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OFFICIAL REPORT
(HANSARD)

Wednesday, November 17, 1999

THE HONOURABLE GILDAS L. MOLGAT
SPEAKER

CONTENTS

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THE SENATE

Wednesday, November 17, 1999

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

Prayers.

SENATORS' STATEMENTS

NOVA SCOTIA

INTERNATIONAL AND NATIONAL AWARDS
WON BY CITIZENS OF LUNENBURG

Hon. Wilfred P. Moore: Honourable senators, I rise today to make a statement in recognition of the international and national awards recently earned by the Town of Lunenburg, Nova Scotia and her citizens.

On Friday, November 5, 1999, Lunenburg was presented with the Port of the Year Award by the American Sail Training Association of Newport, Rhode Island, at its twenty-seventh annual meeting held in Boston. Members of ASTA are from across the Americas. This award is presented annually to the community that demonstrates significant support of ASTA and recognizes and encourages sail training. It is the first time that the award has been presented to a Canadian port.

At that same meeting, Captain Daniel P. Moreland, Master of the barque *Picton Castle,* of Lunenburg, was honoured as ASTA's sail trainer of the year. Captain Moreland successfully circumnavigated the world in *Picton Castle* with a crew who were mostly novices when they departed Lunenburg in November 1977 for their 18-month historic odyssey.

Yesterday, Marq de Villiers of Lunenburg won the 1999 Governor General's Literary Award for non-fiction with his book entitled *Water*, a superb text about this precious resource of our earth. Mr. de Villiers generously donated one-half of his $10,000 prize to Lunenburg's library to assist it in its good work.

We congratulate and salute the Town of Lunenburg, Mayor Laurence Mawhinney and councillors, her shipwrights, marine blacksmiths, sailmakers and hospitable townsfolk. We congratulate and applaud Captain Daniel P. Moreland and Marq de Villiers for their undertakings and the awards they achieved.

REFORM OF THE SENATE

Hon. Donald H. Oliver: Honourable senators, last week, the John Hamm Government of Nova Scotia got it right. As we head into the 1999 holiday season, this legislative body made a strong move to protect public safety by taking a tough stand against drunk driving.

In Nova Scotia, drunk drivers are responsible for almost 40 per cent of all fatalities on the road. The Hamm government has employed new measures they hope will deter people from drinking and driving, thereby decreasing the number of senseless tragedies and protecting the safety of the people of Nova Scotia.

• (1340)

Beginning on December 1, new protective legislation will make a second drinking and driving conviction result in a driver's licence suspension of three years, up from two years. A third offence will result in a minimum 10-year suspension and fourth-time offenders will lose their licence for life. The new law will also provide a 24-hour administrative roadside suspension for drivers with a blood alcohol level of between .05 and .08.

This government has taken on the role of leadership in tightening the laws and getting tough with those who drink and drive. Now, almost all the provinces have implemented similar suspension programs for drunk drivers and many have achieved substantial success in curbing accidents.

As federal legislators, we can learn much from our provincial counterparts, as they have obviously been learning from one another. Protecting the safety and best interests of all Canadians should be our number one priority. Our Transport Committee, under the leadership of Senator Forrestall, has done a commendable study on safety in transportation and is a good example of the "Senate at work."

The Senate is constantly under attack and portrayed by many as an institution that to most Canadians serves no useful purpose. In fact, journalist and best-selling author Claire Hoy has recently published a book entitled *Nice Work: The Continuing Scandal of Canada's Senate*, which declares that this red chamber, as it exists today, has no real value.

Honourable senators, let us respond by showing Mr. Hoy and the rest of Canada just how important the work is that we do here. I believe in the reform of the Senate, but books and articles such as this only add fuel to the calls for its abolition. It is time for us to take on the role of leadership. Let us follow the example set by provincial legislatures such as the Hamm government and show every Canadian exactly how valuable an institution we are.

