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(HANSARD)

Monday, April 21, 1997

THE HONOURABLE GERALD R. OTTENHEIMER
SPEAKER *PRO TEMPORE*

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THE SENATE

Monday, April 21, 1997

The Senate met at 8:00 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

[*Translation*]

ROUTINE PROCEEDINGS

COPYRIGHT ACT

BILL TO AMEND—REPORT OF COMMITTEE

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

Monday, April 21, 1997

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

NINTH REPORT

Your Committee to which was referred Bill C-32, an Act to amend the Copyright Act, has, in obedience to the Order of Reference of Thursday, April 10, 1997, examined the said Bill and now reports the same without amendment but with the following observations and recommendations:

Bill C-32 is a comprehensive piece of legislation that touches upon many important sectors of the copyright economy. The Bill constitutes the second phase of copyright revisions to Canada's *Copyright Act,* proclaimed in force in 1924. The first phase was completed in 1988 with the adoption of Bill C-60.

By its nature, copyright legislation seeks to strike a balance between the legitimate, but often conflicting, needs of users and the rights of creators of literary, musical and other creative works. It involves complex and technical policy issues, and solutions are not simple.

Your Committee recognizes that some measures contained in the Bill do not go as far as some interested parties might wish; conversely, some measures go too far in the view of other parties. Given the divergent views of creators and users, your Committee believes that a compromise totally satisfactory to all parties would have been impossible to achieve.

In the course of its hearings on Bill C-32, your Committee received submissions and heard testimony from a broad cross-section of creators and users. While several witnesses endorsed the Bill and recommended that it be adopted in its current form, a number of groups and individuals who appeared before your Committee expressed concerns about particular aspects of the proposed legislation and recommended that it be amended.

Bill C-32 is a detailed piece of legislation, but some salient aspects may be highlighted. Through the enactment of "neighbouring rights", the Bill will entitle producers and performers of recorded music to be paid royalties when their music is played in public. It will create an exemption allowing libraries to provide a copy of an article to library patrons. It will introduce a levy on blank audio tapes to compensate the music industry for the unlawful copying of their recordings. It will allow broadcasters to include incidentally protected materials in their programs without running the risk of infringement. It will protect exclusive book distributors in Canada by placing restrictions on "parallel" book imports. It will enable special-format materials to be produced for persons with perceptual disabilities. It will provide copyright owners with improved remedies, notably statutory damages and wide injunctions. It will enable educational institutions to tape broadcast programming in order that they may take advantage of that "teachable moment". It will prescribe a fixed term of protection for unpublished works and create an exemption allowing archival material to be reproduced for research purposes. On most of these issues, views expressed before your Committee were conflicting, dividing user and creator interests.

Your Committee is fully aware that the law of copyright is complex. Bill C-32 does not assist in making copyright law more accessible to those who are affected by it in their everyday activities. We note that the words "perceptual disability", "country" and "sculpture" are defined in this Bill, whereas "remaindered books" and "performers" are not. Moreover, what is prohibited or permitted by Canadian copyright law is not readily ascertainable.

Your Committee notes that provisions in the Bill restricting the "parallel importation" of books will apply to used textbooks. Some parties argued that this provision could adversely affect university students seeking to purchase used books at discounted prices. Although used textbooks are not exempted from the parallel import restrictions by virtue of paragraph 45(1)(e), the Government has undertaken to exempt them from the regime by passing regulations under subsection 27.1(6). Your Committee recommends that used textbooks not be made subject to the import restrictions unless there is compelling evidence that their sale in Canada is adversely affecting exclusive Canadian distributors and that there is an overriding public interest that the importation of such books should be restricted.

Your Committee notes that the levy on blank audio tapes, to be imposed to compensate the rightsholders of recorded music for the unauthorized copying of their recordings, will apply exclusively to blank audio tapes and not to other recording media such as video cassettes. The precise amount of the levy will be fixed by the Copyright Board after consultations with interested parties. Your Committee notes that the levy will be imposed at the manufacturing level, and consequently all sales taxes will be paid on the amount of the levy. Manufacturers of blank audio tapes strongly opposed the levy, and predicted that the impact of the levy would be to create a "grey market" in Canada for blank audio tapes. Your Committee therefore recommends that the Government monitor market behaviour in Canada to assess the impact of the levy on sales of blank audio tapes, and to determine whether a similar levy should also be applied to the other recording media.

Bill C-32 will enact "neighbouring rights," which will require broadcasters to pay royalties to recording artists and record producers. The neighbouring rights regime was generally opposed by broadcasters. However, broadcasters will pay only a flat fee of $100 on the first $1.25 million of advertising revenues. This preferential rate will cover about 65 per cent of Canadian radio stations. Royalties, as fixed by the Copyright Board and to be phased in over three years, will have to be paid on any advertising revenues above $1.25 million. Since the United States does not recognize "neighbouring rights", Canadian broadcasters will not be obliged to make payments in relation to sound recordings made in the U.S. However, the U.S. will enforce "neighbouring rights" related to digital radio offered to consumers on a subscription basis. Your Committee therefore recommends that the Government immediately undertake an in-depth study of the new digital technologies, in particular the Internet, and the impact their widespread commercial deployment might have on the payments Canadian broadcasters may have to make to both Canadian and foreign rightsholders.

Canadian broadcasters strongly opposed the "ephemeral recording" and "transfer of formats" exemptions set out in the Bill. These exemptions would essentially allow broadcasters to make recordings and keep them for up to 30 days, although the exemption would no longer apply if a collective exists to grant a recording licence. Your Committee notes that, while broadcasters are strongly opposed to these provisions, which they find too restrictive, they will nonetheless have 30 days within which to seek authorization if they wish to retain a recording for a longer period of time. Finally, while your Committee agrees that re-recording music every 30 days could be time-consuming and cumbersome for broadcasters, we estimate that licensing fees should be quite modest, should licences become available.

Your Committee notes that the definition of "commercially available" was the subject of some controversy among interested parties. Originally, the term "commercially available" signified that educational institutions and libraries could make a copy of a work under selected exemptions if a copy could not be obtained on the market. A new definition was inserted into the Bill, however, according to which "commercially available" signified the period of time any work is available through a collective licence. User groups argued before your Committee that the definition as altered was much too broad and open-ended, and that the original definition should be restored.

Your Committee notes that, while educational institutions and libraries originally would have been exempted from liability for infringements carried out by means of self-serve copiers installed on their premises, the Bill was changed so that these institutions would be absolved from liability only if they obtained a licence. The affected user institutions vigorously opposed the amended version, while creators had strongly objected to the original measure, which they argued went too far in expropriating their rights. Your Committee notes that, as collectives already exist to issue reprographic licences, the requisite licences will be readily obtainable by educational institutions and libraries.

