Senator Murray's speech. He said that there was a certain urgency to this matter, that the Canadian people must know, and that he would like to see the hearings commence in April.

Senator Murray: Yes.

Senator Bryden: The hearings will commence in April. Why all of a sudden do the people on that side want to stonewall this inquiry?

Senator Berntson: You are giving us a pig in a poke.

Senator Bryden: We have no grounds to assume that this will be a four-day inquiry. It may very well be a 40-day inquiry or a 400-day inquiry. We must start somewhere.

Senator Murray: Right. Let us prepare for that.

Senator Bryden: The honourable senator outlined or listed some terrible facts and allegations. They are, indeed, gruesome. He then tells me that, on Monday, I shall not be adequately prepared to ask any questions of a witness, whether it be the former minister of defence or a former general. Is he suggesting that, if we have a witness before the committee, say a general who has some involvement in this matter, I will not have a question to ask of him? Of course I would.

Senator Forrestall said — and Senator Murray picked up on it — that we must determine who was responsible for handling messages and the dissemination of information. He said that they should be called before the committee and that we should nail them to the wall. We will start from the same position.

Senator Forrestall: Be careful about putting words in my mouth, senator.

Senator Bryden: That was a little poetic license, senator.

Senator Forrestall: No, it is not. That is not good enough. This is too serious a matter.

Senator Bryden: I agree that it is serious. However, what the Canadian people resent about what has happened in the Somalia inquiry and the court-martials to this point is that the foot soldier and the corporal, the lower ranks, have all been charged and convicted while the generals, the ministers and the deputy ministers have never been questioned.

Will we now adopt that same procedure and start with the clerks too? Will we spend days and weeks questioning the clerks and putting them through the ringer?

•(1910)

Senator Murray: Clerks?

Senator Bryden: Well, whatever you call them in the military.

Senator Murray: Follow the trail, senator.

Senator Bryden: Follow the trail, yes, but there are two ways of following the trail. Senator Murray and I have had this discussion privately. One of the ways is to start with the people who have said — because they can command the attention of the press — "We have not had an adequate opportunity to tell our side of the story." Remember who these people are. These people are a former Prime Minister and, in that capacity, a minister of the Crown; the deputy minister as he then was; the minister's staff and others.

When we conduct an inquiry such as this, the people whom we bring before us are not there to be cross-examined. If you look at the list of the witnesses that the Senate directed us to call — a former minister of the Crown, her staff, deputy ministers, adjutant generals, all the way down — these people held respected public positions. If I have a former minister of the Crown sitting before our inquiry and I ask, as I would if I were in court on direct examination, "Would you please tell this inquiry, in your own words, what, when and from whom you first learned about the death of Shidane Arone?", surely we would expect to get as truthful and complete an answer as possible. Each of us would then suggest a date to that person — because we would have done some research — at least, I have done some already, and obviously Senator Murray has as well. We might help to jog that person's memory. However, that person, presumably under oath, will tell our inquiry to the best of their recollection what, when, where and from whom they learned that information. Did that person cover up? Did they? How will we find that out? We will ask the next person in the chain. What information did that person have and when did they pass it on up the line?

I see some former practising lawyers in the chamber this evening. Nothing assures the completeness of the answer of a witness more than the fact that there may be 15 witnesses testifying later who know the same facts and are prepared to give evidence to that extent. The fact is that these people can come back and rebut the testimony.

In our opinion, the Canadian people do not believe that they have the full facts on what happened up until 1993, and the incidents that occurred in Somalia as they relate to the responsibilities of the chain of command that ultimately stopped in Ottawa. Presumably, this is why the Senate has directed us to proceed with this inquiry.

We propose to start with the people who have the most comprehensive view and who should have the overview. We want to start with the people who ultimately should be a carrying the can for this situation, the people who are ultimately responsible, in one case to Parliament and in the other case to their minister. It is an absolutely legitimate way to proceed.