AGRICULTURE

INDUSTRIAL HEMP—
OBSTACLES IN EXPORTING TO THE UNITED STATES

Hon. Lorna Milne: Honourable senators, I should like to briefly update you on a matter I spoke about a few weeks back in this chamber. At that time, Kenex Limited of Paincourt, Ontario, was in a confrontation with U.S. Customs and the American Drug Enforcement Agency.

I am pleased to report to the Senate that the issue has been almost fully resolved. While there are still a few matters to be worked out, a shipment of Canadian hemp seed passed through U.S. Customs a week ago without any problems. The DEA and U.S. Customs have agreed not to seize any further shipments of hemp products exported to the United States by Kenex.

I wish at this time to give full credit to the Department of Foreign Affairs and International Trade for their assistance to Kenex in getting this matter resolved with a positive outcome for this young and enterprising business.

My congratulations to Kenex. This is good news for Canadian farmers.

INTERNATIONAL YEAR OF OLDER PERSONS

Hon. Lois M. Wilson: Honourable senators, the UN International Year of Older Persons is drawing to a close, but the ongoing thrust of this initiative is obviously of major concern to senators since we are older persons.

On October 4 and 5 of this year, when the United Nations General Assembly mounted a special session to highlight the International Year of Older Persons, I was privileged to speak for Canada at that special session and was able to highlight the Canadian initiative to devote new resources to the health sector. There is also the need to devote greater attention to disparities in health care and well-being affecting seniors with low incomes, older people living alone, aboriginal seniors and older women with mental health problems who are forced onto the streets without a home.

The Fourth Annual Global Conference of the International Federation on Aging, held in Montreal in September 1999, issued a declaration. It noted with concern that the 1991 UN Principles for Older Persons are still not universally recognized nor adhered to; neither has the 1982 Vienna International Plan of Action been fully implemented.

The concluding observations of the UN Human Rights Committee commenting on Canada's record of implementing the Covenant on Economic, Social and Cultural Rights in November 1998 recommended:

> ...that Canada officially establish a poverty line and establish social assistance at levels which ensure the realization of an adequate standard of living for all.

At the New York meeting, we heard from Third World countries that only 8.5 per cent of their people would reach age 60. In Africa the figure is only 3 per cent, while in Europe 24 per cent will do so. It behooves those of us who seek a new world to pay serious attention to these "continents of poverty," as well as the "islands of poverty" that exist among Canada's aging population. The subject of older people and poverty needs to be set in the context of development, eradication of poverty and social exclusion, which was highlighted at the Copenhagen World Summit for Social Development in 1995.

Our Overseas Development Assistance package has at least stabilized after several years of decline, but it does need an increase. In addition, it needs to be coordinated with debt relief to the most indebted countries, increased measures for employment and health for the elderly.

There was a call for the United Nations to convene a world assembly on aging in five years to review the progress achieved by individual member states in the implementation of their National Plan on Aging. I have every confidence that this will be approved and that Canada will be able to report favourably on its record concerning the care of the elderly in our midst, who happen also to be vulnerable, poor and homeless.

ROUTINE PROCEEDINGS

EUROPEAN MONETARY UNION

REPORT OF FOREIGN AFFAIRS COMMITTEE ON STUDY TABLED

Hon. John B. Stewart: Honourable senators, I have the honour to table the fourth report of the Standing Senate Committee on Foreign Affairs, entitled "Europe Revisited: Consequences of Increased European Integration for Canada."

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

Senator Stewart: Pursuant to rule 97(3), I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

Motion agreed to.

[*Translation*]

TRANSPORT AND COMMUNICATIONS

FIRST REPORT OF COMMITTEE TABLED

Hon. Lise Bacon: Honourable senators, pursuant to rule 104 of the *Rules of the Senate,* I have the honour to table the first report of the Standing Senate Committee on Transport and Communications, concerning the expenses incurred by the Committee during the First Session of the Thirty-sixth Parliament.

