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Tuesday, November 17, 1998

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THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

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THE SENATE

Tuesday, November 17, 1998

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

Prayers.

SENATORS' STATEMENTS

MRS. ELSIE WAYNE, M.P.

LAUNCH OF BIOGRAPHY

Hon. Erminie J. Cohen: Honourable senators, I rise today to bring to your attention a book launch by Neptune Publishing Company and author Linda Hersey of Saint John, New Brunswick, on Friday, November 4, 1998.

The biography entitled *Elsie* tells a story of a housewife who rose from virtual obscurity to a position of political prominence. The author states:

Saint John is home to Elsie Wayne who made history when she became the first woman to ever be elected mayor — a position she held for four consecutive terms.

She was elected to the House of Commons five and a half years ago as a Progressive Conservative member and just last Saturday completed a period as interim leader of the Progressive Conservative Party of Canada. The book tells us that, “ever the free spirit, Elsie has a mind of her own.” It goes on to state:

The bottom line was that it really doesn't matter to Elsie whether she makes friends or enemies — she is willing to take a stand, make a decision, and to her credit, never backs down, and to that end, she has earned enormous respect.

According to her biographer:

Elsie Wayne does not waste any amount of time trying to understand herself, nor is she a complicated woman. Her view of herself is as straightforward as her approach to whatever task she has undertaken. Throw caution to the wind and full speed ahead!

Don Richardson, a political reporter for the *Saint John Times Globe* says:

The Saint John MP goes by a single name — she is Elsie to one and all. Mrs. Wayne's rock-em sock-em style has made her a darling of the national media.

Former Prime Minister Brian Mulroney stated:

When Elsie was mayor, she knew rather than talk to me about a hundred different things, she probably figured I'm going to talk to him about one until I get that, then I'll talk to him about another and sometimes she just wore me down.

This authorized biography of Elsie Wayne gives us insight into the life of a feisty, energetic woman, a tireless cheerleader, a promoter of Saint John, New Brunswick, and a proud Canadian. The book illustrates her mantra: Elsie is Elsie and Elsie does it her way.

**THE HONOURABLE CALVIN WOODROW RUCK
THE HONOURABLE ERMINIE J. COHEN**

TRIBUTES

Hon. Donald H. Oliver: Honourable senators, I am pleased today to rise to call to your attention two events I attended recently wherein two of our senators were honoured. One was a woman, a Conservative, and a Jew. The other was a man, a Liberal and a Black. Both were recognized for their outstanding contribution to their ethnic communities.

The first event was called:

Night of the Senator: An evening of appreciation for Senator Calvin W. Ruck.

It was held in Halifax, Nova Scotia, on October 17, 1998. When I spoke at the celebration of the life and the many achievements of Honourable Senator Ruck, I said:

His appointment to the Senate in June of this year was an honour very befitting a man who had done so much to help so many. His unique perspective will be a valuable asset to our federal government and, in particular, to the Senate.

Others praised his devotion to ending racial inequality and advancing human rights. The other speakers included Lieutenant-Governor J. James Kinley and Premier Russell MacLellan.

Senator Ruck has worked as a human rights commissioner and a social worker. He has volunteered extensively in his community and has even authored a book on Black Canadian military contributions in World War I. His years as witness to the suffering caused by racial inequality led him to become a forerunner in efforts to ensure that it would stop.

The second event I attended was held in Saint John, New Brunswick, an evening in honour of Senator Erminie J. Cohen. At its annual Negev Dinner, the Jewish National Fund paid tribute to Senate Cohen's devotion to the Jewish community in Canada. Senator Cohen was able to choose a project for the fund to support and she selected a reforestation project. Twenty-five thousand seedlings will be planted in the Negev Desert in an area to be named the New Brunswick Forest. This is a tribute to Senator Cohen's home province.

Among the 450 guests at the Saint John Trade and Convention Centre were David Sulton, Israel's ambassador to Canada, as well as guest speaker Joe Schleisinger of the CBC. Mr. Schleisinger noted how successfully Senator Cohen has balanced her multi-faceted life:

Politics is just an essential part of so many other things that Erminie Cohen is all about — wife, mother, community activist, advocate of the poor and women's causes, writer, New Brunswicker, Jew, and above all, Canadian.

He continued on, to note that her greatest achievement has been to blend these many identities into a rich and successful life.

•(1410)

Senator Cohen gives support to the downtrodden who might otherwise continue to struggle. She has been a leader in resolving issues such as family violence, equality, human rights and poverty. As Honourable Senator DeWare recently said, "She defends the underdog." This is why her work is so appreciated and necessary.

I was delighted, honourable senators, to be present to participate in celebrations for these two great senators. The ethnic communities to which these senators belong — indeed, all Canadians — have benefited from their contributions and earnest struggle for social improvement. I urge all honourable senators to join me in congratulating both of them for a job well done.

VISITORS IN GALLERY

The Hon. the Speaker: Honourable senators, before we proceed to the next item on the Order Paper, I should like to draw your attention to the presence of some distinguished visitors in our gallery. They are a group of senior officials from the State Duma of the Federal Assembly of Russia. They are here on our exchange program with the Russian Parliament.

On behalf of all honourable senators, I welcome you to the Senate.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, I should also like to take this moment to introduce to you the pages who are here with us this week on the exchange program with the House of Commons.

[Translation]

Kimberly Amyotte is a student in the Faculty of Social Sciences at the University of Ottawa, majoring in industrial psychology. She is a native of Campbell's Bay, Quebec.

[English]

Sarah Govan, from Montreal, Quebec, is enrolled at Carleton University in the Faculty of Public Affairs and Management, and her major is journalism.

