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Tuesday, October 20, 1998

—

THE HONOURABLE EYMARD G. CORBIN
ACTING SPEAKER

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THE SENATE

Tuesday, October 20, 1998

The Senate met at 2:00 p.m., the Acting Speaker, Eymard G. Corbin, in the Chair.

Prayers.

[Translation]

THE LATE HONOURABLE MARIO BEAULIEU

TRIBUTES

Hon. John Lynch-Staunton (Leader of the Opposition):

Honourable senators, I want to pay tribute today to the Honourable Mario Beaulieu, who passed away on October 13, after a lengthy illness. He served only briefly in the Senate, yet long enough for every one of his colleagues to be impressed by his most charming personality.

I, for one, feel privileged to have known him for more than 30 years and to have crossed paths with him many times in politics.

[English]

The distinguished constitutional lawyer and poet Frank Scott often expressed his disappointment that in Canada, a country that has as many individual rights as any other, there was one right which Canadians seldom expressed, the right to fail. He meant, of course, that Canadians as a whole were not risk takers by nature. He would have been proud of Mario.

[Translation]

For him, no challenge was impossible. In his profession as a notary, his career in business, and his years as a political candidate or organizer, he ran into reverses of fortune on more than one occasion, but his confidence was never shaken, nor was he tempted to give up.

Mario was a man of great warmth, extreme generosity and an open and positive attitude, who awaited each new day with impatience and lived each new day with incredible energy. At last Saturday's funeral service, attended by hundreds of people from all walks of life, everyone was unanimous in their praise of Mario Beaulieu. With his passing we have lost a friend, a colleague, a political ally, a man who, even when the going got rough, never backed down and never gave up on anyone or any cause, even when many others were tempted to.

I would like to quote a paragraph from his book *La victoire du Québec*, which was published in 1971. It shows clearly how extremely lucid and clear-sighted was his view of Quebec society, a view as valid today as it was 27 years ago.

We are seeing a new nationalism emerge, one that no longer reflects provincial parochialism, but rather an opening out onto the continent. We must differentiate between our

heritage of years past, the exigencies of today, and the perspectives of the future, as we rise to our collective challenge and recognize its true dimensions. We are Quebecers in our hearts and in our minds, Canadians under law, and Americans by virtue of our geography. These are the realities on which Quebec needs to define and build its New Society.

Mario was, first and foremost, a loving and devoted husband and father. To his wife, Louise, and their children, François, Martine, Louis, Stéphane and Charles and all other members of the family, I offer my sincere condolences.

[English]

Hon. B. Alasdair Graham (Leader of the Government):

Honourable senators, few French Canadian politicians were as acutely involved in the early turf wars over the future of Quebec's role in Confederation as Senator Mario Beaulieu. When he supported Daniel Johnson in the race for the leadership of the Union Nationale in 1961, the "Quiet Revolution" was already firing up the imagination of Quebecers, and activists of all political stripes were centring their demands on a new deal with Canada.

•(1410)

This was a decade of intense and passionate political debate over the direction of la survivance at a time when the historic Report on Bilingualism and Biculturalism warned Canadians that we were on the eve of the greatest crisis in our history, a crisis caused by the frustrations suffered by Quebec's francophone majority over their inferior and unjust linguistic and economic status. Throughout the passion of these times, Mario Beaulieu was always on the front lines as a loyal supporter of the fiery Daniel Johnson and as a proud, nationalistic Quebecer renowned for his integrity and personal generosity.

By the time he was elected to the Quebec National Assembly in 1969, he was appointed minister of immigration, minister of financial institutions and minister of finance, as well as president of the treasury board in the government of Jean-Jacques Bertrand. Senator Beaulieu was also, of course, a faithful member of the Conservative Party, and was known to be a positive spirit, as a gentleman who worked overtime to bolster morale.

Mario Beaulieu will be remembered best as an engaging and dynamic yet very humble individual who was always prepared to serve the public interest. Whether it was the political realm of his beloved province or the contributions he made to the Senate of Canada, he was always prepared to serve the public interest without expecting anything in return. While he spent much of his life trying to secure a better deal for the Québécois, that better deal was always about tolerance, understanding and compromise. That better deal was always rooted in the beautiful concept of unity in diversity. That better deal was always about a great nation which was much more than simply the sum of its parts.

[*Translation*]

To his family and his many friends, we convey our most heartfelt condolences.

Hon. Normand Grimard: Honourable senators, I want to say a few words about the Honourable Mario Beaulieu. In my view, his greatest quality was his generosity. I do not mean generous with money, even though we know wealthy people who are stingy, which was not the case with Senator Beaulieu. He was generous with his friends in that he would give them good advice based on sound judgment. He was generous in that he was dedicated and took the time to support good causes and charities.

Senator Beaulieu was a shrewd businessman. His company was successful. He taught his children the tricks of the trade. They took over the business during the 30 months or so of his long illness.

Senator Beaulieu played a prominent role in politics. As Senator Graham mentioned earlier, he was one of the main advisors to the Honourable Daniel Johnson and Jean-Jacques Bertrand within the Union Nationale.

Senator Beaulieu filled the important position of Minister of Finance. I should point out that he was instrumental in implementing the Loto-Quebec lottery.

Senator Beaulieu was also very active as a member of the Conservative Party, which needed him during its difficult years, and which could still use his services today.

Mario Beaulieu travelled all over Quebec. I remember that in 1976 he came to visit and comfort me in Rouyn-Noranda, when I was running for the Conservative Party against the son of the late Réal Caouette, which tells you something about the dreadful outcome of that election for me.

The passing of Senator Beaulieu is a terrible loss, not only to his family, which he loved so much and to which I extend my deepest condolences, but also to his many friends, including myself.

[*English*]

SENATORS' STATEMENTS

THE LATE RIGHT HONOURABLE BRIAN DICKSON, P.C.

TRIBUTES

Hon. Jeremiah S. Grafstein: Honourable senators, rarely can we opine, without fear of inflation or exaggeration, on the designation of a truly great Canadian on his passing. Such is the precedent we can safely adopt on the premature passing of Brian Dickson, former chief justice of Canada. To call his

passing premature is appropriate, even though Brian Dickson's life exceeded the allotted biblical span of four score years.

After his retirement as chief justice almost a decade ago, he never ceased to deploy his unquenchable and irresistible talents on behalf of Canada. He died peacefully in his sleep last weekend at his farm, close to his adoring family, near the horses he loved and the acreage he so carefully tended. Yet, he was in the midst of a review of the military police for the Department of National Defence, after having chaired last year a civilian committee created especially to review our military justice system, so badly in need of renovation following the Somalia debacle.

For us in the Senate, his work is especially alive these last weeks as the Senate considers legislation respecting both the military justice system and issues respecting the independence of the judiciary. "But what did Dickson say?", I recall we asked ourselves several times just a few weeks ago. Then he agreed to appear before the Senate committee deliberating on Bill C-25, a bill to reform our military justice system.

What greater tribute can one pay to a jurist whose vision, words, ideas and works are still closely and hotly considered by lawyers and lawmakers alike? For Brian Dickson, always cognizant of judicial restraint, carefully and prudently led, and led again, and led again, to evolve our common law. His words burn ever bright as we debate anew issues respecting the independence of the judiciary, the reach and the limits of the Charter, or the line between law and politics in our Constitution.

Mr. Justice Dickson led especially on questions of minorities, whether the rights of the disabled or aboriginals, or the right to use English in the province of Quebec, or the right of a woman to decide on her own whether or not to have an abortion. On all these questions, Mr. Justice Dickson's decisions took the side of the disenfranchised and the weak.

All was not euphoric, however. I vividly recall the simmering dispute between Mr. Justice Dickson and Mr. Trudeau, a monumental clash respecting the power of the provinces in the repatriation of the Constitution. I recall watching Mr. Trudeau utter what he considered would be his last word on the Supreme Court decision, the majority decision led by Mr. Justice Dickson, in his address to the convocation in his honour at the University of Toronto. Then I turned to observe Mr. Justice Dickson, who sat in front of him, seething, in the audience. He was not pleased with Mr. Trudeau's last word.