Your Committee notes that, according to the original section 29.6 of the Bill, educational institutions would have been allowed to record news programs and news commentary programs and to play them on the institution's premises for up to one year. This exemption was modified expressly to exempt documentaries. Your Committee notes

that, while this change was made to clarify the scope of the exemption, which was never intended to apply to documentaries in the first place, interested parties will not have to incur expenses for litigation on this matter. Your Committee further notes that it will still be possible to tape documentaries for educational purposes, although such recordings will be subject to the different regime for taping other programs set out under section 29.7.

Some parties expressed concern that, under section 38.1 of the Bill, it will be possible to obtain statutory damages, even against innocent infringers. However, in cases of innocent infringement, the court will have the discretion to lower the amount of statutory damages to $200 from the otherwise applicable range of between $500 to $20,000. Thus, the Bill makes allowances for innocent infringements, without however exculpating totally the defendant. Your Committee notes that educational institutions and libraries will be exempted from statutory damages only if they are licensed. Your Committee notes that while exemptions from statutory damages originally applied only to educational institutions, the Bill was amended to include these libraries, archives and museums. The exemption was thus broadened in favour of institutional users and at the expense of creators.

A number of the concerns raised before your Committee related to the amount of royalties that would have to be paid if Bill C-32 were enacted. This issue was particularly contentious regarding the proposed levy on blank audio tapes to compensate music authors, performing artists, and record producers for the unauthorized copying of their recordings. Your Committee wishes to point out that the amount of this levy is not fixed under the Bill. Rather, it will be determined by the Copyright Board following consultations with all interested parties. Whether a given royalty will be subject to the Board's mandatory pre-approval, as will be the case in relation to the proposed levy on blank audio tapes and the neighbouring rights royalties, or whether the parties will themselves be able to determine the amount of royalties to be paid on the basis of a voluntary agreement, as will be the case in relation to the making of multiple copies of special-format works for persons with perceptual disabilities, interested parties will have the opportunity to take an active part in the process and bring all of the relevant facts to bear on the issue.

Your Committee notes that Bill C-32 is the result of nearly ten years of negotiation and consultation. It is, moreover, the second phase of an ongoing review process. Phase III is to deal with copyright issues related to the Information Highway. Given the current context of rapid technological change in communications, especially the rapid growth of digital delivery systems and the Internet, Bill C-32 may prove inadequate to deal with copyright issues in the very near future. Your Committee believes that, in order to avoid possibly protracted and costly litigation, it will be necessary to undertake Phase III reforms in a timely fashion so that legislative reform can keep pace with the rapidly-evolving developments in society.

Your Committee notes that the Bill calls for a review of the implementation of the Act within five years of its coming into force. Given the divergent views that were expressed in relation to some of the Bill's provisions, your Committee recommends that the review be completed within three years of the Act's coming into force in order to monitor developments under the revised legislation and to assess progress on the Phase III revisions.

In a letter tabled with the Committee by the Honourable Sheila Copps, P.C., M.P., Minister of Canadian Heritage, the Minister made the following commitment:

> "I undertake, therefore, that within three years after the coming into force of section 92(1), I shall cause to be laid before both Houses of Parliament a report on the provisions and operation of this Act, including any recommendations for amendments to this Act. This will allow sufficient time to assess the impact of the renewed Act and to bring about any changes that may be required in the new communications environment." (Letter to the Honourable Lise Bacon, Chair, Standing Senate Committee on Transport and Communications, April 21, 1997, p.2)

Respectfully submitted,

LISE BACON
Chair

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

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

[*English*]

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-95, to amend the Criminal Code (criminal organizations) and to amend other Acts in consequence.

Bill read first time.

The Hon. the Speaker *pro tempore***:** 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 Wednesday next, April 23, 1997.

INCOME TAX BUDGET AMENDMENTS BILL, 1996

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-92, to amend the Income Tax Act, the Income Tax Application Rules and another Act related to the Income Tax Act.

Bill read first time.

The Hon. the Speaker *pro tempore***:** 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 Wednesday next, April 23, 1997.

• (2010)

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on Foreign Affairs have power to sit at 4:00 p.m. tomorrow, April 22, 1997, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Motion agreed to.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Sharon Carstairs, with leave of the Senate and notwithstanding rule 58(1)(*a*), moved:

> That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 4:00 p.m. tomorrow, April 22, 1997, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Hon. John Lynch-Staunton (Leader of the Opposition): Could we obtain an explanation?

Senator Carstairs: Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs will be sitting tomorrow afternoon on Bill C-17, and we shall be hearing witnesses from the Canadian Bar Association.

Senator Lynch-Staunton: Thank you.

Motion agreed to.

QUESTION PERIOD

NATIONAL FINANCE

COSTS OF PROGRAMS AND LEGAL SETTLEMENTS CHARGED TO CORRECT FISCAL YEARS—GOVERNMENT POSITION

Hon. Duncan J. Jessiman: Honourable senators, I am informed that this week the Auditor General will appear before the Public Accounts Committee of the House of Commons to discuss his concerns on how the government accounted for approximately $1 billion in sales tax harmonization payouts. The Auditor General has also said that he intends to take a good look at the way the government has chosen to account for the $800-million cost of the Canada Foundation for Innovation. In both cases, funds are booked to one fiscal year, although they will not, in fact, be spent until the following year.

Last month, in his appearance before the Standing Senate Committee on Banking, Trade and Commerce, the Minister of Finance gave this explanation:

> It has always been my experience that by far the most prudent way of keeping books is to acknowledge any liability right up front. Take your profits when they come in, but acknowledge your liabilities.

Perhaps the Leader of the Government in the Senate could explain a major discrepancy in the government's accounting logic. Since last summer, the government has announced more than $300 million in spending under the Technology in Partnership Program. This is not an inconsequential sum of money. However, according to the Estimates, not one cent of that money will be booked to the 1996 fiscal year. Indeed, the money is being spread out over several years. This year, the government will recognize only the spending of $196 million in that $300 million.

Could the Leader of the Government confirm that the entire cost of $800 million allocated to the Canadian Foundation for Innovation is being booked to the accounts for the year just ended, while none of the Technology in Partnership Program funding was so booked? If that is so, what is the reason therefor?

Could the Leader of the Government also explain why only $196 million of the $300 million announced last year for the Technology in Partnership Program will be booked to this new fiscal year? Is the government not simply trying to manage the reported size of the deficit by juggling money between fiscal years?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, in response to the last part of the honourable senator's question, I say "no." To the very detailed part of his question, I shall be pleased to take his question to the Minister of Finance and have him provide an answer for my colleague.