We welcome you to the Senate, and hope that you have a pleasant week with us.

ROUTINE PROCEEDINGS

CHILD CUSTODY AND ACCESS

REPORT OF SPECIAL JOINT COMMITTEE REQUESTING
AUTHORIZATION TO EXTEND DATE OF FINAL REPORT

Hon. Landon Pearson, Joint Chair of the Special Joint Committee on Child Custody and Access, presented the following report:

Tuesday, November 17, 1998

The Special Joint Committee on Child Custody and Access has the honour to present its

FIRST REPORT

In accordance with its Order of Reference from the Senate of October 28, 1997, and from the House of Commons of November 18, 1997 your Committee has considered matters relating to custody and access arrangements after separation and divorce and has agreed to the following:

That the Special Joint Committee on Child Custody and Access be authorized to continue its deliberations beyond November 30, 1998 and that it present its final report no later than December 11, 1998.

A copy of the relevant Minutes of Proceedings is tabled in the House of Commons.

Respectfully submitted,

LANDON PEARSON
Joint Chair

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Pearson, report placed on the Orders of the Day for consideration on Thursday next, November 19, 1998.

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, November 18, 1998, at 1:30 p.m.

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

Hon. Senators: Agreed.

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

[*Translation*]

Hon. Lowell Murray: Honourable senators, do I understand correctly that Royal Assent is tentatively scheduled for tomorrow afternoon at 3:15 p.m.? If so, how long will this ceremony take, in the opinion of the Deputy Leader of the Government, so that committees and their chairmen may plan their affairs?

Senator Carstairs: Honourable senators, the Honourable Senator Murray is correct that Royal Assent is apparently being planned for tomorrow afternoon at 3:15 p.m. However, if we follow our usual time frame, we should be free by 3:30 p.m.

Motion agreed to.

ACCESS TO INFORMATION ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-208, to amend the Access to Information Act.

Bill read first time.

The Hon. the 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, November 19, 1998.

JUDGES ACT

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill C-37, to amend the Judges Act and to make consequential amendments to other Acts, and acquainting the Senate that they have agreed to the amendments made by the Senate to this bill without further amendment.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Leonard J. Gustafson: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

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

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

Hon. Senators: Agreed.

Motion agreed to.

UNITED NATIONS

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS—RECENT RESPONSES TO QUESTIONS FROM COMMITTEE—NOTICE OF INQUIRY

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, I give notice that on Thursday next, November 19, I will call the attention of the Senate to the responses to the supplementary questions by the United Nations Committee on Economic, Social and Cultural Rights relating to Canada's third report on the International Covenant on Economic, Social and Cultural Rights.

[*English*]

QUESTION PERIOD

SOLICITOR GENERAL

COMMISSION OF INQUIRY INTO TREATMENT OF PROTESTORS AT APEC CONFERENCE BY RCMP—APPROPRIATENESS OF FORUM—GOVERNMENT POSITION

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, my question is addressed to the Leader of the Government in the Senate.

•⁽¹⁴²⁰⁾

Does the government continue to believe that the RCMP Public Complaints Commission is the best body to inquire into the alleged human rights violations during the Vancouver APEC meeting, given all of the information that has been emerging respecting that incident?

Hon. B. Alasdair Graham (Leader of the Government): The answer is in the affirmative, honourable senators.

Senator Kinsella: On November 7, the story in the media was that a former senior analyst and investigator for the RCMP Public Complaints Commission, a certain François Lavigne, alleged that the RCMP treats commission staff with contempt and often refuses to disclose files. Lavigne also alleged that the former head of the commission had ordered staff to rewrite reports and change conclusions when RCMP officers were found to have acted improperly. He was noted as saying:

The RCMP Public Complaints Commission is not an independent agency. Its investigators have no powers. It doesn't come close to what it was supposed to do when it was created. It was botched.

In light of these particular comments by one of its own, would the Leader of the Government explain why the government continues to believe that the commission will be able to do its work in a fair and unbiased manner?

Senator Graham: Honourable senators, the answer is again in the affirmative. I am sure that the Federal Court and the commission will be able to work out the difficulties that now face them.

Senator Kinsella: Honourable senators, the Honourable Leader of the Government is now relying on the Federal Court. If that is now the position of the government, as distinct from its former position of relying on the inquiry by the RCMP Public Complaints Commission, and given the fact that, while relying on the inquiry by that commission, their argument not to provide legal counsel for the students was that that commission inquiry was an informal process, would the Leader of the Government, who is now relying on the Federal Court to provide equity, justice, fairness and due process, not agree that the hearing before the Federal Court is a formal proceeding? It is hardly an informal proceeding, and therefore equality before the law demands that the students be represented by counsel. Will the government not change its view and provide legal assistance to the students?

Senator Graham: Honourable senators, the answer is in the negative because, as already explained, the Solicitor General has written directly to the chair of the commission.

In my earlier response, I raised the name of the Federal Court, in addition to the commission, merely in the context that the lawyers for the RCMP have requested another adjournment, and have also asked the Federal Court to examine the impartiality of the chair of the commission.

COMMISSION OF INQUIRY INTO TREATMENT OF PROTESTORS
AT APEC CONFERENCE BY RCMP—COMMENTS BY MINISTER
REGARDING COMMISSION CHAIRMAN—GOVERNMENT POSITION

Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition): Honourable senators, if there are two fundamental issues relating to the appropriateness and possible bias of that commission now going before the Federal Court, surely the need for the students to be represented in that court by legal counsel is a need that would follow, *mutatis mutandis*. However, in his response the Honourable Leader of the Government in the Senate has raised the communications between the Solicitor General and the chair of the RCMP Public Complaints Commission, Mr. Morin.