We can even hear echoes of Mr. Justice Dickson's demarcation and convergence between legal precedent and politics in the last decision of the Supreme Court reference. History is still too green to judge which oak tree will stand.

Brian Dickson, ever and always a gentleman, was not an easy man for an easy time. He confronted all his tasks with unusual care, thoroughness and clarity of thought. Some of us on this side have read the recent decisions of the courts, so confused in their complexity that one can only hope that the example of Mr. Justice Dickson will win, anew, judicial converts for decisions of clarity, cohesion and judicial restraint.

[Senator Graham]

Mr. Justice Dickson served his country in war and in peace in a way that earns him a special place in the pantheon of great Canadian jurists along with Mr. Justices Rand and Hall, who he succeeded to the Supreme Court; Mr. Justice Spence and Chief Justice Laskin.

•(1420)

Brian Dickson was more than an adornment to Queen and country, and his wisdom will be missed. Yet, honourable senators, what is missing from a simple recall of his many honours and many achievements? What influenced Brian Dickson to travel so often against the grain until the unconventional became the conventional? Was it the war, which took from him one limb? Was it the unceasing pain of that disability? Was it his study of the masters of common law — Bracton on the power of precedent; Blackstone on rendering each man his due; Mansfield on toleration of religious worship, or Brougham on reform? Or, was it closer to home? Was it his Saskatchewan roots and his western perspective that painted his own derived truth of man's inhumanity to man that caused him to press ever forward with relentless urgency for redress on matters that required redress? The collage of colours maketh the man. So we say about the great and grand life of Brian Dickson — a life worth living and a life worth remembrance.

Perhaps we can end with the words of Tennyson, who said.

A man may speak the thing he will...
A land of settled government,
A land of just and old renown,
Where Freedom slowly broadens down
From precedent to precedent.

So say we. Ave, Brian Dickson! May you rest in peace!

Hon. Gérald-A. Beaudoin: Honourable senators, the Right Honourable Brian Dickson died at the age of 82. Appointed to the Supreme Court of Canada on March 26, 1973, he became Chief Justice on April 18, 1984 and retired on June 30, 1990.

[Translation]

Few judges have been so sorely missed on leaving the bench. It is my hope that one day a law historian will write his biography, for the life of Mr. Justice Dickson is well worth the telling.

What distinguished him was his courtesy, his sense of duty, his respect for others, his modesty, his love of work and his courage. Intellectually, he stood out for his logic, his good judgment, his legal skill and his open-mindedness.

[English]

His leadership at the top court occurred two years after the enshrinement in the Constitution of the Canadian Charter of Rights and Freedoms. That Charter was the greatest event in the judicial domain since the advent of federalism in 1867.

[Translation]

Brian Dickson modernized the Supreme Court: Because of his efforts, satellite appeals are possible, decisions are tabled, there is

a time limit on pleadings, and oral pleadings are not required for appeal applications.

He became well known for his approach to federalism, as witness *Location résidentielle*, *General Motors*, *O'Hara* and *Alberta Government Telephones*. He was right up there with Beetz, Duff, Laskin, Rinfret, Rand and Pigeon, to name only those no longer with us.

With respect to rights and freedoms, time will show Mr. Justice Dickson to be among those with the greatest and most lasting influence. He did not shrink from pointing out that the three arms of government — the legislative, the executive and the judiciary — have a role to play when it comes to rights and freedoms.

The Supreme Court of Canada handed down 354 Charter decisions. In 1985, during a conference in Ottawa on the Supreme Court of Ottawa, Chief Justice Dickson said that the 1982 Charter was the greatest challenge in the history of the Supreme Court of Canada. This court performed its duty admirably, leaving us no choice but to praise it. Many of the judges now on the bench quickly distinguished themselves in this area of the law.

In *Big M Drug Mart*, Chief Justice Dickson set out for the first time the test of proportionality and, in *Oakes*, he determined on behalf of the Court the criteria for the application of section 1 of the Charter. This test guides judges. He distinguished himself in many other court decisions on the Charter of Rights and Freedoms.

The Right Honourable Brian Dickson distinguished himself in many other areas of public and private law. He was involved in many areas of the law. His output was prolific.

I am impressed by the many decisions he gave. He drafted clear and precise notes. The decisions in *Hunter*, *Mahé*, *General Motors* and *Auditor General (Dye)* are particular examples.

He authored noteworthy dissents, as in *Public Service*, on the right to strike, and in a number of criminal law decisions.

[English]

History will retain some of his judgments. He was full of energy. His reputation has exceeded our boundaries. He has established relations and communication with chief justices of other democracies.

[Translation]

He was involved in university life. I note his participation in the conference on the Supreme Court of Canada organized by the University of Ottawa in 1985. He was also one of those who inspired the *Fédéralisme de demain* conference held at the University of Ottawa in August 1997. Mr. Justice Dickson had disciples.

He would have been very satisfied to know that his hard work was highly appreciated by the men and women of his time.

A great legal scholar and a man with extraordinary human qualities is gone.

[English]

WOMEN'S HISTORY MONTH

LOUISE MCKINNEY—
FIRST FEMALE MEMBER OF LEGISLATIVE ASSEMBLY OF ALBERTA

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, before the break I spent a few minutes during Senator's Statements reminding you that October was Women's History Month, and I introduced you to our first woman senator, Cairine Wilson. This afternoon, I should like to bring to your attention a woman by the name of Louise McKinney, who was one of the first women in Canadian history to sit as a member of a legislative assembly, the Legislative Assembly in the Province of Alberta.

Louise McKinney had always wanted to become a doctor. However, she was born in Ontario and in 19th century Ontario — and, indeed, in Canada — the option for any woman to become a doctor was simply not available. Instead, she became a teacher. As women often do, she made the best of it and received her first teaching position in Drayton, North Dakota, at the age of 18. At 26, she began what she considered to be her life's work. She became a paid organizer for the Women's Christian Temperance Union, the WCTU.

•(1430)

The WCTU was a hotbed of political and social activity. The membership rarely confined their activities to just the issue of temperance. Many early suffragettes and feminists could be found in their ranks. Women were often drawn to the organization because of the effect of drink upon women and children. However, they remained in the organization because it looked at the broader issues of equality for women and children.

In 1903, Louise McKinney moved with her husband back to Canada, and they settled in Claresholm, just south of Calgary. She continued her work with the WCTU and became well known in her community, gaining considerable recognition for her work in promoting female suffrage and temperance.

In 1915, she led the fight for the prohibition plebiscite in Alberta, and it passed, although it was never enforced. This was of such consternation to Louise McKinney that, women having won suffrage in Alberta in 1917, she decided that she would be a candidate. Non-partisan, she ran on a platform of prohibition and was elected easily.

While in office, prohibition was not the only issue to occupy her agenda. She actively worked on behalf of public health issues and was the force behind the establishment of institutions for the mentally handicapped. She also took positions to improve the working conditions of coal miners in her province. She worked to establish laws to help new immigrants, particularly in the area of language training. She was active in the formation of the United Farmers of Alberta, whose purpose was to enhance opportunities for farmers and farm families in the province.

Of special interest to women, Louise McKinney was instrumental in the passage of the Dower Act and its subsequent

amendments granting greater legal status to widows and separated wives. She criticized the government for the pitiful amount put in mothers' pensions. She was defeated in the election of 1921 by 46 votes, but this did not end her political involvement. She, of course, joined with Emily Murphy to become one of the Famous Five in their challenge which became known as the Persons Case.

Louise McKinney was considered by many as having been the best debater and orator in the Alberta legislature. Because of her experience with the WCTU, she was an expert on parliamentary rules. She certainly was a voice for issues of concern to women and children.

THE SENATE

POTENTIALLY LIBELOUS STATEMENTS MADE BY MEMBERS
OF REFORM PARTY—FILING OF STATEMENT OF CLAIM

Hon. Ron Gitter: Honourable senators, today in Calgary my lawyers filed a statement of claim alleging that I was defamed by a Reform member of Parliament and an employee in Preston Manning's office, along with the Reform Fund of Canada. The subject of my complaint is a fund-raising letter dated September 1998, distributed to 31,000 households in Alberta on Reform Party of Alberta letterhead, signed by the member of Parliament and prepared by Mr. Manning's aide.