I do not know, honourable senators, whether we will be able to schedule witnesses for the first week of May. However, as a member of this inquiry, to be asked by a neighbour who knows that I am on the inquiry why we are not proceeding, I could not use the excuse that I do not think I can prepare myself in time.

Honourable senators, something may intervene. There could an election; there might be an earthquake. The fact is that we need to make a beginning. The information is there, and if senators on the other side are not prepared to take the responsibility to do their own research, there is nothing I can do about that.

I am saying that we will bring forward the people whom the Senate directed us to bring before us, and a great deal of valuable information will come forward. These people will have had an opportunity to testify. What is more, once we see in which direction we are headed, then we can follow the roads we choose. Those decisions will not be made by this inquiry, the committee or by this chamber in advance.

To a very large extent in a situation like this, you make a beginning and you go as far as you can see. When you get there, you will be able to see a little farther. At the end of this inquiry, we all want to be able to say to ourselves, and in our report, and to the Canadian people, "We have discovered what happened in relation to the death of Shidane Arone, and what happened with the other two on March 4."

Senator Murray: How far forward will you go, senator?

Senator Bryden: We will take it as far forward as necessary, and as far forward as possible to get who was involved in any type of cover-up. Senator Murray referred to the cover-up of a cover-up.

Senator Murray: Yes.

Senator Bryden: I tried to figure out what that means, and I think I know. It means that there was a cover-up when the incident occurred by the people on the scene, and then, once the news got to headquarters, there was another one.

Senator Berntson: Now this is another one.

Senator Grafstein: How can you say that?

Senator Bryden: Behind all of the smoke, what you are saying is that you do not want any light of day to fall on this issue, just in case there may be an election called in May. My position is let us proceed. Let us get the light we can get. Let us give these people, who are highly credible and held highly credible offices, an opportunity to sit there under oath and tell a Senate committee, and therefore the Canadian people, what they know. Surely they are not afraid to do that, and surely you are not afraid to have them do it.

Hon. Finlay MacDonald: Honourable senators, Senator Murray suggested that the steering committee has turned down the suggestion that, since you have the funds, you can get a staff of research people to prepare the work during the summertime for the eventual meeting of the committee when it is reconstituted in the fall. Is what Senator Murray said true?

•(1920)

Senator Bryden: I would hesitate, honourable senators, to suggest that anything Senator Murray would say would be untrue. However, the fact of the matter is, I do not know whether any allocation of funds for this committee will be available during the summer months if Parliament is dissolved.

Senator MacDonald: Yes, it will be.

Senator Bryden: Further, we do not know whether the new government and Parliament, including the new leadership that will be appointed by the new government in the Senate, will want us to proceed.

If Jean Charest is the new Prime Minister of Canada after the election —

Senator Lynch-Staunton: What has that got to do with the Senate? The Senate runs its own business.

Senator Bryden: Presumably the leadership and the mandate of the Senate will be different.

Senator Lynch-Staunton: What has that to do with the Prime Minister?

Senator Bryden: There is nothing I know of that can usefully be done unless the suggestion is that we try to forecast what will happen.

If there is an election, we can suppose that nothing will change, that the leadership in the Senate will remain as it is and that the Senate, which will have to give us a new mandate, will appoint a new committee. It is impossible to say that senators will be of the same mind come next October.

Senator MacDonald: Come on, senator, as one choirboy to another, that does not wash.

Senator Bryden: It is a pretty good argument.

Senator MacDonald: The committee will have a budget of $280,000. If senators say that they do not want to prepare themselves during the free months for a committee to be reconstituted in the fall, does it not necessarily follow that we should believe there is no intention of reconstituting the committee? Are you headed for a pre-election, three-day farce?

Senator Bryden: It would not be that.

Senator MacDonald: It would be.

Senator Bryden: I am in no position to say whether or not the committee will be reconstituted.