On November 12, honourable senators, during our break, Mr. Dick Proctor, an NDP member of Parliament, swore an affidavit outlining the conversation he had overheard between the same Solicitor General and his lawyer friend, Fred Toole. In this statement, made under oath, Mr. Proctor notes that Mr. Scott, the Solicitor General, and his seat-mate laughed about the RCMP commission chairperson, the same Gerald Morin, and in particular Mr. Morin's financial woes. In his affidavit, Mr. Proctor also noted that the Solicitor General made the statement that pepper spray used at APEC was the "first line of defence."

Would the Leader of the Government in the Senate tell honourable senators whether the government now disagrees with Mr. Proctor's account of the conduct of Mr. Scott, the Solicitor General? Does openly ridiculing the personal hardship of the

chairman of the Public Complaints Commission, Mr. Morin, not indicate some degree of disdain for the commission's chair?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, it is my understanding that the Solicitor General has received — and indeed reviewed — the contents of Mr. Proctor's affidavit. However, he has not yet determined whether he will file an affidavit in return.

It is also my understanding that the complaints commission counsel has set a deadline of November 18, which is tomorrow, for the filing of affidavits. I suggest that we wait and see what happens tomorrow.

NATIONAL DEFENCE

SUPPLY OF MILITARY HELICOPTERS TO AID STORM-RAVAGED HONDURAS AND NICARAGUA—GOVERNMENT POSITION

Hon. Orville H. Phillips: Honourable senators, my question is addressed to the Leader of the Government in the Senate. Tropical storm Mitch wreaked havoc in Nicaragua and Honduras, particularly in the field of transportation, destroying roads and bridges. Canada has already provided aid in the form of \$9 million originally, plus the assistance of charitable organizations. More recently, Canada announced aid of a further \$100 million over a four- or five-year period. It has also dispatched to the area a Canadian Forces military medical unit.

All Canadians appreciate this approach. However, the need is for helicopters to deliver supplies to the more remote areas. Mexico has provided military helicopters for this purpose. Would the Canadian government consider supplying military helicopters, as well as those supplied by Mexico?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I thank the honourable senator for his question and for bringing this matter to the attention of our colleagues.

My honourable friend is correct in saying that the government, through the Canadian International Development Agency, committed \$9 million. The amount was originally \$1 million, and then the government added a further \$8 million. In addition, Minister Marleau has announced an initiative relating to the repayment of the \$29.5 million commercial debt owed by Honduras, and supporting a proposal for a new, multilateral repayment schedule for the affected countries. In fact, the government has suspended the repayment of interest on that loan, and there may be further developments on that particular front. In addition, the minister also announced that the Canadian International Development Agency would reallocate funds in order to provide an additional \$100 million to Central America over the next four years.

With respect specifically to helicopters, it is my understanding that at least five Griffon helicopters have been dispatched to the area to assist in the rebuilding efforts.

Senator Phillips: Honourable senators, what about supplying Labrador helicopters, which is a far superior aircraft for the purpose of transporting supplies and performing search and rescue missions?

Senator Graham: Honourable senators, I am glad that Senator Phillips has confidence in the Labrador helicopter. I will be happy to bring his representations to the attention of all the ministers who are coordinating assistance efforts for the terrible disaster which has afflicted that particular part of the world.

•(1430)

OFFICIAL APPROVAL OF PROGRAM TO REPLACE SEA KING
HELICOPTERS—GOVERNMENT POSITION

Hon. J. Michael Forrestall: Honourable senators, we now know that the Minister of National Defence has pretty well given up on trying to persuade his colleagues in government to redirect some of the surplus \$10.5 billion or so accrued in the first six months of this year. We have this next six-month period, and many six-month periods lying not too far in front of us. Nor does the minister seem terribly confident in persuading his colleagues to direct some of that money towards better pay and allowances, with which he does agree.

Regarding helicopter replacements for ships, the minister will recall that some four years ago in the defence white paper, we were told to identify immediately options and plans to put into service new affordable replacement helicopters by the end of the decade. We now know that “immediately” is some four years in duration.

Will the minister take up with his colleagues in cabinet the fact that to call for proposals for replacement for the Sea King will cost nothing. I am not asking the government to spend money. I am asking the government to at least approve the project. That has not been done yet. There is no government statement that would support the replacement of the Sea King. That step has deliberately not been taken.

Will the minister take up with his colleagues the question of putting out an approved program, thereby permitting Department of National Defence staff to look around the world to see what is out there and who best can fill our needs when we are in a position to do so? Then at least that six-month or one-year stage will be behind us. It will not cost anything.

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I thank the Honourable Senator Forrestall for bringing this matter to our attention. Before inviting proposals, it is the policy of this government, first, to identify the money, where the money might come from and what would be the costs. As recently as last week, the Minister of National Defence was in Nova Scotia. He said he wished to move on a replacement project for the Sea King helicopters as quickly as he possibly could.

Senator Forrestall: It has been a couple of years.

Senator Graham: I suppose we all get impatient with the process, but, I wish to assure the honourable senator, the procurement strategy to replace the Sea Kings is currently under discussion. Minister Eggleton has not given up on the helicopters, nor on better pay and allowances for members of the Armed Forces. He puts forward the case vigorously and forcefully to his cabinet colleagues.

I had an opportunity again this morning, prior to the cabinet meeting, to discuss this matter with the Minister of National Defence and there is nothing higher on his agenda than the matters which have been raised by the honourable senator this afternoon.