I rise today in the Senate to speak publicly to the matter for the first time. I do so not because I seek to obtain the immunity provided by speaking to the issue in this chamber, for what I say here today I will repeat outside the chamber. I do so because my action in filing this lawsuit reflects upon the Senate of Canada and its members, whom I hold in high regard.

As a consequence, before I speak elsewhere, I prefer to provide my colleagues here with an insight into the reasons for my actions. I do not intend to get into the merits of the claim. This is not the place for such comments. That is for lawyers and courts, and I have every confidence in the fairness and wisdom of our judicial system.

I have taken such action without joy or happiness, I can assure you, but I did so without hesitation. I have taken such action because it is the only recourse available, and because to do nothing would be tantamount to accepting the correctness of the allegations contained in the letter, and to encourage a course of political tactics that are repugnant and unacceptable in Canadian political life.

I have taken such action for a number of other reasons. One, obviously, is to defend my family name and my reputation, which I have worked hard to build, as an active volunteer and public servant, but also I do so because the defendants, after being asked gracefully to apologize, chose to refuse and to continue the defamation in the media.

I have taken such action because so many of the comments being made about the Senate of Canada are erroneous, and fail to recognize the valuable contributions of this institution in maintaining the fragile structures that exist in this federation of Canada.

The issues involved here today, as in the case of the lawsuit of Senator Lawson filed this spring against the Reform Party of Canada, bring to the forefront very basic, simple concepts of dignity that are fundamental to the ability of our democratic institutions to survive and flourish, namely, the necessity and responsibility of those involved in public life to maintain an element of decorum, fairness and, above all, civility in their conduct.

To be clear, those of us in public life have an obligation to aggressively debate the issues, to question the policies of others, to engage in the cut and thrust of political dialogue and to advance our agendas and arguments in the most persuasive manner. These are all part of the political environment as we know it today in Canada, and they are acceptable and healthy. However, to enter into the unsavoury and mean-spirited tactics of character assassination, based on erroneously stated facts and out-of-context interpretations as a means to encourage campaign contributions is not only unacceptable, it is deplorable.

The inevitable results of such manoeuvres by those involved in the political mainstream of Canadian political life, if left unchallenged, if allowed to become the norm here in Canada, will be the growing disrespect for our institutions that are the cornerstones of our democratic traditions and for the dedicated men and women who choose to serve their communities, be it in this chamber, the House of Commons, our provincial legislatures or our city and town councils.

It is fair and appropriate to discuss the role of the Senate in our parliamentary system. We are doing that ourselves in a discussion that I have placed as an inquiry on the Order Paper and in many other ways. It is appropriate to examine our Constitution to see if, by amendment, we can make this place more useful and acceptable to Canadians.

The Hon. the Acting Speaker: I regret to interrupt the honourable senator, but his speaking time has expired. Is it agreed, honourable senators, that he may continue?

Hon. Senators: Agreed.

Senator Gitter: It is appropriate to examine our Constitution to see if, by amendment, we can make this place more useful and acceptable to Canadians, just as it is fair debate to call for the election of senators, the abolition of the Senate, or the stripping away of powers from the Prime Minister's Office and making our political system more transparent and open. It is neither fair nor appropriate to hold up our parliaments, our courts or the people who serve in them to shame and ridicule for the mere purpose of seeking political gain or soliciting donations.

This Americanization of our political way of life will only serve to demean and undermine the ability of our democratic institutions to function. It fuels the coals of cynicism, negativism and disrespect for our Parliament, our courts and their servants. It will only serve to discourage talented, educated and wise Canadians from entering public life — a serious problem, in my view, and confirmable by anyone in this place who has endeavoured to encourage someone else to seek public office. Why would one run for office, or accept an appointment in this place, only to face distrust and lack of respect and a potential barrage of personal attacks for political gain? It will only serve to make politics more irrelevant to a growing number of Canadians

who are becoming increasingly apathetic to the goings-on in the capital cities of this nation.

In the 1993 federal election, 70 per cent of eligible voters cast their ballots. In June of 1997, the percentage dropped to 67 per cent nationally, and to only 59 per cent in Alberta. Provincial and municipal elections — even yesterday in my province — showed the same voting trends. Even more alarming is the low turnout of first-time voters in Canada.

There are, of course, many reasons for this growing apathy and apparent irrelevance of our political system but it must not pass unnoticed. The defacement of civility is one of them. Let us not forget that it was the Reform Party who promised to restore civility to Canadian politics. The following statements have been made by the leader of the Reform Party of Canada:

We will campaign on principle and specifics, and avoid the simple bashing of opponents and the manipulation of symbols.

On another occasion, Mr. Manning stated:

I also want to emphasize that we in the Reform Party are not interested in personal attacks on individuals or in bashing any group or region in Canada.

How sad it is that they have never learned to walk their talk. How sad it is that they have now become a political party reduced to name-calling and smear tactics.

•(1440)

I learned as a trial lawyer that in court you endeavour to argue the strongest case possible for your client, but you do so in the most respectful way to the court and to the opposing counsel. At the end of the case, you compliment the other counsel, perhaps even go out for coffee with him or her, but you do not demean or ridicule his or her work, or their commitment to their client.

In politics, no doubt a rough-and-tumble world, where words can become inflamed and rhetoric flamboyant, there must still be an underlying concept of fairness and respect within a framework of honest and substantive debate, and a willingness to improve our parliamentary system.

There may be times in this chamber, and in the other place, where disagreements are profound and differences on policy matters as wide as the broadest chasm. However, during and after the debate, we do, I hope, still respect each other and the duties and responsibilities we are here to maintain.

Free speech must never be confused with defamation and slander. Differences of opinion must never be reduced to bitterness and hatred. Perceived political power and influence must never be used as a sword to undermine our fundamental political institutions and thrust personal attacks for political gain against persons who serve these institutions.

We must all work together, whatever our political leanings, to build respect and esteem for our political institutions and our political processes. We must all work together to overcome the cynicism and apathy that is so evident at times in Canada today. If we fail, we will all be the losers.

ALBERTA

RESULTS OF REFERENDUM ON ELECTED SENATORS DURING ELECTION

Hon. Shirley Maheu: Honourable senators, I rise today to share with you a few interesting details with regard to the "senator-in-waiting" ballot in Alberta.

According to the provincial writer in *The Edmonton Journal*, it is estimated that over half the voters in Edmonton yesterday refused to cast a ballot when asked to choose their candidate. I wish to render my interpretation of what the voters are thinking.

Though voters in Alberta see the importance of Senate reform, it is my belief, and that of *The Edmonton Journal* writer, that Albertans do not wish to breach the Canadian Constitution. This serves as a message to all Canadians that the Reform Party's agenda and utter disrespect for the Constitution is not acceptable.

I congratulate the people of Alberta for respecting our Constitution, and perhaps the leader of the opposition in the other place will take note.

FOREIGN AFFAIRS

COMMEMORATION OF FORTY-FIFTH ANNIVERSARY OF CEASEFIRE IN KOREAN WAR

Hon. Norman K. Atkins: Honourable senators, Senator Johnstone and I have recently returned from a trip to Japan and South Korea that we took with a number of Canadian Korean War veterans to recognize the forty-fifth anniversary of the ceasefire in the Korean War. During this trip we had the opportunity to visit numerous memorial sites and attend a number of moving ceremonies in Brampton, Vancouver, Esquimalt, Yokohama, Seoul, P'anmunjom, Kap'yong, Naechon, and Pusan.

South Korea is a developing nation with a population of 45 million people. There is construction virtually everywhere you go. They have a transportation system that is quite remarkable, in view of the fact that there was literally nothing there 45 years ago. Their economy has advanced, and that is evident everywhere you look in the country.

I was particularly touched at the warmth displayed by the South Koreans to the Canadian Korean War veterans, obviously an acknowledgement of Canadian participation during the Korean War.