(*For text of report see today's* Journals of the Senate.*)*

[*English*]

CAPE BRETON DEVELOPMENT CORPORATION

FIRST REPORT OF SPECIAL COMMITTEE TABLED

Hon. John G. Bryden: Honourable senators, pursuant to rule 104 of the *Rules of the Senate,* I have the honour to table the first report of the Special Senate Committee on the Cape Breton Development Corporation, which report deals with the expenses incurred by the committee during the First Session of the Thirty-sixth Parliament.

(*For text of report see today's* Journals of the Senate.)

[*Translation*]

COMMITTEE OF SELECTION

FIFTH REPORT PRESENTED

Hon. Léonce Mercier, Chairman of the Committee of Selection, presented the following report:

Wednesday, November 17, 1999

The Committee of Selection has the honour to present its

FIFTH REPORT

Pursuant to rule 85(1)(a) of the *Rules of the Senate,* your Committee nominates the Honourable Senator Losier-Cool as Speaker *pro tempore.*

Respectfully submitted,

LÉONCE MERCIER
Chairman

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

Senator Mercier: Honourable senators, with leave of the Senate, I move that this report be taken into consideration later today.

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

Hon. Senators: Agreed.

On motion of Senator Mercier, report placed on the Orders of the Day for consideration later this day.

[*English*]

RELIGIOUS FREEDOM IN CHINA IN RELATION TO UNITED NATIONS INTERNATIONAL COVENANTS

NOTICE OF INQUIRY

Hon. Lois M. Wilson: Honourable senators, I give notice that on Wednesday next, November 24, 1999, I will call the attention of the Senate to religious freedom in China, in relation to the UN international covenants.

• (1350)

QUESTION PERIOD

NATURAL RESOURCES

CAPE BRETON DEVELOPMENT CORPORATION—CLOSURE—ANNOUNCED INFUSION OF FUNDS—GOVERNMENT POLICY

Hon. Donald H. Oliver: Honourable senators, my question is directed to the Leader of the Government in the Senate. On Monday, Minister of Natural Resources Ralph Goodale announced that the federal government will sink $70 million into the Cape Breton Development Corporation to keep the Crown corporation in operation until April of 2000. This is a complete turnaround by a government which has repeatedly claimed that there are no new federal funds available to improve the pension and severance packages being offered to the Devco miners and their families. Devco employees have been fighting for over eight months to get the government to enhance the deal. The Liberal government has put up $111 million for pension and severance packages, but only 340 miners will qualify for pensions and 650 for severance. This federally funded rescue of the coal mining company for the second year in a row is a blatant about-face.

What is the government's explanation for suddenly producing millions of dollars it claimed it did not have to keep in operation the company it intends to shut down? Is this a signal that the government has not abandoned Cape Breton and will commit sufficient funds to the Devco miners who were set to end the first year of the new millennium without jobs?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I can say categorically and without fear of contradiction that the Government of Canada has not in the past and does not intend in the future to abandon Cape Breton. The federal government's commitment to the coal industry over the last number of decades has been a large one, as I am sure the honourable senator is aware. It is a commitment in the range of $2 billion.

Our commitment to Cape Breton continues. For example, most recently, in concert with the province, the federal government established a special $80-million development fund to assist the economy of Cape Breton in the transition it is facing. The Government of Canada will continue to play its part in assisting the people of Cape Breton.

Specifically with relation to the $70 million, the plan to close Devco as a federal Crown corporation was scheduled, in a very phased and organized way, to occur at the end of December, 1999. I am sure that the honourable senator is familiar with the very detailed human resources package that was assembled and presented in relation to the schedule of closure. In order for the government to do that, it was assumed that a certain revenue stream would occur from production in the Phalen mine. That was a very large and necessary part of the plan.

As the honourable senator and others will know, the mine was shut down early under catastrophic circumstances. Rockfalls were causing immediate danger to life and limb of the miners so, primarily for safety reasons, the mine was immediately shut down. With that immediate shutdown, the revenue stream which would have carried it through to December 31 was gone.