Senator Forrestall: Honourable senators, I am sure that in Minister Eggleton’s mind there is nothing of a higher priority, but that is not the point. The point is that in this respect we are practising, not risk management, but rather, risk taking. It is coming close to becoming immoral, if not downright sinful and criminal. It will cost nothing to approve the project program so that at least we can take a first step and can be seen to have taken a first step.

Could the minister pursue that very narrow window?

Senator Graham: Honourable senators, I would be happy to bring that matter to the attention of not only the Minister of National Defence but to my other colleagues who would also be directly involved.

HUMAN RESOURCES DEVELOPMENT

REFORM OF SOCIAL INSURANCE NUMBERING SYSTEM— GOVERNMENT POSITION

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. *The Globe and Mail* had an article on November 4 in which was detailed the lack of government concern for problems with our social insurance numbering system. In spite of the identification of countless inadequacies in the system resulting in fraud and the false registration of deceased citizens, this government plans no reform.

Honourable senators will recall the biting criticism tabled by the Auditor General on September 29. He said that the matter needed immediate overhaul and, in his words:

The government needs to clearly state the level of integrity and privacy protection expected in the management of the Social Insurance Number. There is an urgent need for action.

So far, there has been none. Can the honourable minister tell us when the government will be taking some action?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I understand that the matter is presently under review, and I hope that action will be taken in the near future.

Senator Oliver: Perhaps the honourable leader could explain the following: Two departments are now arguing with each other as to who is responsible for this matter. Two officials from two government departments related to the SIN have tried publicly to disassociate themselves from this problem. Mr. Bob Nichols, the director of the insurance program at the Department of Human Resources Development, is quoted as saying:

Changing the framework of the SIN program is the responsibility of the Department of Justice.

Brian Jarvis of the Department of Justice says:

Justice doesn't have any responsibility or connection to SIN...this is really HRDC's bailiwick.

Which is it, Mr. Minister?

Senator Graham: Honourable senators, I must put on my referee's shirt and repair to the locker room to cogitate the problem that has been put forward to me. I will bring forward an answer, perhaps by tomorrow.

THE ECONOMY

APPLICATION OF SURPLUS GOVERNMENT FUNDS TO REDUCTION IN TAXES—GOVERNMENT POSITION

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government. It concerns the \$10-billion surplus.

First, I would like to extend congratulations to Joe Clark in attaining the leadership of our party.

Hon. Senators: Hear, hear!

Senator Stratton: Mr. Clark gave a statement, I believe on Sunday, right after the announcement of his victory, about the surplus and how it should be used to attack the debt and reduce taxes for Canadians. Given that \$10.4-billion surplus for the first six months, when in the world will the government do something about reducing taxes?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I would not be surprised if the government does something about taxes in the next budget. As you know, there have been indications that in the next budget the Finance Minister may very well concentrate on health care. However, there will be many other items in the budget to which I am sure all honourable senators and all Canadians will look forward.

NATIONAL DEFENCE

APPLICATION OF SURPLUS GOVERNMENT FUNDS TO AID MILITARY PERSONNEL AND PURCHASE OF MATÉRIEL— GOVERNMENT POSITION

Hon. Terry Stratton: Honourable senators, I would like to return to the subject of Senator Forrestell's question. We have our Armed Forces lower echelons going to soup kitchens with their kids. Do you not think the government should do something for those people before the next budget?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, in my earlier answer to Senator Forrestell, I indicated that there is nothing higher on the agenda of the Minister of National Defence than the welfare and well-being of Armed Forces personnel, as well as the condition of their equipment.

•(1440)

Senator Stratton: Honourable senators, if there were real concern, something would have been done by now.

Last February's budget called for programs spending to be \$1.5 billion less this year than last year. Yet, in the first six months of the year, programs spending was \$600 million higher than in the same period last year. Does the government still intend to restrict programs spending for this fiscal year to the budget announcement?

Senator Graham: Honourable senators, the government takes a very cautious approach to its forecast. I suggest to the honourable senator that, while the surplus may be larger than anticipated, the government would prefer to err on the side of caution.

UNITED NATIONS

ADEQUACY OF RESPONSE TO COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS—GOVERNMENT POSITION

Hon. A. Raynell Andreychuk: Honourable senators, I wish to congratulate the government for obtaining a seat on the Security Council. According to Minister Axworthy's statements, this was important in order that Canada could influence the international agenda.

How does the government square our seat on the Security Council with its lack of adequate response to human rights difficulties here in Canada? I am sure that Senator Kinsella will go into further detail on that matter in his inquiry with regard to the questions by the United Nations Committee on Economic, Social and Cultural Rights.

In the opinion of the United Nations, and I believe in the opinion of many Canadians, we did not give an adequate response to questions about conditions in Canada. How does that square with our indication that, in compliance with our seat on the Security Council, we intend to follow all the rules, regulations and legislation of the United Nations?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, it is my understanding that representatives of the government will be making a presentation to the appropriate United Nations committee on November 24. We should wait to see the nature of those representations before coming to conclusions.

Senator Andreychuk: Honourable senators, has the government changed its policy with regard to transparency and support for the United Nations when we work with governments overseas? We have often said that we can expect adherence to human rights legislation by others because we will impose the same kind of scrutiny that we impose on others in human rights investigations.

Does the Leader of the Government in the Senate not believe that the government has fallen short in its response when it did not deal adequately with poverty issues in Canada?

Senator Graham: Honourable senators, there is poverty in many pockets of the country. The government is doing its best. I could recite a long list of measures that have been taken by the government, including spending on better and more housing and more jobs. The unemployment rate is now the lowest it has been in a long time. Nationally it is down to 8.1 per cent, although it is still unacceptably high in many areas of the country. We have taken strong measures to help those who are most in need.