Senator Jessiman: Honourable senators, could the Leader of the Government also advise us as to which fiscal year the government intends to book costs arising from both the Pearson airport settlement and pay equity for the public service?

Senator Fairbairn: I shall be glad to add those questions to the list, honourable senators.

INTERGOVERNMENTAL AFFAIRS

STATUS OF LABOUR AGREEMENTS WITH QUEBEC AND OTHER PROVINCES—GOVERNMENT POSITION

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I should like an explanation from the Leader of the Government in the Senate as to why the labour agreement signed today between Canada and Quebec is only an agreement in principle. This is the fifth agreement of this nature. Three were signed with Alberta, New Brunswick and Newfoundland, which came into effect on April 1, 1997. On April 17, 1997, an agreement was signed with Manitoba, which came into effect on that date. However, these agreements, referred to as historic labour market agreements, are really only agreements in principle subject to further discussion.

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, the honourable senator will know that each of the agreements being negotiated with the provinces has been done independent of one another in their substance, and in a way that is most acceptable to the situation of each province. I am advised that, in the case of Quebec, it was Quebec's desire to proceed in this fashion. The agreement, as the honourable senator will know, is quite comprehensive and covers all the major elements that have been agreed to elsewhere, but in a different fashion.

I asked the same question as my honourable friend, and I was told that the agreement in principle will be followed by an implementation agreement which should be concluded no later than September of this year and, therefore, could be in operation in January of 1998.

• (2020)

Senator Lynch-Staunton: Honourable senators, the agreements with Alberta, New Brunswick and Newfoundland went into effect in their final form on April 1, 1997. The agreement with Manitoba went into effect in its final form on April 17, 1997. When these four agreements were announced, they were firm agreements, and the signatures on the dotted lines meant that they would go into effect on the dates that I have just given.

The one with Quebec is not a firm, final agreement; it is an agreement in principle. The minister has said — but I will complete her statement — that "Now that the Canada-Quebec agreement in principle has been signed, the two governments will be embarking on a process that will lead to the signing of an implementation agreement that is scheduled to come into effect, in whole or in part, on January 1, 1998."

This clause does not exist in the other four agreements, and it need not exist, since those four agreements were in their final form. My question is: Why make an exception for one province? Why did the Government of Canada and the Government of Quebec not agree to trumpet this agreement in its final form? Is this another part of the pre-election strategy of this government?

If my interpretation of this deal is correct, nothing has really happened except that two governments sat down for their own opposite purposes and signed a deal which, in effect, cannot be implemented until more serious negotiations take place. Even then, by this particular clause, there is no guarantee that the agreement signed today will be implemented in its entirety because one paragraph very clearly states, "...is scheduled to come into effect..." meaning that the parties are not bound to have it come into effect; "...in whole or in part..." which means that some, or all, or perhaps none of it, for that matter, will come into effect on January 1, 1998.

Who are the Government of Canada and the Government of Quebec trying to fool?

Senator Fairbairn: Honourable senators, the Government of Canada and the Government of Quebec have been working together for months to reach this agreement in principle. They have done so in good faith, and have set out in great detail the agreement between them which has been reached. The honourable senator is quite right: This agreement will be followed by further discussions that will lead to the final implementation agreement, and at the beginning of next year, the people of Quebec will begin to see in operation this labour market agreement which has been sought by the Province of Quebec for many years.

There is no intent, honourable senators, to mislead at all with this agreement. It is, indeed, a very significant agreement; one that has taken an incredible amount of work on both sides. The result will be beneficial to the people of Quebec. It has been approached in a different way, but the conclusion will be of great help, particularly to the unemployed people in Quebec.

Senator Lynch-Staunton: Honourable senators, there is no agreement. There were two signings carried out today for electoral purposes. If there is an election called between now and January 1, 1998, how can the Government of Canada bind a successor government to such a significant expenditure? According to the documents we have, if this agreement goes into effect, we are talking about an expenditure of a total of $2.7 billion over the next five fiscal years, including the current one.

My question is: How can this government bind a successor to such a commitment? We know about commitments being made, and successor governments not honouring them. I need not cite one particular example of that happening after the 1993 election. However, I sense that we are now approaching the same situation. Apparently, we are heading towards an election in June. Here we have the Government of Canada agreeing to commit its successor government to a five-year expenditure of $2.7 billion with a government in the Province of Quebec which has no interest in helping this government except to put it in an embarrassing position.

I sense in all of this that the federal government's desperate need to shore up what little support it has in the Province of Quebec has led it to resort to desperate measures which will only cause false optimism in Quebec, because there is no agreement in place now. Had this agreement been reached on the same basis as the agreements with the other four provinces, the Quebec agreement would have said, "This goes into effect today" and the unemployed in Quebec would have found encouragement in that statement. However, when they finally get to read this agreement, they will see that they are being used by two governments with completely opposite objectives, and that this is being done at the expense of those who need the help the most.

Senator Fairbairn: Honourable senators, I have listened to the honourable senator's views, which undoubtedly are strongly held — and may I reiterate that he has every right to his views.

It may be that the two levels of government have, in this case, a common interest, namely, to come together to help the people who are unemployed in the Province of Quebec. This agreement will go a long way towards meeting that goal.

ELECTIONS CANADA

FAILURE TO HONOUR PRE-ELECTION PROMISES ON REFORM OF ELECTORAL LAWS—GOVERNMENT POSITION

Hon. Fernand Roberge: Honourable senators, four years ago, in a policy statement called "Reviving Parliamentary Democracy," the Liberals made several promises to reform Canada's election laws. The Red Book calls this a platform document. Canadians were promised laws to limit spending by special interest groups, mandatory reporting by riding associations, and changes to broadcasting laws, and the way in which returning officers are appointed.

Could the Leader of the Government in the Senate advise this house why today, four years later, those promises remain unfulfilled?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, all of the items to which the honourable senator has referred have not been put in place, but there has been significant advancement in reforming our electoral laws, as is evident in the way in which the upcoming election, whenever it occurs, will be conducted.

REFORM OF ELECTORAL LAWS—FAILURE OF COMMONS COMMITTEE TO MEET—GOVERNMENT POSITION

Hon. Fernand Roberge: Honourable senators, more than one year ago, the Chief Electoral Officer tabled a report recommending substantive changes to Canada's election laws in such areas as financing and broadcasting. Aside from a permanent voters list and a shorter writ period, the government has ignored that report.

Officially, those recommendations were referred to the House of Commons Committee on Procedure and House Affairs. This has proven to be nothing but a stall tactic, since this government has not treated its promises seriously.