There were some very moving moments, but several events we attended stand out: the repatriation of five unidentifiable bodies, which were transferred from the North Koreans to the UN command in P'anmunjom; the service in Kap'yong where the PPCLI regiment distinguished itself in battle, and our visit to the UN Memorial Cemetery in Pusan where 376 Canadians are buried.

Questions have been raised as to the value of these pilgrimages. As a result of my recent experience on this pilgrimage, I am convinced that they are a very important component of the mandate of the Department of Veterans Affairs. Through this type of trip, we establish and maintain important relationships in foreign countries where Canadians have fought and died with honour.

In the case of South Korea, Canadians clearly made their mark, and it made those of us who accompanied the Korean War veterans very proud. It was an honour for me, and I think I also speak for Senator Johnstone when I say that the past two weeks on this pilgrimage were very memorable. To have been included as members of the Canadian Senate was, for us, a great privilege.

NEW BRUNSWICK

CONGRATULATIONS TO LEADER OF CONSERVATIVE PARTY ON ELECTION

Hon. Mabel M. DeWare: Honourable senators, when the legislature in New Brunswick opens its next session, the leader of the Conservative Party will take his rightful place in the legislature because yesterday, in three by-elections in New Brunswick, our leader won his seat in Moncton East, and we also won Fredericton South. That riding in Moncton East has been held by the Liberal Party for 24 years. Congratulations. It now belongs to the leader of the Conservative Party for New Brunswick.

I congratulate all those in New Brunswick who found their rightful place and decided to vote in the proper way yesterday.

[Translation]

DISTINGUISHED VISITORS

The Hon. the Acting Speaker: Honourable senators, I call your attention to the presence in our gallery of the members of the Sub-Commission on Economic Relations of the Parliamentary Assembly of the Council of Europe. Welcome to the Senate of Canada.

[English]

ROUTINE PROCEEDINGS

CANADIAN PARKS AGENCY BILL

REPORT OF COMMITTEE

Hon. Ron Gitter, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Tuesday, October 20, 1998

The Standing Senate Committee on Energy, the Environment and Natural Resources has the honour to present its

FOURTH REPORT

Your committee, which was referred the Bill C-29, an Act to establish the Parks Canada Agency and to amend other Acts as a consequence, has, in obedience to the Order of Reference of Monday, June 15, 1998, examined the said bill and now reports the same without amendment but with the following observations:

During its study of Bill C-29, the committee heard a number of suggestions from witnesses that it feels merit further consideration by the minister:

(1) That the Preamble of Bill C-29 be expanded to stress and reinforce the conservation mandate of the proposed Agency. The following wording has been proposed:

To effect the conservation of ecosystems and natural areas that extend beyond national park boundaries by working in co-operation with adjacent landowners, and being involved in research, environmental assessment and planning processes within the region;

(2) That a statement of purpose for the Agency be added to strengthen the legislation. The following wording could be used:

The purpose of the Agency is to protect nationally significant examples of Canada's natural and cultural heritage in national parks, national historic sites, marine conservation areas and related heritage areas, and to commemorate and present these places in ways that encourage long term ecological and commemorative integrity;

(3) That the Minister of Canadian Heritage create a national advisory council, comprised of informed stakeholders, and that the council meet quarterly with Parks Canada Agency management; and

(4) That a requirement for public input into the formation and/or alteration of management plans be added to the legislation.

Respectfully submitted,

RONALD D. GHITTER
Chair

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

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

BUSINESS OF THE SENATE

ADJOURNMENT

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

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, October 21, 1998, at 1:30 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

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COMPREHENSIVE NUCLEAR TEST-BAN TREATY IMPLEMENTATION BILL

FIRST READING

The Hon. the Acting Speaker informed the Senate that a message had been received from the House of Commons with Bill C-52, to implement the Comprehensive Nuclear Test-Ban Treaty.

Bill read first time.

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

On motion of Senator Carstairs, bill placed on the Orders of the Day for second reading on Thursday next, October 22, 1998.

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STANDING JOINT COMMITTEE—MESSAGE FROM COMMONS

The Hon. the Acting Speaker informed the Senate that the following message had been received from the House of Commons:

Ordered,—That the Standing Joint Committees be composed of the Members listed below:

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Members: Bailey, Catterall, Clouthier, Finlay, Grey (Edmonton North), Karygiannis, Lavigne, Lill, Malhi, Mayfield, Mercier, Plamondon, Price, Redman, Saada, St. Denis—(16)

Associate Members: Davies, Dumas

OFFICIAL LANGUAGES

Members: Bélanger, Bellemare, Bradshaw, Coderre, Finestone, Goldring, Kilger, Mark, McTeague, McWhinney, Meredith, Muise, Paradis, Plamondon, Tremblay (Rimouski—Mitis), Vautour—(16)

Associate Members: Brien, Dumas, Godin, Nystrom

SCRUTINY OF REGULATIONS

Members: Bailey, Bryden, Casey, DeVillers, Epp, Gouk, Grewal, Jennings, Lebel, Lee, Malhi, Maloney, Murray, Nystrom, Saada, Venne, Wappel—(17)

Associate Members: Axworthy (Saskatoon—Rosetown—Biggar), Bellehumeur, Guimond, Marceau

That a message be sent to the Senate to acquaint their Honours of the names of the Members to serve on behalf of this House on the Standing Joint Committees.

ATTEST

ROBERT MARLEAU
The Clerk of the House of Commons

[*Translation*]

CANADIAN NATO PARLIAMENTARY ASSOCIATION

CANADIAN DELEGATION TO SPRING SESSION OF NORTH ATLANTIC ASSEMBLY HELD IN BARCELONA, SPAIN—REPORT TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to table the fifth report of the Canadian NATO Parliamentary Association. This is the report of the official delegation that represented Canada at the 1998 spring session of the North Atlantic Assembly (Parliamentarians from NATO countries) held in Barcelona, Spain, from May 22 to 26, 1998.

[*English*]

SOLICITOR GENERAL

COMMISSION OF INQUIRY INTO TREATMENT OF PROTESTORS AT APEC CONFERENCE BY RCMP—PROVISION OF FUNDS FOR DEFENCE OF STUDENTS—NOTICE OF MOTION

Hon. Pat Carney: Honourable senators, I give notice that on Thursday, October 22, 1998, I will move:

That the Senate supports the granting of funding for legal counsel to complainants at the APEC hearing in Vancouver before the RCMP Public Complaints Commission.

UNIVERSAL DECLARATION ON HUMAN RIGHTS

COMMEMORATION OF FIFTIETH ANNIVERSARY—NOTICE OF INQUIRY

Hon. Lois Wilson: Honourable senators, I give notice that on Thursday next, October 22, 1998, I shall call the attention of the Senate to the fiftieth anniversary year of the Universal Declaration of Human Rights and its implications for Canada.

**ORGANIZATION FOR SECURITY AND COOPERATION
IN EUROPE**

PARLIAMENTARY SEMINAR ON CONFLICT RESOLUTION AND DEMOCRATIC DEVELOPMENT IN THE CAUCASUS HELD IN TBILISI, REPUBLIC OF GEORGIA—NOTICE OF INQUIRY

Hon. Jeremiah S. Grafstein: Honourable senators, I give notice that on Thursday next, October 22, 1998, I shall call the attention of the Senate to the Organization on Security and Cooperation in Europe's parliamentary seminar on conflict resolution and democratic development in the Caucasus held in Tbilisi, Republic of Georgia, from October 3 to 6, 1998.

QUESTION PERIOD

SOLICITOR GENERAL

COMMISSION OF INQUIRY INTO TREATMENT OF PROTESTORS AT APEC CONFERENCE BY RCMP—PROVISION OF FUNDS FOR DEFENCE OF STUDENTS—RE-EXAMINATION OF ISSUE

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, last Thursday I had the opportunity to join with a number of human rights experts from across Canada in meeting with the Solicitor General. Human rights experts such as Alan Borovoy of the Canadian Civil Liberties Union and Warren Allmand, President of the International Centre for Human Rights and Democratic Development and a former solicitor general, urged upon the Solicitor General that he take a ministerial decision and provide funding for the students who are appearing before the RCMP

Complaints Commission. In a communiqué received on Friday, we learned that the Solicitor General has said that the government did not wish to do that.