There is no question that poverty is a very real problem. There is poverty in Canada. There are many homeless. The government is doing its best to meet those challenges and to be fair in every respect to all Canadians.

FOREIGN AFFAIRS

ISSUES AT UNITED NATIONS SECURITY COUNCIL—
POSSIBILITY OF DEBATE—GOVERNMENT POSITION

Hon. Marcel Prud'homme: Honourable senators, my question is supplementary to that of the Honourable Senator Andreychuk.

Canada has been given the honour of sitting on the Security Council. The best people to speak about world affairs are in the Senate and not in the House of Commons. I say that with no disrespect to members of the House of Commons.

Keeping in mind the immense talent that exists in the Senate on world affairs, will the government agree to hold a special debate on the United Nations and the policy Canada should exercise in the future? We have been given an immense responsibility. We will have to vote on every issue. Even when we do not wish to, we will have to take our responsibility and do so.

Would the government agree to a two-hour debate on the subject before Christmas?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I would welcome such a debate. I invite any honourable senator, including the Honourable Senator Prud'homme, to initiate a debate of that nature under the general heading of "Inquiries." I am sure that honourable senators on all sides would want to participate fully in such a debate. I agree with my honourable friend about the talent that exists in this chamber.

Senator Prud'homme: Honourable senators, my concern is that in an inquiry a senator can move the adjournment of the debate after one speech. That would be unfair to both the opposition and independent senators.

I thank the honourable leader for the suggestion of an inquiry, but would he be willing to go further than that?

Senator Graham: Honourable senators, depending upon the nature and wording of the inquiry, I would encourage all honourable senators, particularly those on this side, to participate in such a debate because I think it would make an important contribution to the deliberations of this place for both public consumption and the public record.

UNITED NATIONS

RESPONSE TO COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS—AVAILABILITY TO PUBLIC—
GOVERNMENT POSITION

Hon. Lois M. Wilson: Honourable senators, on the weekend I received the following from a constituent:

Canadian NGOs —

that is, non-governmental organizations

— have asked the United Nations to declare Canada to be in violation of the international covenant on economic, social and cultural rights. They spoke to this committee in Geneva today. Canada is reviewed every 5 years for its compliance.

This constituent says:

On June 10, 1998, the UN Committee submitted to Canada a list of 81 questions to which the government has responded. The document is a public document. The only problem is that he feels the government is not eager to make the document available.

How and where can it be obtained?

Hon. B. Alasdair Graham (Leader of the Government): Honourable senators, I am aware of the document. I do not know where the document can be obtained but I will certainly seek it out and try to ensure that it becomes public, if it is not already.

•(1450)

ORDERS OF THE DAY

COMPETITION ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Callbeck, seconded by the Honourable Senator Poy, for the second reading of Bill C-20, to amend the Competition Act and to make consequential and related amendments to other Acts.

Hon. Donald H. Oliver: Honourable senators, I rise to speak on second reading of Bill C-20, to amend the Competition Act and to make consequential and related amendments to other acts.

I wish to commend Senator Callbeck for her thorough review of the bill. I particularly appreciate the fact that she highlighted two of the main areas which I feel are in need of careful scrutiny by the Senate committee. I should also like to thank the director of the Competition Bureau for kindly sending three of his top officials to my office to provide me with a two-hour briefing, and to answer my many questions about the legislation.

As honourable senators will know, the purpose of the Competition Act is generally to promote competition and efficiency in the Canadian marketplace. The act forms the legislative framework for some of the basic principles of trade. The last substantial amendment to the act was in 1986.

In June 1995, the Minister of Industry, Mr. Manley, announced the commencement of a consultation process to update the act. Bill C-20 is designed to address recent proliferation of deceptive telemarketing practices that prey upon consumers, and cast a shadow over Canada's legitimate telemarketing industry.

The proposed amendments would also provide faster and more effective resolution of misleading advertising and deceptive marketing practices; revise and clarify the law regarding comparative price advertising by retailers; allow judicially authorized interception without consent of private communications in order to tackle the most serious cases involving conspiracy, bid-rigging and deceptive telemarketing; improve the administration of the merger notification process; expand the tools available to the courts to address criminal conduct through the consent resolution and directive orders following conviction; formalize the directors' existing responsibility in relation to the administration and enforcement of certain labelling statutes; and change the title of the director to the Commissioner of Competition.

I will now focus on the deceptive telemarketing provisions of the bill. When the minister spoke to the bill in the other place, he stated that the proposed updating of the Competition Act is particularly needed in light of deceptive telemarketing. It is important to realize that there are thousands of Canadians employed in totally legitimate telemarketing activities. For instance, some prominent financial services, merchandising, manufacturing and technological firms, as well many charitable organizations, depend on telemarketing and carry it out in a perfectly legitimate way. However, the real problem lies with deceptive telemarketers who use the anonymity of the telephone and their skills at deception to sound plausible. They often persuade their victims to trust what seem like reputable businesses. In many cases, high pressure sales tactics are used to convince consumers to send money or provide their credit card numbers over the phone. The representations made over the phone by deceptive telemarketers promote the sale of products or other business interests, either at grossly exaggerated values or that often do not even exist at all, and therefore will never be received by the purchaser.

According to field experts, detecting and stopping these criminals is complicated by a number of factors. The operators are usually unestablished companies run out of boxes in rented rooms, and they can be packed up quickly and moved on. They can easily change their corporate identity to start over and hide their operators' personal assets to avoid seizure.

The heads of the operations can also shield themselves from liability by denying knowledge or responsibility for whatever representations their employees make over the phone. Also, telemarketing scams cross multiple jurisdictions and make cooperative enforcement particularly difficult.