The government had two choices. The first was to provide a revenue stream in order that the government could meet the commitments it had made to the miners and their families under this package. The second was that all employees become unemployed immediately. This latter option was unacceptable. I know that the honourable senator would not countenance such an alternative. Indeed, many groups in Nova Scotia, including members of his own party, indicated that that was not an acceptable alternative.

Therefore, the money was provided in order that the orderly phasing out of the federal presence in the mines could continue. As a result, people who were forced to arrange their lives on the basis of this plan will not be disrupted. We trust that everything will proceed as planned, and the replacement of the revenue which would have come from coal production is the most viable option.

CAPE BRETON DEVELOPMENT CORPORATION—BILL TO DISSOLVE—EFFECT ON MINERS AND STAFF

Hon. Donald H. Oliver: Honourable senators, Bill C-11, which authorizes the sale of Devco, contains a clause that seeks to delete a section of the Cape Breton Development Corporation Act which states that the government must take every reasonable precaution to ensure that workers are looked after.

If this bill is passed, will the Liberal government simply close the corporation, give the miners a one-time payment equal to less than one year's economic activity generated by Devco, and walk away? If not, what federal initiatives will be implemented to generate new jobs and foster new growth in Cape Breton's weakened economy?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, there are very large initiatives underway, and I have made brief reference to some of them. An $80-million economic development package over and above the other programs that exist for economic development in that area is a significant effort. As well, the package that was presented to the miners and the public in Cape Breton was a very thorough package. However, the Prime Minister has given his undertaking that that package will be reviewed, as is currently being done.

Frankly, my concern is not for an electrician working at Devco who will receive an $80,000- or $90,000-severance arrangement and will find a new job six months later. That individual will do just fine. My personal concern is for any individual who, because of long years of work, and perhaps partial physical disability, will have a difficult time relocating in the new economy.

As I have mentioned, work is being done to review the package to see if any additional measures can be put in place, in particular, to help those individuals most in need of assistance.

Senator Oliver: The minister did not refer to the clause in Bill C-11 that prompted my supplementary question.

Senator Boudreau: That specific clause has been raised by a number of people, including the United Mine Workers. They were concerned that it may have disrupted an arbitration process currently underway. I sought an opinion and relayed it to the United Mine Workers. The opinion indicates that this bill would not impact on any rights in existence prior to its expected passage.

I may have undertaken yesterday to give that opinion to Senator Murray. I will certainly give it to the Honourable Senator Oliver as well.

NATIONAL DEFENCE

CLOSING OF CFB CORNWALLIS—REMOVAL OF MEMORIAL WINDOWS FROM ST. GEORGE'S CHAPEL

Hon. Gerald J. Comeau: Honourable senators, the honourable Leader of the Government in the Senate will remember that in 1993-94 former Canadian Forces Base Cornwallis was closed by the federal government. At that time, stained glass windows were removed from St. George's Chapel, on the former base. The rationale given at the time was that the windows would be placed in safe storage until such time as the chapel was reconsecrated. The chapel was reconsecrated over a year ago.

Would the Leader of the Government in the Senate advise when the Department of National Defence will put these windows back in their proper place at St. George's Chapel? The people who paid for the windows, local residents as well as former recruits of the base, want these windows back in their rightful place.

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I am familiar with the matter which the honourable senator raises. In fact, those windows were removed from a chapel not presently in daily use. They are currently in a chapel in Halifax, the largest naval base in the country, that is used on a daily basis.

A decision was made to put them in that chapel so that people would have an opportunity to see and get the benefit of them on a regular basis. I understand the chapel from which they came is being used, but only on a very intermittent basis, once or twice a year. The decision, at this time at least, is that those windows should remain in their present location where more people can enjoy and be edified by them.

• (1400)

There have been some representations made recently, and obviously they are being given consideration, but that has been the rationale to date.