Could the Leader of the Government in the Senate explain why, more than one year later, that House of Commons committee has yet to meet to examine those proposed changes to Canada's election laws?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, I cannot enlighten the honourable senator as to the work of that House of Commons committee, except to say that they certainly spent a great deal of time and effort in putting together the changes that have been brought into effect for an upcoming election. Undoubtedly, the committee will continue its work in the areas which the honourable senator has indicated.

JUSTICE

REFUSAL OF MINISTER TO PAY LEGAL FEES OF FORMER MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT— FURTHER REQUEST FOR ANSWER

Hon. Eric Arthur Berntson: Honourable senators, my question, which is directed to the Leader of the Government in the Senate, is not a new one. I raised it first on December 4, 1996. It concerns Mr. Munro and his application for costs. We all know the story. I have raised this question several times in this chamber, but I still do not have an answer.

My concern is not only for Mr. Munro but also for the apparent inconsistent application of the rules. Either he qualifies for help because he qualifies for help or he does not, and it should not be a political decision, as has been reported.

• (2030)

I might be a little more patient if the minister could tell me that we are not rushing headlong into an election, which will result in this place being shut down until the fall or who knows when. Who knows what impact that delay could have on Mr. Munro? Everything I hear and read indicates that we are rushing headlong into an election.

Once more, I ask the Leader of the Government: When will I receive some answers to the questions I have raised about Mr. Munro's situation?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, as I have said to the honourable senator on other occasions, the question he has raised is an important one. I do not have the answer for him. I can assure him that I will make further inquiries. Since I do not have an answer, I will not make a commitment other than to say that I will revisit the sources that I have used.

As far as the date of the election is concerned, I cannot tell the honourable senator. I read the same stories and watch the same interviews as does the honourable senator. The final decision lies with the Prime Minister, and he has not shared his decision with me.

Senator Berntson: Honourable senators, in this chamber we see every day the urgency of getting legislation passed, and that is a significant signal. We talk about getting things wrapped up this week or next. That strikes me as a significant signal that we are approaching an election.

Honourable senators can understand my frustration. The Leader of the Government has talked about the significant contribution which Mr. Munro has made to Canadian public life and has stated that he is an honourable gentleman and that this is an important issue. It is not at all complicated. We have seen instances where similar matters have been dealt with on a weekend. I first raised this matter on December 4, 1996; others may have raised it earlier. I do not see why it is so difficult to get an answer. Quite frankly, it is appalling for the government to treat this individual in this way.

Senator Fairbairn: Honourable senators, I hear the Honourable Senator Berntson's comments. I simply say to him that I do not take his questions lightly. I take them seriously, and I will continue to do so. However, without further information, I simply cannot give him an answer. I will continue to pursue the matter.

HEALTH

PLEDGE OF MINISTER AND PRIME MINISTER TO AMEND NEW TOBACCO LEGISLATION—GOVERNMENT POSITION

Hon. Finlay MacDonald: Honourable senators, I have become convinced — and I speak only for myself — that the longer one is in this place, the more jaded one becomes.

Senator Cools: Never!

Senator MacDonald: I know this will come as a disappointment to you, Senator Cools, but there are some things that I just cannot understand.

Last Wednesday, this chamber was overwhelmingly in favour of the passage of Bill C-71 without amendment. Personally, I seconded, and voted for, Senator Kenny's motion in amendment because I thought it was rather ingenious and seemed to solve a lot of problems by using tobacco money.

I have nothing against the spirit of Bill C-71. On Wednesday last we passed the bill without amendment. Almost everyone in this chamber voted in favour of the bill. The day after the bill was passed, the Prime Minister and Mr. Dingwall said that they were prepared to amend Bill C-71 in the autumn — a little burst of optimism there — to allow logos on the cars and on the jerseys of participants in the Grand Prix and Indy car races.

I enjoy car races as much as the next person, and I think Mr. Villeneuve is a bit of a national hero, but it is not my favourite sport. I quote an article in *The Globe and Mail* of April 19 which states that it is not clear as to how far Mr. Dingwall is prepared to reverse the bill that has just been passed. The article goes on to state:

> ...it looks like it will be okay for the racing industry and Jacques Villeneuve to have their images plastered with tobacco ads as they drive through the international celebrity circuit, but nobody else will enjoy the same exemption. No letters have been sent to jazz musicians, theatre groups...

such as the Neptune Theatre in Halifax —

> ...or tennis tours.

My question to the Leader of the Government is: Do you not think this is an abuse of the parliamentary process?

Hon. Joyce Fairbairn (Leader of the Government): Honourable senators, no. I believe that both Houses of Parliament, particularly the Senate, have done a very good piece of work in their study and passage of this bill, which is a significant piece of legislation affecting the health of tens of thousands of Canadians. Certainly, significant issues were raised during the debate in both places, and the government intends to follow up on those issues in the months ahead.

Senator MacDonald: Through regulation.

Senator Fairbairn: The honourable senator may believe that this is a case of misplaced optimism. If it is, then we still are left with a very sound piece of legislation passed by the Parliament of Canada.

Senator MacDonald: I assume the minister is referring to regulations when she refers to further amendments — legislation which we have not seen.

Senator Fairbairn: Honourable senators, I was referring to the bill that was passed. I said that the government is looking further at issues surrounding the concerns raised and will deal with those at a later time, as has been indicated. In the particular letter my honourable friend mentioned, the issues involve a particular endeavour, but there are undoubtedly other considerations that all of us, including the government, will be interested in trying to promote, including the issue of alternate sponsorships for pastimes other than racing that would interest my honourable friend. The fact remains that we have a significant piece of legislation involving smoking and the health of Canadians. Parliament has done a sizeable piece of work in passing the bill and getting it on its way.

I could never consider the honourable senator to be jaded in any way, shape or form, and I believe the Senate made a significant contribution to the debate on Bill C-71.

Senator MacDonald: Honourable senators, I thank the minister for the compliment.

My last question is this: Does the leader not think that Mr. Dingwall has failed to get a genuine tobacco bill through Parliament?

• (2040)

Senator Fairbairn: Honourable senators, I believe that Mr. Dingwall, helped by his colleagues in the House of Commons and here in the Senate, has passed a solid piece of legislation. The report of the Standing Senate Committee on Legal and Constitutional Affairs, with its strong recommendations, will result in serious consideration of the subject in the future, based on the concerns that were so strongly expressed here in the Senate.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, at the committee hearings, when the Minister of Health appeared as the last witness, he held up a cardboard cut-out of Jacques Villeneuve without the identification of the tobacco company which sponsors him, and said, "This is the garb that Jacques Villeneuve will wear once the exemption ends in 1998." At the same time as he was telling us that, he was negotiating with organizers of international events to allow Jacques Villeneuve to wear the patch which he was telling the Senate committee he would not allow.