According to department officials, total annual losses borne by Canadian consumers and businesses to all forms of telemarketing scams have been conservatively estimated at \$4 billion.

Although deceptive telemarketers prey on all groups in society, they tend to focus on those who are the most vulnerable: the elderly. Senior citizens have many characteristics that these operators thrive on. They usually have greater disposable

income, and increased availability. They are more likely to be at home to answer the phone, and they often possess unsuspecting natures stemming from the era in which they grew up, when people were far more trusting and trustworthy. These elements make the elderly the most likely target for deceptive telemarketers.

Public education and media attention has helped in making people more aware of this problem. However, with decreasing resources available to law agencies, new statutory provisions are needed to facilitate more effective law enforcement.

The issue of telemarketing fraud arose in April of 1997 at a meeting between the Prime Minister and the President of the United States. As a result, a binational working group on telemarketing fraud was established, and delivered its report to the Prime Minister and President in November of 1997. The working group examined a number of areas in which legislative changes or administrative arrangements could be used to control the problems in both countries. Some of the concerns expressed included the need for effective powers of investigation, the need for federal coordination when an offence involved many provinces or states, and the need for powers to deprive fraudulent telemarketers of the tools required to commit the offence.

Provisions in the Competition Act currently prohibit the use of materially false or misleading representations to promote the supply or use of a product, or the promotion of a business interest. In addition, there are sections relating to promotional contests. However, the act does not specifically forbid certain practices associated with deceptive telemarketing. Bill C-20 will address these areas.

Officials from the Competition Bureau have pointed out that the current legislation is not specific enough to convict the so-called "con artists," and the only other protection that the victims have is from the provisions of the Criminal Code, or provincial laws from the eight provinces that recognize this crime.

The proposed telemarketing provisions address the current inadequacies of the law and are therefore much welcomed and long overdue. One of the questions senators must ask is if this proposed legislation goes far enough.

The proposed legislation would create a new offence of interactive telephone communications for the purpose of promoting a supply of a product or business interest. Persons engaged in telemarketing would be required to disclose certain types of information during telephone calls. This might include information such as the identity of the organization or person on behalf of whom the telemarketer is calling, the nature of the business interest being promoted, the price of the product, and the terms and conditions applicable to delivery.

A number of other deceptive practices would be prohibited, namely requiring consumers to make advance payments for products sold at grossly inflated prices, or to receive a prize payment from a lottery or contest. The responsibility of corporations, their officers and directors would be expanded to ensure compliance with the law, mainly by increasing their responsibility for the actions of their employees.

For example, proposed section 52.1(8) reads:

Where a corporation commits an offence under this section, any officer or director of the corporation who is in a position to direct or influence the policies of the corporation in respect of conduct prohibited by this section is a party to and guilty of the offence... whether or not the corporation has been prosecuted or convicted, unless the officer or director establishes that the officer or director exercised due diligence to prevent the commission of the offence.

I point out the use of the “due diligence” defence, on which the Standing Senate Committee on Banking, Trade and Commerce has done a considerable amount of work in the last couple of years.

Furthermore, the proposals would make it easier for courts to issue interim injunctions to halt suspicious activities by shortening the required waiting periods for application processing by the courts. This legislation would also propose stricter penalties for telemarketing offences. On summary conviction, an offender would receive a maximum \$200,000 fine, or a maximum one-year jail term, or both. On indictment, the offence would be subject to an unlimited fine, or a maximum of five years imprisonment, or both. Currently, the typical sentence upon conviction is only two to five months.

In certain cases, law enforcement officials would be able to intercept private communications without consent after obtaining judicial authorization through a proposed amendment to “offence” in section 183 of the Criminal Code. This power would be used to gather evidence of deceptive telemarketing, as well as for the more serious crimes of conspiracy and bid-rigging.

I am always concerned about potential violation of basic, intrinsic and inherent rights wherever legislation purports to give power without consent or notice. Such powers are notorious for being abused. Interception without consent must be guarded with care.

The proposed measures to combat telemarketing fraud are a part of a total package of amendments to the Competition Act in Bill C-20. I expressed many concerns about certain sections of the bill to officials who met with me in my office. Let me now deal with my principal concerns.

•(1500)

The definition of telemarketing is the first. Under proposed section 52.1, telemarketing would be defined as:

...the practice of using interactive telephone communications for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest.

The Canadian Bar Association viewed the proposed definition of telemarketing as being overly broad and requiring clarification. In its opinion, the words “live voice” should be added to the definition before the word “interactive” to clarify that it would not apply to other modes of advertising that may use telephone lines, such as the Internet or fax marketing.

Both the Retail Council of Canada and the Canadian Chamber of Commerce, while generally supportive of the bill’s provisions regarding deceptive telemarketing, share the Canadian Bar Association’s concern about the definition, arguing that it should be tightened up in order to give greater clarity about the activities that are intended to be covered under this part of the amended act.

Like the Canadian Bar Association, they suggested that the words “live voice” should be added to the definition in the legislation even though the committee heard from the Competition Bureau officials that this is what it is intended to mean according to the bureau’s proposed guidelines for telemarketing provisions. The feeling was that adding the words “live voice” to the definition would provide clarity to the legislation itself and would also account for probable future developments, such as interactive voice communications over the Internet. This is a matter that does warrant consideration by the Senate committee that will examine this bill.

My second concern deals with the possibility of there being inconsistencies between section 206 of the Criminal Code and the proposed telemarketing provision of Bill C-20, particularly proposed section 52.1(3)(b). Up until now, certain charitable organizations, banks, and other institutions have used lotteries as a legitimate way of raising money for important charitable causes. Section 206 of the Criminal Code creates a number of offences relating to lotteries and specified games of chance.