My question to the Leader of the Government in the Senate is: Would he tell this chamber whom in the government the Solicitor General would have consulted that enabled him to state that “the government had considered the matter”? Was it the “forces of darkness” in the Prime Minister’s Office, someone else in the Prime Minister’s Office, or the Prime Minister himself?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, Senator Kinsella would know that the Solicitor General would have taken into very careful consideration the representations that were made by the members of the distinguished group who were present at his meeting on Thursday.

After consideration, the following day the Solicitor General wrote to Gerald Morin, Chair of the panel of the RCMP Public Complaints Commission. I do not intend to read the entire letter but I would be happy to table the letter if that be the wish of Senator Kinsella and others. However, he did say that he was writing to advise the members of the panel that the government had carefully considered the matter and decided to maintain the decision communicated by letter of August 31, 1998 that funding for the complainant’s legal fees would not be provided.

The author of the letter further states that the government endorses the view expressed in Mr. Morin’s letter to Minister Scott that all parties appearing before the panel would be treated with dignity and fairness.

Mr. Scott made clear that the government was of the view that the panel could address all the complaints before it in an open and thorough manner without the need for the government to provide funding for legal counsel to complainants.

He noted that, further to the commission’s request, the government recently provided the complaints commission with additional resources in the amount of \$650,000 to support the panel’s work, and that the government will continue to provide the commission with the necessary means to complete its inquiry.

Mr. Scott concluded that for the reasons stated above, the government believes that the panel continues to enjoy the full confidence of Canadians, and awaits the findings and recommendations.

Senator Kinsella: Honourable senators, we would welcome the tabling of that letter. Perhaps we could also have tabled the letter that Mr. Morin wrote to the Solicitor General.

Honourable senators will be interested to discover that the letter contains six paragraphs. In those six paragraphs we find the phrases “the government believes,” “the government has considered,” “the government provides,” and “it is the view of the government.” The request went from the RCMP complaints commission to the Solicitor General requesting a decision of the Solicitor General. The letter contains eight references in the space of six paragraphs to an articulation of the government’s position.

•(1500)

My question to the Leader of the Government in the Senate is this: Is there not a clear distinction between the responsibility of the Solicitor General, on the one hand, and the responsibility of the government, on the other hand? More particularly, in this instance the government has been arguing that the RCMP Complaints Commission ought to be the vehicle that gets to the bottom of these alleged human rights abuses; yet it turns around and says that the government will not provide any assistance with inquiries, which it would have normally provided with inquiries under the Inquiries Act.

Perhaps the minister could clarify something else for us. The government is a co-respondent to the very matter that is before this police commission. The Solicitor General indicates this eight times in his letter. How is it that the government can be a co-respondent and influence whether or not the victims or complainants have counsel?

Senator Graham: Honourable senators, different ministers have different styles. Minister Scott has obviously chosen to use the collective “we” instead of “I”, but always he would be speaking on behalf of the government as a whole. As the Solicitor General, he is the minister responsible for this particular investigation. He is the spokesperson for the government, and presumably that is why he responded on behalf of the government.

Senator Kinsella: Honourable senators, is the honourable minister suggesting that the Solicitor General does not have quasi-judicial responsibility under our parliamentary system, and that in this instance we are dealing with precisely a request pursuant to statutes of Parliament that assign a quasi-judicial responsibility to the Solicitor General in contradistinction to his or her role as a member of the cabinet?

Senator Graham: Honourable senators, as I said, the Solicitor General in this respect was responding on behalf of the government as a whole.

COMMISSION OF INQUIRY INTO TREATMENT OF PROTESTERS
AT APEC CONFERENCE BY RCMP—POSSIBILITY OF PUBLIC
INQUIRY—GOVERNMENT POSITION

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): My final supplementary question, honourable senators, is this: Considering the public has now lost confidence in the ability of the RCMP Public Complaints Commission to do its job, will the Leader of the Government tell the Senate whether his government will now launch an inquiry under the Inquiries Act into the alleged human rights violations that occurred at the APEC conference?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, contrary to my honourable friend’s belief, I believe that Canadians have every confidence in the public complaints commission. If my honourable friend were to carefully examine the record of the public complaints commission, he would find that they have an outstanding reputation not only in Canada, but internationally. It would be inappropriate to go further and to call for a public inquiry while there is a commission to do that very job at the present time.

COMMISSION OF INQUIRY INTO TREATMENT OF PROTESTERS AT
APEC CONFERENCE BY RCMP—ALLOCATION OF FUNDS FOR
DEFENCE OF STUDENTS—GOVERNMENT POSITION

Hon. Pat Carney: Honourable senators, my question is also directed to the Leader of the Government in the Senate.

The executive director of the RCMP Public Complaints Commission has stated that the APEC hearings are budgeted to cost taxpayers roughly \$1 million, which would be the most expensive in Canadian history. On what basis was this estimate made? What percentage of the legal costs will cover the government's legal bills and what percentage will cover the RCMP legal bills?

I realize that my colleague may not have this information immediately available, but I would ask him to table it in the Senate as soon as possible.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I would be very happy to respond to the request from my honourable friend. There have been indications that the government has provided, as I just mentioned, something in the order of \$650,000. The public complaints commission would have its own budget. I suspect that the commission will require more money as time goes by and as the commission continues its work, and the government would be prepared to respond in a positive way to further requests for funding.

Senator Carney: Honourable senators, obviously the government will respond in a positive way to a request for funds to cover the cost of government lawyers to protect the government, but the issue here is the funding of money to protect the students.

A woman recently wrote in the *Victoria Times-Colonist* that murderers, rapists and thieves in Canada are granted the right to legal representation when appearing before our various commissions and courts. Given the fact that the government proposes to use our tax dollars to defend itself, why is it that no funds have been allocated to help defend the students' rights, or are they to be violated in the same way their human rights were violated during the pepper spray incident?

Senator Graham: Honourable senators, it is important to recognize that under our established rules on procedures any public servant while on active duty — and this includes the Royal Canadian Mounted Police — and while being investigated in a matter of this kind is provided with legal assistance. They are not the complainants, they are the accused. In this particular case — and I am sure there are many precedents for the kind of action the government has taken here — complainants are not funded. Lawyers are not provided for complainants.

Of course, the government feels that it is responsible to the Canadian taxpayer. In this particular case, where would it end? What kind of precedents would be set? That is the decision that has been taken.

Now that things have settled down somewhat, it would be wise for us to watch how the work of the commission unfolds in the coming days and weeks.

COMMENTS OF MINISTER RELATING TO SECURITY
ARRANGEMENTS AT 1999 FRANCOPHONIE CONFERENCE IN
MONCTON, NEW BRUNSWICK—GOVERNMENT POSITION

Hon. Brenda M. Robertson: Honourable senators, my question is for the Leader of the Government in the Senate.

The Solicitor General is reported in the *Moncton Times-Transcript* of September 11, 1998 — and I shall table this document afterwards, honourable senators — to have made comments regarding security at La Francophonie Summit in Moncton in September of 1999. Some of these comments are very disturbing to the residents of New Brunswick, in particular the residents of Moncton. The Solicitor General is reported to have told *The Times-Transcript*:

Solicitor General Andy Scott told *The Times-Transcript* the measures used to control students at the University of British Columbia during last November's meeting of the Pacific Rim leaders in Vancouver — if endorsed by the RCMP Public Complaints Commission — would be justified in a similar action.

Does this mean that La Francophonie Summit will be exposed to the same security arrangements that led to students and other demonstrators being pepper sprayed and roughed up by the RCMP?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I sincerely hope that that will not be the case. Many lessons were learned as a result of the APEC Summit held in British Columbia. One of the first was related to the site that was chosen.

I know that the former secretary general of the United Nations, who is the Secretary General of La Francophonie, visited Moncton and had meetings with those who will be directly concerned with La Francophonie of 1999. I am sure that he and all those responsible will take every precaution to ensure that incidents of this kind are not repeated, while at the same time not preventing any peaceful demonstrations in which Canadian citizens may wish to engage.