This is the first time and, I hope, the last time that such extreme disdain for the role of Parliament will be shown. At the same time as the minister was convincing Canadians that the identification of sports personalities with a tobacco product would be limited, he was reassuring organizers of international events that the tobacco identification would continue to be seen on the uniforms, the cars, the mechanics and all others involved with the race.

Senator Nolin proposed an amendment to allow that practice to continue. The minister said, "No, we cannot do that. Sponsorships are a great contributor to the initiation of young people to smoking. We cannot allow any identification of the brand."

I would like the minister to explain how this kind of duplicity, of working behind the scenes, of making a mockery of Parliament, could be allowed to happen. The Leader of the Government in the Senate has a responsibility to explain the behaviour of her colleague, who has made an absolute mockery of the role of the committee chaired by the Honourable Senator Carstairs. If, while we are seriously studying legislation, those who are protesting vigorously are being reassured behind the scenes because there is an election coming up, then let us shut this place down.

Senator Fairbairn: Honourable senators, we studied this legislation in a very responsible way in this chamber and in our committee proceedings. The minister has also been made aware of the report that was issued by the Standing Senate Committee on Legal and Constitutional Affairs and some of the strong recommendations contained in it. I do not believe that the process has been an abuse of Parliament. I do not believe that it has been duplicitous. I have no idea what the outcome of the minister's consultations will be, but I am sure that he will make the best possible use of the advice he has been given.

The Hon. the Speaker *pro tempore***:** Honourable senators, the time for oral questions has expired.

Hon. Michel Cogger: May I ask a supplementary question on this subject?

The Hon. the Speaker *pro tempore***:** Is there leave to prolong Question Period?

Hon. Senators: Agreed.

Senator Cogger: Honourable senators, the minister claims not to know the outcome of the discussions between the Minister of Health and the sponsors of various events. Minutes after we finished voting last Wednesday, one of her colleagues stood in the foyer of the Senate announcing, in French, that sponsors of the events and Montrealers had nothing to worry about; that the Grand Prix, the fireworks festival, the tennis tournaments and everything else sponsored by the tobacco companies would proceed.

Why is it that that colleague knows so much about the outcome when the minister professes not to know where the talks are going?

Senator Fairbairn: Honourable senators, I do not know where the talks are going. I do not know whether talks have begun in the various areas about which the honourable senator is speaking. I certainly hope that all of the events to which he refers will continue in the future. I know that everyone in this house hopes for that as well, in whatever manner sponsorships may be arranged and encouraged for those events. I cannot foresee what will happen in the future, other than that honest efforts will be made.

Senator Cogger: Honourable senators, I hear and understand the minister. Will she go on French television and announce to Montrealers and the world at large, in French, please, that her colleague misspoke herself?

Senator Fairbairn: Honourable senators, I would not choose that option.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. B. Alasdair Graham (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in the Senate on March 5, 1997, by the Honourable Senator Lavoie-Roux regarding the results of the recent campaign against smoking, and a response to a question raised in the Senate on April 8, 1997, by the Honourable Senator Simard, regarding employment insurance, size of surplus in the fund.

HEALTH

RESULTS OF RECENT CAMPAIGN AGAINST SMOKING—GOVERNMENT POSITION

(Response to question raised by Hon. Thérèse Lavoie-Roux on March 5, 1997)

Health Canada ran an anti-tobacco media campaign which consisted of six television ads and three print ads designed to reach both adult and teen audiences. Phase one of the campaign ran in 1995, and phase two ran in 1996.

The first phase of the media campaign consisted of three TV commercials titled "Cocktail," "Not Much," and "Doll's House" which ran on all major networks from January 10, 1995 until March 31, 1995, and again in October and November of 1995. The three print ads also ran until March 31 in major dailies, ethnic papers and various magazines across Canada.

The second phase of the campaign was launched on January 15, 1996. It consisted of three television ads titled "Lung," "Vignettes" and "Poison" which ran until March 31, 1996, on all major networks.

The media buy for the first phase of the campaign was approximately $5M and production costs were $1.2 million. The media buy for the second phase of the campaign was approximately $1.8M and production costs were $450,000.

This campaign was extensively evaluated by independent research companies. The results among teens were very positive. In fact, the awareness levels for the first phase were over 90%, ranking it as one of the top 10 advertising campaigns ever run in Canada.

In summary, most teens agreed that the ads successfully communicated their intended messages. Over 90% of teens agreed that the ads successfully brought out the issue of the harmfulness of tobacco. Over 95% of the teens who saw the ads said it made them "stop and think" about the harmful effects of smoking cigarettes. Over 80% of teens agreed that "the ads discourage young people from starting to smoke" and felt the ads would influence people "like themselves." 75% of teens said the ads had some influence on their personal smoking behaviour.

The campaign also promoted a 1-800 number which over 20,000 Canadians called to receive information about tobacco use, and resources to help them quit smoking.

An example of Health Canada's future campaigns for young people include the recently launched "Challenge to Youth." Promoted via MuchMusic/MusiquePlus and in movie theatres, the contest asks youth from across the country to give, in their own words, their reasons for not smoking. The best ideas will be made into advertisements featuring the winning youth speaking to their peers. Winners will be chosen by Minister Dingwall's Youth Advisory Committee on Tobacco.

This type of interactive, teen-oriented public education campaign will be part of the new tobacco control initiative. Some of the new activities specifically for youth include:

- an interactive print campaign;
- a partnership with Concerned Childrens' Advertisers to develop public service announcements addressing healthy life coping skills;
- promotion of the Quit 4 Life kit, a cessation kit for teens; and
- a video on healthy lifestyles developed for and by Aboriginal youth.

EMPLOYMENT INSURANCE

SIZE OF SURPLUS IN FUND—GOVERNMENT POSITION

(Response to question raised by Hon. Jean-Maurice Simard on April 8, 1997)

It is not surprising that in certain months, employment insurance premium revenues exceed employment insurance program costs. Changes to the earnings base have resulted in a change in the premium revenue flow over the course of the calendar year. Those whose earnings are above the maximum insurable earnings will be paying more of their premium liability earlier in the calendar year and less at the end. Furthermore, there is a very distinctive seasonal pattern to the flow of employment insurance benefits.

The activities of the employment insurance program are fully consolidated in the Government's financial statements. This means that when program costs exceed premiums received, the federal deficit rises. Conversely, when premiums exceed program costs, the deficit is reduced accordingly.

Between 1990 and 1993, program costs far exceeded premiums and premium rates were raised from $2.25 per $100 of employee insurable earnings to reach $3.00 in both 1992 and 1993. Although the employee premium rate was increased to $3.07 in 1994, it has declined every year since. In the last budget, the Minister of Finance indicated that for planning purposes the employee premium rate would be set at $2.80. These declines in premium rates along with the changes to maximum insurable earnings have significantly reduced the costs of the employment insurance program for most employers and workers.