Proposed section 52.1(3)(b) of Bill C-20 provides as follows:

(3) No person who engages in telemarketing shall

(b) conduct or purport to conduct a contest, lottery or game of chance, skill or mixed chance and skill, where

(i) the delivery of a prize or other benefit to the participant in the contest, lottery or game is, or is represented to be, conditional on the prior payment of any amount by the participant, or

(ii) adequate and fair disclosure is not made of the number and approximate value of the prizes, of the area or areas to which they relate and of any fact within the person’s knowledge, that affects materially the chances of winning;

What Bill C-20 does, then, is impose certain obligations on people conducting contests by means of telemarketing. It creates offences for failing to comply with statutory requirements.

Honourable senators, although these obligations differ from the obligations imposed by the Criminal Code, some lawyers would argue that the provisions of the bill are inconsistent with the Criminal Code. The Competition Bureau has assured me, however, that these new provisions dealing with deceptive telemarketing in the context of contests are designed to focus on the use of abusive high-pressure tactics during interactive telephone communications where the victims are vulnerable and have little or no time to reflect on the proposal. It is my hope that witnesses from the Canadian Bar Association, the Department of

Justice, and lawyers from the Competition Bureau will appear before the Senate committee to address the apparent conflict. It should certainly not be the intention of this legislation that bona fide and legitimate fundraising activities by way of lotteries will now be prohibited.

The reason for my concern is that there may indeed be situations where contests with a telemarketing component do not contravene the Criminal Code but contravene proposed section 52.1, or situations where contests without a telemarketing component may be conducted in one way while contests with a telemarketing component must be conducted in another way to ensure compliance with Bill C-20. Canadians should not have to rely solely on the purpose of a statute to ensure protection from a charge.

My third concern deals with proposed section 52.1(2), which specifies the classes of information that would have to be provided by those engaging in telemarketing. Proposed subsections 52.1(2)(a) and (b) specify the types of information that would have to be disclosed, and (c) states that disclosure must be made, in a fair, reasonable and timely manner, of such other information in relation to the product as may be prescribed by the regulations.

The Canadian Bar Association and the Canadian Chamber of Commerce feel there is a lack of certainty about what would be required and it would have been preferable to specify that "other information" in the legislation itself rather than in the regulations. The Canadian Chamber of Commerce suggested that the proposed section be deleted. The Senate committee will determine what is best.

My final concern deals with what is undoubtedly the most controversial provision of the bill, the proposed wiretap provision, clause 47. The Canadian Bar Association stated that the wiretap provision was not included in Bill C-67 and was not subject to the same level of consultation as the other proposed amendments in the bill. It opposed the introduction of what it referred to as "such an abusive and investigative tool" without greater consultation and public debate. As a result of their concern, the relevant clause was amended in the other place to limit the possibility of wiretap without consent in relation to the telemarketing offence in proposed section 52.1 to only those involving deceptive marketing practices under proposed section 52.1(3). Therefore, authorization to wiretap without consent could not be obtained in cases where there were allegations of failure to disclose the necessary information as required under proposed section 52.1(2). In addition, the possibility of wiretap without consent in relation to conspiracy cases under section 45 of the Competition Act was limited to offences involving price fixing or market sharing. The Competition Bureau expressed its support for all of the current amendments to the proposed wiretap proposal.

The Senate committee intends to hear from several witnesses and will therefore be in a position to improve upon Bill C-20 in areas such as the concerns I have addressed in relation to deceptive telemarketing as well as other issues. Deceptive telemarketing has become a major problem, and consumers deserve protection from it as soon as possible. Vulnerable people,

particularly the elderly, have been victimized by this crime for too long. As a recent *Maclean's* article noted:

Telemarketing fraud isn't about the money, it's about the human suffering it causes — it's life altering.

It is for this reason that reform of the law in this area is so necessary. The tools provided by the proposed amendments will go a long way toward shutting down the operations of deceptive telemarketers.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

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ACCESS TO CENSUS INFORMATION

INQUIRY—DEBATE ADJOURNED

Hon. Lorna Milne rose pursuant to notice of October 27, 1998:

That she will call the attention of the Senate to the lack of access to the 1906 and all subsequent censuses caused by an Act of Parliament adopted in 1906 under the Government of Sir Wilfrid Laurier.

She said: Honourable senators, in 1918, the Borden government passed a new Statistics Act. While this does not sound particularly innovative, there was a clause in this act which is currently causing a great deal of consternation. Clause 15(1) reads, in part:

No individual return, and no part of an individual return, made, and no answer to any question put, for the purposes of this Act, shall, without the previous consent in writing of the person... be published, nor, except for the purposes of a prosecution under this Act, any person not engaged in connection with the Census be permitted to see any such individual return or any such part of any individual return.

This clause codified what had been merely a regulation under the Laurier government, and only in effect since the 1906 western census. From that time forward, there would be no access to individual census returns except by the person who completed them. While this happened a long time ago, and does not sound very important now, from now on it will have a tremendous impact upon genealogists, demographic researchers and historians.

In the United States, census data can be accessed after 72 years, and in Great Britain after 100 years. Up until now, anyone researching in Canada has been able to access individual census data after 92 years. However, because of this law, the 1901 census will be the last individual data that will ever be available to researchers. I have been informed that 7.5 million

people in this country are involved in genealogical research. Obviously, the researchers for these people are very concerned about this situation.

A letter sent out by the Upper Ottawa Valley Genealogical Group, of which I am a member, states:

The data on census forms has been helpful in tracing family trees; it has helped in tracing medical problems passed along in genealogical lines. Family lineage has also successfully been used in court cases to prove lineage and settle inheritance legalities.