Senator Comeau: I have a supplementary question, honourable senators. The government leader indicated that the chapel in Shannon Park, which is where they are situated now, is being used on a more regular basis than the chapel at Cornwallis. He might want to check the attendance figures, as is sometimes done between the House of Commons and the Senate, to see if in fact the attendance at Shannon is all that high versus the attendance at former CFB Cornwallis. However, much more important than attendance at the chapel is the fact that the people who paid for these windows are residents of the area of Cornwallis and Digby, and the fact that thousands of recruits who passed through Cornwallis are scheduled to reunite there next spring. I think these people would be very proud to see the windows where they should be rightfully and historically. I would ask the honourable leader to support that proposal.

Senator Boudreau: Honourable senators, the honourable senator's proposal that I undertake to check attendance at the religious services or the institutions reminds me of the Biblical injunction, "Let he who is without sin cast the first stone." I do not know that I would be very aggressive about counting heads at any particular religious service.

However, I understand the sentiment that the senator brings to the floor here, and I will certainly convey it to the minister.

Hon. J. Michael Forrestall: Honourable senators, I, too, have a supplementary question. Perhaps I could throw the first pebble. If the minister were to determine where the pews for that chapel are and restore them to the chapel, perhaps the chapel might be a little busier.

Senator Kinsella: Where are they?

Senator Boudreau: Honourable senators, perhaps I may have an opportunity to speak with the honourable senator later and locate those pews.

REPLACEMENT OF SEA KING HELICOPTER FLEET— POSSIBILITY OF LEASING

Hon. Gerry St. Germain: Honourable senators, my question is also to the Leader of the Government in the Senate. It relates to a question I posed on November 4 regarding the Sea King helicopters. I have mentioned on numerous occasions, along with Senator Forrestall and others in this place, the urgency that surrounds this particular issue. I have gone so far as to say — and I would say this if we had a Conservative government, an NDP government or a Reform government — that if something is not done, and there is an accident, responsibility will lie directly on cabinet, the Prime Minister and the Minister of National Defence. Like many other Canadians, I believe we have abandoned our Armed Forces with respect to giving them safe equipment.

Therefore, I ask the Leader of the Government, in all sincerity, being completely non-partisan: When will the government start leasing helicopters? Cancellation of the EH-101s was a political decision, and I am not certain as to whether they would be in service today had the order gone ahead. However, in reply to my question yesterday, the Leader of the Government told me an answer would be forthcoming soon. Could he please give me a more direct or definitive answer at this moment?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, with respect to the replacement program for the Sea King helicopters, in one sense I can repeat what I have already indicated to the Senate. I have spoken with the Minister of National Defence, who indicated that this is absolutely a top equipment priority for him.

Senator Lynch-Staunton: They have all been saying that.

Senator Boudreau: He has had some success. The government has indicated that it is prepared to commit to major programs, for example, the submarine program.

Senator Lynch-Staunton: What is the cost of the refitting?

Senator Boudreau: He has indicated to me that it is a matter of very high priority with him. I have indicated to him, as I will now indicate to honourable senators, that I regard it as a matter of great priority.

I live in the city of Halifax, and there is not a city in the country where the military is held in higher regard. We appreciate greatly the role they play and the sacrifices they make on a daily basis. I will certainly lend whatever support I can to the effort to see that the procurement of the Sea King replacements goes ahead as quickly as possible.

Senator St. Germain: Honourable senators, I have no doubt that the intention of the government is to make that procurement. The question is: Are they prepared to lease? That is the key.

I speak from experience as an active pilot. If any aircraft requires 30 hours of service to fly one single hour, honourable senators can imagine just how bad is the condition of these aircraft. Anyone who knows anything about helicopters knows the stresses and strains that are put on them. I say to the honourable leader that I do not believe there is any alternative but to lease. We must get the proper equipment into the hands of the military so that they can look after people who decide to venture offshore in a boat — off Nova Scotia or anywhere else. I urge the leader to pursue this matter, and I ask him again for a response with respect to leasing.