GUIDELINES FOR SECURITY ARRANGEMENTS AT 1999
FRANCOPHONIE CONFERENCE IN MONCTON, NEW
BRUNSWICK—REQUEST FOR PARTICULARS

Hon. Brenda M. Robertson: Honourable senators, I do not take much comfort from that.

Honourable senators, we know that the Americans and the Indonesians have been allowed to bring guns into Canada, in the American case for the recent Clinton-Chretien Summit and in the Indonesian case with respect to the APEC Summit. I should like to know what guidelines regarding weapons, in particular, will be applied to La Francophonie.

•(1510)

Before the honourable leader gives his answer, I should like to quote again from this interesting article.

This is what is happening in Moncton:

In September of 1999, Moncton will host the leaders of 49 countries from all corners of the world. Members include Togo, which has the longest serving dictator in Africa, and human rights hot spots such as Rwanda, Burundi, Congo and Haiti. By contrast, last year's Asia Pacific Economic Co-operation summit involved 15 countries.

I repeat my question: What guidelines regarding weapons will be applied to the francophonie conference?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I thank the honourable senator for bringing this matter to our attention because there are many lessons that can be learned from incidents that have occurred. I think that the City of Moncton and the Province of New Brunswick should be congratulated on the fact that they have been selected to host the very important francophonie conference, which will involve representatives from 49 countries, if they all attend.

I do believe that at the time of the APEC summit in Vancouver, there were 17 countries who held membership in that organization. I believe that membership is now up to 21.

As I understand it, following the revelation that those who came to protect the President of the United States, for example, or other heads of state from other countries, were carrying weapons, they were given temporary status as peace officers and registered as agents on behalf of the government. This then allowed them to carry weapons in a lawful manner. A reciprocal agreement was reached whereby the members of the Royal Canadian Mounted Police who travel with whatever Prime Minister happens to be in office at the time, are also allowed to carry weapons into other countries.

With respect to the guidelines, I want to assure the honourable senator that we learn from the past. It is to be hoped that the lessons we learn from the past can be put to beneficial use in the future. I do not know that those guidelines have been finalized. Certainly, they will be examined carefully. I am sure the Royal Canadian Mounted Police, in conjunction with other relevant agencies, and in consultation with representatives of other countries, will ensure that every precaution is taken to protect not only the people who come to the summit but also the citizens of Canada.

I recognize and thank the honourable senator for bringing this matter to the attention of the Senate. At the same time, I recognize that each host country has responsibility for the protection and security of anyone who comes to such a conference from another country.

Senator Robertson: Honourable senators, those responsibilities are well recognized by everyone in this chamber, and by most Canadians.

What New Brunswickers want, and in particular the citizens of Moncton, is the assurance that no one, whether they be members of the RCMP or anyone else, will infringe on their human rights. The democratic process has to proceed, and human rights must be protected.

I shall await with interest the responses to these questions by the honourable leader.

Senator Graham: Honourable senators, the honourable senator makes a valid point. I could give an undertaking at the present time on behalf of the government that the human rights of the citizens of Moncton will be protected and honoured in every respect.

JUSTICE

SALE OF AIRBUS AIRCRAFT TO AIR CANADA— ALLEGATIONS OF DISCUSSIONS REPORTEDLY HELD BY PRIME MINISTER—GOVERNMENT POSITION

Hon. Marjory LeBreton: Honourable senators, my question is directed to the Leader of the Government in the Senate. It goes right to the heart of a serious problem. I refer to the Prime Minister's intolerance of views other than his own, and his disregard for political opponents, even those who have left office. The implications of this are most serious.

As found at page 303 in the new book, *Presumed Guilty* by William Kaplan, and as reported in *The Ottawa Citizen* on October 2, 1998:

...after expressing great envy about Brian Mulroney's lifestyle and post-prime-ministerial professional and financial success, Chrétien confided to a prominent Ottawa businessman, a man he had known for years, that he had been thinking about calling a royal commission into the Airbus, but decided against it.

This is an interesting revelation, given that the Prime Minister said on November 20, 1995, in Tokyo that the November 18, 1995 *Financial Post* story was the first he had heard of the matter.

Will the Leader of the Government confirm that the Prime Minister did, indeed, confide to an Ottawa businessman in the summer of 1995 that he had been thinking of calling a royal commission into Airbus?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, as the honourable senator would recognize, I think it would be impossible for me to know of the private conversations that the Prime Minister, or any other citizen of this country, had with another. It would not only be impossible for me to respond but inappropriate for me to speculate.

Senator LeBreton: Honourable senators, perhaps I can ask the Leader of the Government to ask the Prime Minister this simple question: Did the Prime Minister openly discuss Airbus sales to Air Canada and the alleged involvement of the former prime minister at any time prior to the September 1995 letter that was sent to the Swiss government?

Senator Graham: Honourable senators, I will certainly bring the honourable senator's comments to the attention of the Prime Minister. Whether or not I will get a response is something else again.

NATIONAL FINANCE

LONG-RANGE PROJECTIONS OF FISCAL POLICY BASED ON DEMOGRAPHIC TRENDS—POSITION TAKEN BY AUDITOR GENERAL—REQUEST FOR RESPONSE

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. I wish to refer to an earlier question I asked on June 16, 1998 in this chamber, dealing with the Auditor General's report. I should like to quote excerpts from the question that I asked at that time. I said:

According to an article in today's *Financial Post*, it appears that the Auditor General is again clashing with the Department of Finance. This time Mr. Desautels wants the department to provide regular, long-term fiscal projections on the likely impact of an ageing population on the government's financial condition, because pressures will be immense if debt burdens remain high.

I went on to say:

For example, the United States, the United Kingdom, Australia and New Zealand all provide this kind of information in some form or other. The Labour government in Britain recently introduced a code for fiscal stability that calls for projections of not less than ten years to show the intergenerational impact of fiscal policy.

If other governments are doing that because of the impact of the ageing baby boomer population on the fiscal house of the government, why are we not doing something about it? This issue will be haunting the leader for some time.

If I may, honourable senators, I should like to quote the response of the Leader of the Government, in order to completely refresh his memory. He replied:

It could well haunt me, honourable senators. However, I am quite satisfied that the Government of Canada has embarked upon long-range studies, and as soon as they are available they will be made public.

Will that information be forthcoming shortly?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, the long-range view on whether I can give a short answer in a short space of time remains to be seen. I certainly shall make inquiries.

Senator Stratton: Honourable senators, I received a telephone call from the leader's office before we came back in September. I was told that I would be receiving this information. Is the Leader of the Government aware of that telephone call to my office saying that that information would be coming down?

Senator Graham: Honourable senators, I do not keep track of every telephone call that is made either into my office or from my office. Indeed, I asked my staff to keep you informed. As a consequence, and since my staff is an excellent one, the call was

made. I could not say exactly on what day, at what time or by what person, but I can confirm that I had asked that they keep you informed.

•(1520)

Senator Stratton: Honourable senators, I am rather curious because just after the phone call took place and the information was to be forthcoming provided I did not table it in the Senate — with which I agreed — the actuary for the Canada Pension Plan was fired.

Senator Di Nino: It is your fault!

Senator Stratton: It is rather curious. I do not know if there is a link there or not. This information was to be sent over and then, all of a sudden, boom, there was silence!

Senator Graham: Honourable senators, I am glad that Senator Stratton is prepared to share not only the fame but also the blame.

SOLICITOR GENERAL

GUIDELINES FOR SECURITY ARRANGEMENTS APPLICABLE TO VISITING FOREIGN DIGNITARIES—GOVERNMENT POSITION

Hon. Norman K. Atkins: Honourable senators, my question is to the Leader of the Government in the Senate. It is a follow-up to the question Senator Robertson asked with regard to security carrying weapons. She asked what the guidelines would be for visiting dignitaries who come from foreign jurisdictions to the francophonie conference in 1999.