The Minister of Finance has stated that he would continue to reduce the premium rates as quickly as possible.

ANSWER TO ORDER PAPER QUESTION TABLED

SETTLEMENTS TO THIRD PARTY CLAIMS RESPECTING PEARSON AIRPORT TERMINALS I AND II

Hon. B. Alasdair Graham (Deputy Leader of the Government) tabled the answer to Question No. 163 on the Order Paper—by Senator Lynch-Staunton.

ORDERS OF THE DAY

BILL TO AMEND CERTAIN LAWS RELATING TO FINANCIAL INSTITUTIONS

THIRD READING

Hon. B. Alasdair Graham (Deputy Leader of the Government), for Senator Kirby, moved third reading of Bill C-82, to amend certain laws relating to financial institutions.

Motion agreed to and bill read third time and passed.

CRIMINAL CODE

BILL TO AMEND—THIRD READING

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

She said: Honourable senators, I rise to speak briefly to third reading of Bill C-27. I agree with Senator Andreychuk's comment at second reading of the bill that we should not expect legislation on its own to cure our social ills. I further agree that, as a society, we should concentrate more on addressing the poverty and domestic disarray that puts so many children at risk.

Nevertheless, legislation is essential in order to create the proper environment in which to find workable solutions to these problems. This is particularly true of Bill C-27, for Bill C-27 sends a very clear message to the Canadian public: Obtaining sex from children, whether in Canada or abroad, is a crime; using violence and intimidation to coerce and retain children in the sex trade is a crime; maiming and mutilating the bodies of girl children is a crime.

The measures set out in Bill C-27 may not be enough to catch and convict all perpetrators, but, as a result of this bill, every adult in Canada will know that exploiting children for sexual gratification is criminal behaviour and liable to severe penalties. They should also recognize that it is behaviour that can never, ever, be justified.

This is important because the sexual exploitation of children is an activity in which there are at least two actors: an exploited child and an exploiting adult. When a child is prostituted, adults are the customers. Without customers, there would be no sex trade. Clearly, effective approaches to the problem must not only diminish the supply of vulnerable children but also lower customer demand. Bill C-27 seeks to criminalize the behaviour of the exploiter, and increase the chances for successful prosecution.

• (2050)

Research tells us that only a small minority of those who buy sex from children are pedophiles. On the contrary, they are usually customary prostitute-users who turn to children for a variety of reasons, including the fact that children are often cheaper. The capacity of these individuals to deceive themselves in order to justify their actions is extraordinary. At the same time, many of them are fearful of incurring penalties for breaking the law, and Bill C-27 may bring them to their senses.

With Bill C-27 in place, not only sex tourism but seeking out child prostitutes on the streets of Canada will lose its allure. Then, perhaps, over time it will sink in that exploiting a child's body for the sexual gratification of an adult is as gross an abuse of human rights as any other that can be imagined.

I feel equally strongly about female genital mutilation, although I recognize that the roots of this practice in long-standing custom means that it will only be eliminated in its countries of origin with the help of local leadership and major improvements in the education of women. For if the primary exploiters of children for sexual purposes are male, the primary perpetrators of FGM are female. Yet it is girls and women who suffer the painful consequences — the infections, the loss of normal sexual feeling, the risks of maternal and infant mortality, the life-long humiliation of untreated fistulas. It is to be hoped that we can use the sections in Bill C-27 relating to FGM to promote educational programs on the subject, at least in Canada.

Finally, I would like to say a few words about the place of Bill C-27 in the agenda for action against the sexual exploitation of children that Canada adopted last year in Stockholm. Since that congress, and at the request of Minister Axworthy, I have been coordinating a committee to follow up on Canada's commitment. We have been developing a strategy based on the key orientations that the congress identified — child

participation, prevention, protection, recovery and reintegration, information collection and dissemination, and international cooperation. Without going into details, I am glad to say that there is considerable progress to report. The National Action Committee on the Status of Women is working with the media, and with the tourism industry. Revenue Canada is working on child pornography, and with Interpol. CIDA is funding numerous programs in prevention, protection, and recovery and reintegration. The Department of Foreign Affairs is working in a number of international fora to promote the cooperation that is necessary to deal with what is frequently a cross-border violation.

Finally, the Department of Justice has brought forward Bill C-27. This is a vital component of our strategy to address this deplorable problem. For the sake of our children, and of the world's children, I hope that all senators will give their approval to this bill.

Motion agreed to and bill read third time and passed.

CITIZENSHIP ACT
IMMIGRATION ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Gigantès, seconded by the Honourable Senator Adams, for the second reading of Bill C-84, to amend the Citizenship Act and the Immigration Act.

Hon. Eric Arthur Berntson: Honourable senators, I will provide a little background to this legislation. The Security Intelligence Review Committee, commonly known as SIRC, was established in 1984 as an independent body to review the activities of the Canadian Security Intelligence Service.

At the same time, the Citizenship Act and the Immigration Act were amended to provide for a review by SIRC in all cases having to do with national security matters. As a result, each case in which national security concerns are paramount must be considered by SIRC before the government may take any action authorized by these statutes.

The government says the changes in Bill C-84 will ensure that it is not obliged to grant citizenship to a person who might be a threat to Canada's national security.

The substance of this bill, Bill C-84, will allow cabinet to appoint a retired judge of a superior court to act in place of SIRC when the committee cannot fulfil its mandate, as set out in the Citizenship Act or the Immigration Act, because of the appearance of bias, a conflict of interest or any other reason.

In cases where SIRC is of the opinion that it cannot fulfil its mandate, it must terminate its investigation and inform the minister and the person being investigated. Cabinet may then appoint a retired judge to take over the investigation. Retired judges will be appointed for a term of three to five years during good behaviour, and are eligible for re-appointment.

Honourable senators, on the face of it, this does not seem to be at all controversial or at all complicated. I would suggest that any questions that may be forthcoming could be properly dealt with at committee stage of this bill.

Hon. Philippe Deane Gigantès: Honourable senators —

The Hon. the Speaker *pro tempore*: I wish to inform the Senate that if the Honourable Senator Gigantès speaks now, his speech will have the effect of closing the debate on second reading.

Senator Gigantès: Honourable senators, I reiterate my motion that this bill be read the second time now.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker *pro tempore***:** When shall this bill be read the third time?

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

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, seconded by the Honourable Senator Rompkey, P.C., for the second reading of Bill C-46, An Act to amend the Criminal Code (production of records in sexual offence proceedings).

Hon. Gérald-A. Beaudoin: Honourable senators, the purpose of Bill C-46 is to restrict the right of the accused to have access to the victim's records in sexual assault cases. It is aimed at striking a balance between the right of the accused to a full answer and defence and the victim's right to privacy.