Genealogical research is a boon to the Canadian tourist industry. Anyone who is involved in researching their family history usually consults the census reports released by Statistics Canada. After locating useful information, these researchers end up visiting the various locations in Canada where their ancestors lived.

Thousands of people come from around the world each year to do this. The letter goes on to state:

They spend hard cash for meals, accommodation, transportation and souvenirs...

Not to mention film for their cameras.

Genealogy is one of the fastest growing hobbies and businesses. Numerous Canadian companies do millions of dollars worth of business yearly in this field, from researchers, publishers and writers to suppliers of software, books, et cetera. There are at least 35 publishers in Canada whose main publishing interest is family history.

There are approximately 500 genealogical societies and groups across the country, and every province has an overall provincial society.

Almost every family has someone who is doing family research.

Honourable senators, I am the genealogist in my family. I have published three family histories, and I know how invaluable the census data was in tracing those families. It was an absolutely essential research tool for reconstructing the family unit and tracing them back by 10-year periods. Essentially, it provided a snapshot in time.

I look around this chamber and, in spite of what many Canadians presently suspect, none of us were born before 1923. Thus, unless this law is rescinded, none of our descendants will ever have the wonderful experience of finding us in the census. While this information may not be as necessary in later years, given computerized records, photography and other technological advances, consulting the census is still an important method of tracing your family, and always will be.

Another group which this old law will substantially impact are historians. They use the census to trace trends in Canada — that

is, social mobility in individual families, changes in neighbourhood settlement patterns, birth rates, literacy rates, reported religious affiliation, and so on. They often follow families who have been living in the same house for decades, and manage to reconstruct some idea of what life was like at that time. By cutting out this source of information we are limiting the access that Canadian historians have to information about our past.

As the prominent historian, Father Joseph Gravelle of Otter Lake, Quebec, said before his death in 1971:

Genealogy is not concerned with Blue Bloods and First Families but rather with the Little People who made up the backbone of the country, who pioneered and settled and made their own contributions in their small and untrumpeted ways.

That is true for history, too. If we cut off access to information about the "Little People," then the only ones who will be written about will be the "Blue Bloods," the "First Families" and the business tycoons of this country. This skew will become obvious in literature written about Canada.

To be fair, I must give the other side of the picture as well. This issue cannot be seen strictly in black and white. A serious concern which rests on the other side of the issue is privacy. By allowing access to this information, we are changing the rules under which the information was collected. We must ask ourselves how we would feel if it were our personal data that was being used 92 years in the future.

Furthermore, in his 1994-95 report, the Privacy Commissioner recommended that all personalized records from the 1991 census, as well as all other census records not already in the public domain, be destroyed once Statistics Canada has processed the data to ensure its accuracy and quality. This solution would require Statistics Canada to seek an amendment to the census retention and disposal schedule approved by the National Archivist under the National Archives of Canada Act. Luckily, Statistics Canada never agreed to do this, and the 1991 census is still safely maintained. However, the concerns of the Privacy Commissioner do need to be addressed.

How does the release of personal information from a census interfere with a person's right to privacy, particularly when that privacy has been guaranteed even though 92 years may have passed?

Let me close by saying that I am greatly concerned by this lack of access to census data. Through this change, we will destroy a growing Canadian industry, as well as distinguish Canada as being the one nation in the western hemisphere which does not welcome and encourage people to research their families. However, privacy concerns must be balanced with the wish of people to access this kind of information. Perhaps through debate we can develop some ideas about how these two concerns might be balanced. I invite my fellow senators to involve themselves in a discussion of this matter. I feel that it is important, and something which definitely needs to be addressed.

Hon. John B. Stewart: Honourable senators, I have a question that I wish to pose to the Honourable Senator Milne.

I notice that she did not put forward her own proposal as to what should be done to address the situation that she has described.

•(1520)

Would the honourable senator consider having a bill drafted to address the problem, with the notion that the bill would be given second reading quickly? We would then go into committee with the understanding that the clauses in that bill would not be regarded as sacrosanct, but could be amended to achieve the kind of balance suggested by Senator Milne.

Honourable senators, I am afraid that nothing will be achieved if we go on debating without having a document before us, and the disastrous effects to which Senator Milne referred will be upon us. I propose that solution to Senator Milne as a *modus operandi* and ask if she has any thoughts on it.

Senator Milne: I thank the honourable senator for his question. My honourable friend's thoughts follow along exactly the same lines as mine. I was hoping there would be some debate in this place on the matter before I started work on drafting a bill, which I am seriously considering. Perhaps I should move a motion asking the Senate to refer the matter to a committee for

further study. Out of that committee study might then come a Private Member's Bill.

On motion of Senator Johnson, debate adjourned.

SOCIAL HOUSING PROGRAMS

ABORIGINAL PEOPLES COMMITTEE AUTHORIZED
TO EXTEND DATE OF FINAL REPORT

Hon. Sharon Carstairs, for Honourable Senator Watt, pursuant to notice of November 5, 1998, moved:

That, notwithstanding the Order of the Senate adopted on Thursday, May 28, 1998, the Standing Senate Committee on Aboriginal Peoples, which was authorized to examine and report on the damaging consequences of the recent decision of the Canada Mortgage and Housing Corporation (CMHC) to terminate all of its "Social Housing Programs", excepting Rural Residential Rehabilitation Assistance Program (RRAP), be empowered to present its report no later than April 28, 1999.

Motion agreed to.

The Senate adjourned until Wednesday, November 18, 1998 at 1:30 p.m.

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