For any foreign leader who comes into this country today with security, is it the policy of the government to allow that security to carry weapons in every case?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, certainly not in every case, but by a pre-determined arrangement the answer could be in the affirmative.

Senator Atkins: The question then is: What are the guidelines that allow that to happen in the present circumstances?

Senator Graham: Honourable senators, I will have to get a more detailed answer. Some information has been provided through the media already, that under certain pre-determined arrangements, both the forces who protect our Prime Minister and our Governor General when they travel abroad are permitted to carry weapons. These reciprocal arrangements have been made for to protect leaders of other countries who come to Canada for special conferences — whether it happens to be the President of the United States, who was also one of the attendees at the APEC conference in Vancouver; the President of Indonesia, the President of the Philippines, or whomever. They are of more recent vintage but, perhaps, as the inquiry and the work of the complaints commission unfolds and witnesses are examined, we will find that there are other precedents. I urge all honourable senators to follow very closely the work of the commission. It should prove to be interesting and elucidating.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Sharon Carstairs (Deputy Leader of the Government): Honourable senators, I have a response to a question raised in Senate on October 1, 1998, by the Honourable Senator Mira Spivak, regarding the explosion on the highway near Sudbury, Ontario and request for public inquiry; a response to a question raised in the Senate on September 23, 1998, by the Honourable Senator Pat Carney, regarding the cancellation of the program to destaff lightstations, availability of funds for boating safety issues; and a response to a question raised in the Senate on September 24, 1998, by the Honourable Senator Terry Stratton, regarding the treatment of protesters at the APEC conference by the RCMP and the jailing of a student prior to the conference.

THE ENVIRONMENT

EXPLOSION ON HIGHWAY NEAR SUDBURY, ONTARIO—
REQUEST FOR PUBLIC INQUIRY—GOVERNMENT POSITION

(Response to question raised by Hon. Mira Spivak on October 1, 1998)

Safety is Transport Canada's top priority. Transport Canada is working with officials of Natural Resources Canada, assisted by officials of the Ministry of Transport of Ontario and the Ontario Provincial Police in investigating the explosion. The report of this coordinated investigation will be made public.

Either Natural Resources Canada, under the *Explosives Act* or Transport Canada, under the *Transportation of Dangerous Goods Act* could conduct an investigation or an inquiry into the explosion. However, neither Natural Resources Canada nor Transport Canada feel an inquiry would provide any more information than could be gathered in an investigation. Consequently, Natural Resources Canada and Transport Canada are conducting a joint investigation of the cause of the detonation and of its effect. The Ontario Ministry of Transport will assist in the investigation with respect to the cause of the traffic accident.

Although the *Transportation of Dangerous Goods Act* could be used to establish an inquiry, its extent would necessarily be limited by the scope of the *Transportation of Dangerous Goods Act*. In order to involve the four affected agencies (Transport Canada, Natural Resources Canada, Ministry of Transport of Ontario and the Ontario Provincial Police), a coordinated investigation has been established. The report of the investigation will include the identification of any needed regulatory changes.

If the investigation shows that the explosion took place in spite of compliance with the *Transportation of Dangerous Goods Act* and regulations and the *Explosives Act* and regulations, the regulations made under one or both of these Acts will be modified with the intention of preventing a recurrence.

BRITISH COLUMBIA

CANCELLATION OF PROGRAM TO DESTAFF LIGHTSTATIONS—
AVAILABILITY OF FUNDS FOR BOATING SAFETY ISSUES—
GOVERNMENT POSITION

(Response to question raised by Hon. Pat Carney on September 23, 1998)

Lightstations on the west coast are fully automated and have been for many years. It is for this reason that Coast Guard officials proposed as a cost saving measure the removal of lightkeepers from the remaining 27 staffed sites.

Last March the government announced that it had listened to the people of British Columbia who spoke eloquently about the need to retain lightkeepers on lightstations. It was made perfectly clear at that time that there were no safety concerns with sites that had already been destaffed and many of the remaining stations could have been destaffed without compromising safety.

The Coast Guard expenditures of \$2.3 million relate to work already undertaken as part of the lightstation modernization project, to conclude the demonstration projects already under contract, and to refurbish the sites for a retained human presence. Significant additional expenditures will be required to maintain a staffed presence at these sites.

SOLICITOR GENERAL

TREATMENT OF PROTESTORS AT APEC CONFERENCE
BY RCMP—JAILING OF STUDENT PRIOR TO CONFERENCE—
GOVERNMENT POSITION

(Response to question raised by Hon. Terry Stratton on September 24, 1998)

The RCMP Public Complaints Commission consists of a Chairman, a Vice-Chairman, a member for each province or territory that contracts for RCMP services, and not more than three other members. They are appointed by order of the Governor in Council.

No member of the RCMP is eligible to be appointed as a member of the Commission.

The Chair of the RCMP Public Complaints Commission, Shirley Heafey, announced the establishment of the Public Interest Hearing into events arising from the APEC Forum on February 20, 1998.

Commission Member Gerald Morin (Saskatchewan) will chair the panel which will also include Members Vina Starr (British Columbia) and John Wright (Yukon).

ORDERS OF THE DAY

DNA IDENTIFICATION BILL

SECOND READING—DEBATE ADJOURNED

Hon. John G. Bryden moved the second reading of Bill C-3, respecting DNA identification and to make consequential amendments to the Criminal Code and other Acts.

He said: Honourable senators, I am pleased to speak today to Bill C-3, the DNA Identification Bill, which provides for the establishment of a national DNA data bank.

This bill is a major milestone in the government's safer communities agenda. It marks the second phase of the government's DNA strategy. The first phase was implemented in July 1995, when amendments to the Criminal Code were passed to create a DNA warrant framework. Those amendments authorized provincial court judges to issue a warrant allowing the police to collect samples of bodily substances for DNA analysis from a person suspected of having committed a designated offence. This law has been used successfully throughout Canada to help solve very serious and violent crimes.

With the warrant structure firmly in place, the government is now proposing a legal framework for storing both DNA samples and the resulting profiles. It is another concrete step toward better protecting Canadians from violent criminals.

As we all know, forensic DNA analysis has been instrumental in securing convictions and has helped to exonerate wrongly convicted individuals. However, DNA analysis also raises important ethical and Charter concerns because it has the ability to reveal a great deal about a person — much more than is revealed by traditional forensic techniques such as fingerprinting.

Given the scope and the nature of the issues surrounding the use and potential misuse of DNA information, the government referred this bill to the House of Commons Standing Committee on Justice and Human Rights for a brief study prior to the second reading in the other place. That committee held witness hearings with over 30 individuals who represented police associations, victims groups, legal organizations, provincial attorneys general, academics, privacy experts and medical geneticists. Great care was taken by the committee during this review to strike a proper balance between privacy and Charter concerns and the overriding goal of better protecting Canadians from violent crime.

I will now briefly explain how these issues are addressed in the bill that is before us.

The bill would establish a national DNA data bank to be maintained by the Commissioner of the RCMP. The data bank will include two indices: a crime scene index, containing DNA profiles from actual crime scenes; and a convicted offenders index, containing DNA profiles from offenders convicted of designated offences. With this structure, stored DNA information

can be cross-referenced in order to identify linkages and to help solve serious crimes in any police jurisdiction across the country.

Bill C-3 sets out the circumstances in which bodily samples may be taken from convicted offenders and DNA profiles prepared and stored in the data bank. Where a person has been convicted of a "primary" designated offence the court will, except in the most exceptional circumstances, make an order requiring the offender to submit bodily substances for DNA analysis to be then placed in the data bank.

Where a person has been convicted of a "secondary" designated offence, the bill authorizes the court to make an order requiring the offender to provide bodily substances for DNA analysis and placement in the data bank. In making this order, the court must be satisfied that it is in the best interests of the administration of justice to do so.

The primary and secondary designated offence lists in the bill were developed on a two-fold basis of the serious nature of these offences and the likelihood of finding DNA evidence at the crime scene. The primary offence list includes the most violent offences and sexual offences where DNA samples are most likely to be found at the crime scene, for example, murders and sexual assaults. The secondary list includes those offences, also very serious in nature, where DNA evidence is less likely but may still be found at the scene, for example, situations of robbery and arson. Accordingly, for these offences courts would have discretion to order that the samples be taken.