Senator MacDonald: Neither Senator Bryden nor Senator Grafstein would walk near a courtroom under these circumstances, that is, with this amount of documentation and lack of preparation. Why are we even voting on this?

Senator Grafstein: Do not put words in my mouth. I do my own preparation.

Senator Bryden: I hesitate to disagree. I certainly do not feel that, when the hearing starts on Monday, I shall be entering the room unprepared. I shall be prepared to ask very probing questions. We have much excellent information in summary form, and one can readily access the backup information.

The fact of the matter is, I did not say, "No, we cannot do that." I am in no position to say the committee will be reconstituted. Would you not want us to account for spending $228,000 on something that did not happen?

The Hon. the Speaker: Honourable senators, I regret to interrupt, but Senator Bryden's time for his speech, and as you know questions are part of the time, has expired. Is leave granted to continue?

Senator Bryden: No.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I am also a member of the committee and I am in admiration of our friend on the other side who says he is quite ready to question witnesses next week. I am not.

First, I do not know who the witnesses will be. Second, I have received no documentation, no briefings, and no background material. Surely I am not expected to rely on a faulty memory resulting from watching CPAC and reading the newspapers about the Létourneau commission. Should that alone be enough for me or any member of the committee, for that matter, to start in five or six days from now and question witnesses? The answer is absolutely not.

Committee members on this side are certainly not prepared. Thought we are anxious to commence the work of this committee, and anxious to see it start off on the right foot, it would make a mockery of the Senate's work to call in the eight people who are mentioned in the terms of reference to testify and ask them to give their version of the facts, when we are unable to question them on their interpretation of those facts and the role they played in the development of those facts. They must be called at some time, but, out of courtesy to them, it should be at a time when we are ready to receive them.

I am not ready to receive any of the eight witnesses mentioned in the terms of reference, because their responsibilities at the time in question were so crucial that we should be prepared to treat them in a manner that is respectful to the responsibilities they held at the time and, in fact, may be holding even now.

As of today, Senator Murray has received, by virtue of his position on the steering committee, 18 volumes of documentation which he is prepared to distribute to his colleagues. Are we expected to digest all of that without guidance and be ready to proceed on Monday?

These documents, I believe, come from the Department of National Defence, which obviously has an interest in selecting the documents in order to make the picture somewhat less unfavourable to them than we know it is. That has been done in the same way it was done during the Pearson inquiry, when the Department of Justice selected documents to favour the government's position.

Senator Bryden: That is false.

Senator Lynch-Staunton: The government side was favoured to the point where, when the Liberal side received the original documentation, sections of documents were whited out.

The fact that the government spent $1 million on what we call the "gumshoes", who screened the documents with the Department of Justice, helped to ensure that the opposition received only those documents that they felt would not —

Hon. Jerahmiel S. Grafstein: What interest does any member on this side have to withhold any information? I resent the implication that, before the committee starts, the honourable senator is tarring members who are trying to fulfil their constitutional and Senate responsibilities. I have not even attended a meeting yet.

The Hon. the Speaker: Senator Grafstein, please. Senator Lynch-Staunton has the floor. You may take the floor subsequently.

Senator Lynch-Staunton: In answer to Senator Grafstein, why did he not make his appeal to the Minister of National Defence when the Létourneau commission was shut down? If he is such a great searcher of the truth, why did he not stand up to Minister Young and say, "Why did you shut down the inquiry at the stage when the truth is starting to be known about cover-ups?"

Senator Grafstein: We are here because officers on this side want to deal with this type of matter.

The Hon. the Speaker: Honourable senators, please. We cannot conduct debate in this way. An honourable senator has the floor. He may respond to a question if he so wishes, but he is not obliged to do so. We cannot allow this kind of debate.

Senator Lynch-Staunton: The only reason we are having this exchange is that the Minister of Defence shut down the Létourneau commission, an unprecedented gesture by a government in this country.