This bill is a result of the 1995 *O'Connor* decision in which the Supreme Court set out a series of criteria designed to guide the courts in deciding when to order the production of a sexual assault victim's personal records. These criteria were criticized, which led Parliament to legislate on this issue.

The preamble to Bill C-46 expresses Parliament's concerns about sexual violence against women and children, which has a particularly disadvantageous impact on victims' rights, including those guaranteed under sections 7, 8, 15 and 28 of the Canadian Charter of Rights and Freedoms. There is therefore a need to encourage victims to report sexual offences. That said, a balance must nonetheless be struck between the victim's right to privacy and the right of the accused to a full answer and defence, and a fair trial.

• (2010)

Bill C-46 establishes a two-step mechanism for requests for the production of records: First, the accused must establish the likelihood of relevance to an issue at trial or to the competence of a witness to testify; second, if the accused successfully proves this relevance, the records will be examined in private by the judge at trial, who must take into consideration the rights of the accused and those of the plaintiff as guaranteed by the Charter, in order to determine the degree of access the accused will have to the records.

"Record" in this case means medical, psychiatric, therapeutic records, child welfare or counselling records, employment and adoption records, personal journals and diaries, and records containing personal information protected by other federal legislation or by provincial legislation.

The judge may order the production of the record or part of the record if he is satisfied that the correct procedure has been followed and that the accused has proved that the record is likely relevant to an issue at trial or to the competence of a witness to testify.

Records produced to the accused at trial cannot be used in any other proceedings.

A determination to make an order for the production of the record is deemed to be a question of law for appeal purposes.

Bill C-46 is an attempt to reconcile two types of law which sometimes clash, namely the right to privacy of the victim or the witness and the right of the accused to a full and complete defence. The purpose is praiseworthy: to find the truth. Since no law is absolute, constant balancing is needed to respect the rights and freedoms guaranteed under the Canadian Charter of Rights and Freedoms. As Justice L'Heureux-Dubé said in a decision handed down the same day as the *O'Connor* decision and dealing with the same issue.

> Our adversarial judicial system's main goal is to find the truth. For justice to be done, the judicial system must have all the relevant information.

This is the background against which Bill C-46 should be seen. Now we must find out whether this bill complies with section 7 of the Charter as interpreted by the Supreme Court.

The right to a full and complete defence is a fundamental principle of justice. The Supreme Court confirmed the scope of this right in the *Stinchcombe* decision of 1991. The *O'Connor* decision completes the *Stinchcombe* decision.

It would seem that Bill C-46 affects the right to a full and complete defence by restricting the extent of disclosure. However, this restriction is justified under section 1 of the Charter.

Bill C-46 represents a real and urgent concern. The objective is sufficiently important that it justifies limiting the right to make a full answer and defence. There is a rational connection between this limitation and the purpose of the legislation. The criterion of minimal effect is satisfied.

The effects of Bill C-46 are commensurate with the objective of limiting the accused's right to make a full answer and defence.

Bill C-46 also limits the right to privacy of the victim and the witness when they must file personal records. However, the right to privacy is not absolute. Strict limits are set out in Bill C-46: "Fishing expeditions" are prohibited; serious and relevant grounds must be provided by the accused and approved by the trial judge, who retains his discretionary power to order production of records and to attach conditions. In exercising his discretionary power, the judge must take into consideration a number of factors defining the limitation provided for in Bill C-46.

Once again, although Bill C-46 undermines the privacy of the victim and the witness, it is a reasonable limitation under section 1 of the Charter.

In fact, Bill C-46 constitutes a delicate and proper exercise of weighing the merits of two rights that are equal in importance but not absolute.

On February 15, 1997, the Barreau du Québec expressed a number of reservations about Bill C-46. The Barreau proposed that the complainant's diary be excluded from the definition of record. It proposed that crimes of conjugal violence be included among the offences listed in proposed section 278.2.

We are of the opinion that the Barreau's reservations do not call into question the foundation of Bill C-46. They do, however, constitute very constructive comments.

On motion of Senator Cools, debate adjourned.

[*English*]

FARM DEBT MEDIATION BILL

SECOND READING

Hon. Nicholas W. Taylor moved the second reading of Bill C-38, to provide for mediation between insolvent farmers and their creditors, to amend the Agriculture and Agri-Food Administration Monetary Penalties Act and to repeal the Farm Debt Review Act.

He said: Honourable senators, this bill is entitled the Farm Debt Mediation Act, and I am pleased to have the opportunity to speak to it tonight.

The bill before us not only builds on the current Farm Debt Review Act but also provides Canadian farmers with the kind of complete farm financial review service they need in today's climate of ever-increasing and changing marketing demands.

Ten years ago, the Farm Debt Review Act was established as a temporary response to exceptional circumstances. Many farm families and farmers were on the brink of bankruptcy. Others had to abandon farming, often losing the family business because they were unable to meet their debt obligations.

• (2110)

In those days, the Farm Debt Review Act was, for many, the light at the end of the tunnel, a godsend, as it represented a last refuge for farmers to seek arrangements with their creditors. It worked well enough that 75 per cent of all completed cases resulted in an arrangement between the parties involved. That was then, and this is now. Things have changed since the 1980s.

Today, the reality is not quite the same. The Canadian farmer of the 1990s lives in a somewhat different world, a world of increasing globalization, merging technologies, reduced income support and shrinking government coffers, an era of changes in transportation policies as well as increased competition in both domestic and international markets.

One of the main objectives of the present government since it came into office in 1993 has been to help Canadian farmers and their families adapt to these realities, and that is what Bill C-38 is all about. It is one of the many tools the government is providing Canadians to adapt to change so they can better manage their economic futures and, in the process, help increase the overall prosperity of Canada's agricultural and agri-food sector.

Bill C-38 does not take anything away from the current legislation. Instead, first, it addresses the needs of insolvent farmers in Canada; second, it still provides farmers an opportunity to obtain a stay of proceedings; third, it still provides insolvent farmers with the opportunity to meet with their secured creditors without requiring a stay of proceedings; and fourth, it provides farmers with the opportunity for mediation between themselves and their creditors whether or not there is a stay of proceedings in place.

Bill C-38 builds on the current legislation by embedding the mediation for insolvent farmers in the legislation. Let me enumerate some of the benefits of this bill. Bill C-38 will work hand in hand with the Farm Consultation Service we have designed to help farmers in financial difficulty resolve their problems before they become insolvent. Bill C-38 focuses on mediation and simplifies the whole process by calling one single mediator instead of a three-person panel. It reduces overlap and duplication. It provides assistance to help farmers hire their own financial consultants or experts if they are not comfortable with using the financial consultants designated by the Farm Debt Mediation Service administrator. It provides farmers and creditors with the opportunity to appeal decisions regarding the granting of a stay, its extension, or its termination.