• (1530)

Taking samples after an offender has been convicted balances an overriding concern for the safety of all Canadians and the need to respect the rights protected by Canada's Charter. The accused has the right to be presumed innocent and protected from unreasonable search and seizure.

The issue of when DNA samples should be taken received considerable attention in the other place. The vast majority of those consulted expressed the view that taking samples after a person has been convicted will respect the rights of all Canadians under the Charter. However, they also shared the position that taking samples at time of arrest or charge would pose a serious risk of being struck down as unconstitutional. In formal legal opinions sought by the Department of Justice from three of Canada's most eminent justices, each independently supported this position.

Not only will Bill C-3 capture serious offenders following conviction, but it will also permit DNA samples to be collected and analyzed from the high-risk violent offenders under penitentiary sentence who have been convicted before the bill comes into force. Under the bill, a judge would have the ability to order samples to be taken from declared dangerous offenders, repeat sex offenders, and murderers who have killed more than once. Collection of DNA samples from these offenders will provide the police with valuable information to help solve outstanding criminal cases.

Young offenders will be treated in the same manner as adults with respect to the taking of DNA samples for the purpose of data banking. The DNA extracted from the sample will be analyzed with the resulting profile entered into the convicted offender's index of the data bank. However, the DNA profiles and actual bodily samples of young offenders will be retained for shorter periods than those of adults. The periods of retention will parallel those set out in the provisions of the Young Offenders Act regarding the retention of police records.

Bill C-3 authorizes the RCMP to establish and maintain the data bank. It is worth noting that access to the DNA profiles contained in the convicted offenders index and to the samples themselves will be strictly limited to those directly involved in the operation of the data bank.

To further ensure that the information will be properly used, the legislation explicitly states that only the name attached to the profile will be communicated to the appropriate law enforcement authorities during criminal investigations. The bill also includes strict prohibitions and criminal penalties in relation to any misuse of either the samples or the DNA profiles.

With few exceptions, DNA samples collected for the data bank will be retained indefinitely. The scientific community has advanced strong arguments that retention is essential for the data bank to be able to adapt to technological changes yet to come. The field of forensic DNA analysis is developing rapidly and, as the technology evolves, the DNA profiles of today are likely to become obsolete later on. Therefore, if samples are retained, they can be re-analyzed using new technology to enable Canada's data bank to keep pace with technological advances.

To ensure that the data bank will respect the privacy rights of all people who are innocent bystanders at a crime scene, the victims of a crime or law-abiding citizens who volunteer their DNA samples to help police, the bill also contains provisions to permanently remove access to the information contained in the crime scene index if it relates to a victim or a person who has been eliminated as a suspect in a criminal investigation.

Bill C-3 also provides an opportunity for persons required to provide DNA samples to express their preference as to the type of sample they would like to give. The police are then required to take that preference into account although they are in no way obligated to take the sample specified by the person. This is because the police must take other considerations into account. For example, in Ontario, the Ontario Court of Justice recently ruled that taking hair samples was unconstitutional. In addition, forensic scientists have advised that blood provides the best sample for successful DNA typing. Bearing all this in mind, Bill C-3 allows the police to make the final decision on the sample to be taken.

The benefits of using a data bank are numerous. I will list just a few. Police will be able to identify and arrest repeat offenders by comparing DNA information from a crime scene to that of the convicted offenders index. They will also be able to determine whether a series of offences was committed by the same offender or whether more than one perpetrator was involved. Police will be able to cross-reference and link DNA profiles from other

cases within and across jurisdictions. Using DNA profiles will help focus police investigations by more quickly eliminating suspects whose DNA is already in the data bank in cases where no match with the crime scene evidence is found. Finally, it is expected that the knowledge of DNA information in the data bank may deter some offenders from committing further offences.

In conclusion, there is no doubt that over the past few years, forensic DNA analysis has provided the police with an effective tool in investigating countless serious crimes. The proposed national DNA data bank has the potential to further assist the police in more quickly identifying those who commit the most serious crimes and in holding them accountable. Canadians can continue to enjoy the safety of their streets and to have a sense of security knowing that police forces across the country will have access to one of the most sophisticated tools worldwide.

I would urge honourable senators to support Bill C-3. I look forward to participating in examining this important bill in detail when it comes before committee.

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I wonder whether Senator Bryden would entertain a couple of questions?

Senator Bryden: I will certainly entertain them. I do not know if I can answer them.

Senator Kinsella: At our second reading debate, we deal with the general principles so it is not a question of detail. It is a matter of some principle when a bill which is brought before the Senate speaks to a review of the act. This one, in clause 13 on page 9 of the bill, says that this bill will be reviewed within five years of its coming into force by a committee of the House of Commons.

As a matter of principle, would the honourable senator not agree that it should be subject to review by the Senate as well as by the House of Commons, that is, review by either house or by both?

Senator Bryden: Honourable senators, the answer to that question is yes. I know that it is a matter of principle, rather than detail, but somewhere in the documentation which I reviewed there is a reference to a committee of the House of Commons and/or a joint committee of the House of Commons and the Senate.

Senator Kinsella, I am not sure if that was simply a proposal. If so, it certainly is one that we can consider when the bill comes before the committee.

•(1540)

Senator Kinsella: My next question is one of general principle, as it applies to the mechanics of the bill. The power of making regulations is granted to the Governor in Council in this bill. As you carefully outlined, the bill is attempting to maintain or reflect a balance. I think that the bill has achieved that objective, by and large.

In order to be sure that that balance is not overtaken by the regulatory power given by the statute to the Governor in Council, does the honourable senator agree with the general principle that regulations should be only those that are strictly required as opposed to being regulations made by virtue of the fact that we have granted in the statute the power to make regulations?

Senator Bryden: As I understand legislation and legislative drafting and interpretation, the regulations must be consistent not only with any specific section of the bill but with the law when read as a whole.

As sponsor, I take my responsibility seriously. It may be that the committee will want to look at the possibility of requiring, either by amendment or by regulation, some more criteria than I was able to see in the bill relating to the discretion of the Commissioner of the RCMP. I use him as an example because that is where one concern lies. I will certainly be asking for further explanation in the committee hearings. I assume it will go to the Standing Senate Committee on Legal and Constitutional Affairs at some point.

To answer the honourable senator's general question, you can have a regulation-making section. That section does not allow government, by regulation, to go outside the general principle of the legislation. It may be that we need to provide, to use a term with which the people on the other side will be very familiar, more specificity in the types of regulations to be made.

Senator Kinsella: Thank you for that. I agree.

Honourable senators, I read the portion of the bill that speaks to the reasons for which DNA bodily substances would be kept. As I understand the honourable senator's presentation this

afternoon, down the road, new technologies may present themselves, and one would want to be able to apply those new technologies to the substances that they have in the bank or that are being stored. The adjudication as to whether such analysis is justified because of a significant new technology is not a power that would be subject to the oversight of Parliament but would be at the discretion of the Commissioner of the RCMP. I take it that that was one of the areas that caught the honourable senator's attention as well, and that it should be examined in detail in committee.

Senator Bryden: That is correct. By saying that, I am not saying that the answer is to circumscribe it somehow. I have not gone through all of the testimony from the other place, for example, but we need to determine from the witnesses what the intention is and whether the bill clearly circumscribes what is intended. I assume that what is intended, and this is just an assumption, is that it is like any other developing technology right now, and if you wait six months, the level of precision of the analysis could be dramatically better. Therefore, why would we need to go back and retest all the people in the penitentiaries and so on. However, we do need to be cautious that there is not the potential for misuse of the discretionary power vested in the Commissioner of the RCMP or anyone else.

Senator Kinsella: There are many areas of interest to explore. For the present I will move the adjournment in the name of my colleague, Senator Nolin, who I expect will speak tomorrow.

On motion of Senator Kinsella, for Senator Nolin, debate adjourned.

The Senate adjourned until Wednesday, October 21, 1998, at 1:30 p.m.

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