He shut it down and said, "You are going to stop hearing witnesses as of the end of March of this year and you will report by the end of June."

An action was initiated in the courts in British Columbia and the minister was severely reprimanded for taking this unprecedented step.

•(1930)

Fortunately for him, the judge in all fairness said that if you amend the terms of reference and the mandate of the commission, then you can get away with it. The Minister of Defence, in no time at all, took two-thirds of what the commission was supposed to examine and told them to forget it. He got away with it.

It was the Government of Canada that shut down the Létourneau commission. The Conservative side said, as early as February, that we should pick up where the commission was told to leave off.

Senator Bryden: Now we have. So let us get on with it.

Senator Lynch-Staunton: That took the the government until April 9. If there was so much enthusiasm on the other side to carry on, why did it take two months to finally come to a yes decision? Why? The answer is clear. They will call an election. Then they can shut the committee down within days of starting its work.

Honourable senators, I come to my main argument. I, as a member of the committee, feel so disqualified to participate in it under the proposed schedule of the majority that I am hesitant to even attend. I do not want to insult key witnesses by showing ignorance of the facts.

The committee has not supplied us with a research director, with legal counsel, with background material, with briefing material. They have supplied nothing. We suddenly have been told that we can do it all on our own. I cannot do it on my own. From the moment of striking the Pearson inquiry, six weeks passed before the first hearings. Every member was given the opportunity to have briefings, background material and at least basic knowledge of the facts before the first witness was heard.

Here we are doing things upside down. We have none of that and we are asked to hear witnesses. I for one will hesitate before participating in that sham.

Senator Bryden: May I ask a question?

Senator Lynch-Staunton: Certainly.

Senator Bryden: Senator Lynch-Staunton indicated that he is a member of the committee. Is he an appointed committee member or is he a member in his automatic *ex-officio* capacity?

Senator Lynch-Staunton: What is the difference? I am a member of the committee.

Senator Bryden: It does make a difference.

Senator Lynch-Staunton: Senator Fairbairn is a member of the committee. I am a member of the committee. In our absence, Senator Kinsella or Senator Graham can replace us.

Senator Bryden: It makes a difference in that, as a member of the committee, I received a box of documents at the same time, presumably, as Senator Murray did.

Senator Forrestall: I would love to have a box of documents, too.

Senator Bryden: There are three members of the committee. It is my understanding that the three members who were named, other than the people who are automatically members of all committees, received documents earlier this week. Is that correct?

Senator Murray: I received my documents yesterday, and I understand that my colleagues Senators Balfour and Phillips and Lynch-Staunton are to receive them today or tomorrow.

Senator Lynch-Staunton: It is Pearson all over again.

Senator Bryden: No, it is not quite.

Senator Lynch-Staunton: Well, you are getting close. You are getting there.

Senator Bryden: No, it is not, because you have not determined whether the three standing members of your committee will perform well or not. In the Pearson inquiry, you moved in only when it was not going so well. Are you saying that you are in this one right from the beginning?

Senator Lynch-Staunton: I am afraid that Senator Bryden is showing total ignorance of how committees are set up. The selection committee came up with a set of names, four names from the government side, three from the opposition side, plus the *ex-officio* members. As far as I know, they are still members of the committee and entitled to receive all the documentation and any other material that committee members are entitled to receive.

Senator Murray has informed us that he received documentation yesterday. Senator Bryden says he received it some days ago. I have received nothing as a member of the committee. I understand that neither Senator Balfour nor Senator Phillips has received anything. I say this is the same as Pearson; some of the documents went to the other side before they came to us.

Senator Gigantès: You just do not want an inquiry.

On motion of Senator Lynch-Staunton, debate adjourned.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO PERMIT PUBLICATION AND DISTRIBUTION OF REPORT DURING DISSOLUTION OF PARLIAMENT

Hon. John B. Stewart, pursuant to notice of April 15, 1997, moved:

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.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

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Wednesday, April 16, 1997