Expenditures under Bill C-38 in the Farm Consultation Services will not exceed costs under the current legislation. It is possible there will be some savings accrued based on the single-person mediation process rather than three-person panels we are now using.

All in all, Bill C-38 improves the level of services to Canadian farmers without increasing the cost to Canadian taxpayers. There was some question as to whether cutting back in expenses would decrease the number of offices. We have six offices across Canada, although recently offices were closed in Nova Scotia, Manitoba, and B.C. P.E.I, through the use of a 1-800 number, will be handling most of the cases in New Brunswick and Nova Scotia.

Hon. Eileen Rossiter: Honourable senators, I rise to speak on Bill C-38, which is an important bill. Although it is not the sort of bill which garnered a great deal of attention from parliamentarians in the other place, it is the sort of bill that governments trumpet on the campaign trail. It is, in essence, about the difficulties of making a go of it for Canada's farmers and what Parliament can do to offer a helping hand, or, at least, it should be.

Almost a year ago, I believe in May, the Minister of Agriculture and Agri-Food introduced this bill to replace the Farm Debt Review Act. Presumably it would mean that a simplified mediation process would be instituted and would result in a less costly, less cumbersome administration of cases wherein farmers require assistance in mediating with their creditors. Some might ask whether this bill simplifies the helpful and necessary governmental process or simply makes it more difficult to access help from government.

Bill C-38 was the subject of pre-study or, as the Library of Parliament called it, and this is a new description of pre-study, an early referral to the House committee prior to second reading. I must express some surprise that here we are, one week before an expected tea between the Governor General and the Prime Minister, with a bill we have yet to study ourselves but which received pre-study in the other place almost one year ago. This is an odd set of circumstances but not unusual given the government's strange use of the parliamentary schedule and the government's on-again, off-again interests in the issues that mean something to Canada's farmers.

In general, there appears to be some support for the bill from the agricultural community. Financial institutions do not appear to be opposed to any of its provisions. Still, one must ask the question: Why has it languished on the other place's Order Paper all these months, only to be resuscitated days before a general election call?

The Farm Debt Mediation Act would ideally set up a fairer and more efficient system for farmers to apply for some mediation assistance in meeting their farm's financial obligations. A single mediator rather than the three-member panel mandated under the old Farm Debt Review Board process would presumably assist the farmer and the creditor in dealing with each other and the re-evaluation of the farm's insolvency. If necessary, expert assistance is available to any mediation process. The bill outlines the way in which a mediation process would occur. In short, a neutral, independent mediator would neither advise the farmer nor negotiate on behalf of either the farmer or creditor.

It is of concern to some that perhaps the most obvious difference between the old act and this new one is that the proposed process would be available only to insolvent farmers and not to farmers in financial difficulty as well, which is currently the case under the present Farm Debt Review Board. One wonders if the farmers in financial difficulty or those who are approaching insolvency would be able to apply for a 30-day stay of proceedings, as is the case for insolvent farmers. I am not certain of the value of limiting access to a process that may have enormous benefits to farmers foreseeing difficult financial times ahead. In other words, why not give a hand before things become a disaster?

It is a good idea to give farmers and creditors the option and the opportunity to appeal an administrator's decision to stay proceedings to a non-judicial appeal board; however, again, what recourse have those farmers and creditors in a situation where insolvency is fast approaching?

I am under the impression that there are two types of applications which can be made by farmers meeting one of three insolvency criteria. A farmer could apply to an administrator for: one, a stay of proceedings against him or her by all of his or her creditors; two, a review of his or her financial affairs; and mediation between him or her and all of his or her creditors for the purpose of assisting them to reach a mutually acceptable arrangement, as outlined in clause 5(1)(*a*); and three, a review of his or her financial affairs, a mediation between him or her and all of his or her creditors for the purpose of assisting them to reach a mutually acceptable arrangement, as outlined in clause 5(1)(*b*).

I trust that the Standing Senate Committee on Agriculture and Forestry can give some time to the full consideration of the elements of this bill and improve it, should it believe that improvement is warranted.

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

On motion of Senator Taylor, bill referred to the Standing Senate Committee on Agriculture and Forestry.

BILL CONCERNING AN ORDER UNDER THE INTERNATIONAL DEVELOPMENT (FINANCIAL INSTITUTIONS) ASSISTANCE ACT

SECOND READING —DEBATE ADJOURNED

Hon. John B. Stewart moved second reading of Bill C-77, concerning an order under the International Development (Financial Institutions) Assistance Act.

He said: Honourable senators, this bill relates to the International Development (Financial Institutions) Assistance Act which provides for Canadian financial assistance to international development institutions. The statute has a schedule listing the international financial institutions to which the provisions of the act apply. Let me give you an example or two, honourable senators. There is the Caribbean Development Bank and the Special Development Fund; the International Fund for Agricultural Development; and the Asian Development Bank.

The act provides that the Governor in Council may add the names of additional institutions to the schedule to the act. In 1994, the cabinet agreed that the Global Environment Facility Trust Fund and the Multilateral Fund for the Implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer would be eligible for financial assistance. To implement that decision, the government, by an order in council, added the names of those institutions to the schedule to the act. That order in council was made on November 15, 1994, and it was published in *The Canada Gazette* on November 30, 1994.

The act provides that when such an order in council has been made, it is to be laid before Parliament within 15 sitting days. In this case, the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations advised the Department of Foreign Affairs that that statutory requirement had not been met. The bill which is now before us is required to correct an oversight. It is required to authorize the commitments that have been made to the two international financial institutions that I mentioned.

A new order has been made adding those institutions to the schedule. That order is currently before Parliament. What needs to be done is to correct the oversight relative to the order in council that was made on November 15, 1994. The current bill will accomplish that rectification.

Neither the basic statute nor the bill appropriate money. The schedule lists the institutions which are included within the umbrella; the appropriation of money for those institutions takes place in the normal way. These two institutions are worthy. They are the multilateral instruments by which Canada supports projects in developing countries to protect biodiversity, to prevent climate change, to protect the ozone layer and to manage international waters.

I commend the bill to the speedy attention of the Senate.

On motion of Senator Andreychuk, debate adjourned.

[*Translation*]

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO MEET DURING SITTINGS OF THE SENATE

Hon. Lise Bacon, pursuant to notice of Thursday, April 17, 1997, moved:

> That the Standing Senate Committee on Transport and Communications have power to sit during sittings of the Senate for the duration of its study of Bill C-44, An Act 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.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

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Monday, April 21, 1997