Senator Boudreau: Honourable senators, I would remind all senators that the government has made some significant commitments of late with respect to equipment for our Armed Forces. I mentioned the submarines. For submarines, the commitment is $750 million. The replacement process for the Labrador helicopters for search and rescue is underway now, and that is a commitment of slightly under $800 million. There is also a commitment of $30 million to modernize Camp Aldershot, as well as a commitment of another $300 million in benefits to improve the standard of living of our Armed Forces personnel in the area.

I do not want to avoid the honourable senator's question. As a matter of fact, further to my inquiries, I have a delayed answer that I plan to table at the end of Question Period. I can inform the honourable senator that there are no present plans to lease helicopters.

Senator St. Germain: Honourable senators, it is totally unacceptable to expose our military to conditions due to the poor state of the equipment. I can only repeat to the Leader of the Government what I said earlier: If there is an accident involving any of these helicopters, the responsibility will lie directly on his shoulders, the shoulders of cabinet and the Minister of National Defence. That is not the solution.

I hate to have to say this, but I cannot adequately describe in words the horror that exists, I am sure, in the minds of those pilots when they have to take up aircraft that require 30 hours of service to fly for one single hour. Can the honourable senator imagine any other organization in the aviation industry trying to operate under those conditions?

• (1410)

Senator Meighen: They would be shut down!

Senator St. Germain: That is correct. As Senator Meighen says, either the Transportation Safety Board or Minister Collenette's department would shut them down because the aircraft would be so dilapidated and in such poor condition. I urge the leader again to go back to the minister and get him to reconsider that position.

Senator Boudreau: I thank the honourable senator for his comments. Honourable senators, I am repeating myself, but the minister has assured me that the helicopters are his top priority for equipment replacement. Obviously he agrees, as would anyone who looked at the situation, that the helicopters must be replaced.

With respect to the helicopters' flying assignments, I take some assurance in the fact that the helicopters would not be given a particular mission or service if those in command were not convinced that the piece of equipment was capable of performing that job. As to the cost of servicing them, some questions can be asked. However, we are involved in that process, and I hope that the replacement process will be completed as soon as reasonably possible.

UNITED NATIONS

PROPOSAL BY REFORM PARTY TO REVIEW MEMBERSHIP—GOVERNMENT POLICY

Hon. Douglas Roche: Honourable senators, this question is to the Leader of the Government in the Senate. The Reform Party, which is the Official Opposition in the House of Commons, released a foreign policy paper stating that, as government, it would review Canada's membership in the United Nations.

Since the UN has been, for half a century, a cornerstone of Canada's foreign policy, irrespective of the political colouration of the day, what is the government's position on such a startling proposal? Does the government intend to respond with a clear statement of support for the United Nations or does the government intend to give this proposal the attention it deserves and ignore it?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, in my position as Leader of the Government in the Senate, I wish to indicate the strong and unwavering support of our government for the United Nations as an institution.

Hon. Senators: Hear, hear!

Senator Boudreau: I find it incredible that any responsible political party would make a statement or take a position such as has been advanced by the Reform Party. Have they learned nothing from history?

That statement should not be given any great attention in order to avoid giving it any credibility. People of goodwill in government in this country and from two federal parties have long supported the UN. Canada is, perhaps, the greatest supporter of the institution in the world. Almost 5,000 of our servicemen are now serving in various parts of the world, putting themselves in harm's way and assisting the United Nations in doing a very valuable job. I find it incredible that such a statement could be seriously made in this day and age.

HEALTH

AUTHORITY FOR REGULATING SUBSTANCES ENTERING RENDERING PLANTS—GOVERNMENT POLICY

Hon. Mira Spivak: Honourable senators, my question is to the Leader of the Government in the Senate. Last July, a most unfortunate incident took place in Manitoba. Some cattle were poisoned with a highly potent weed killer. They were shipped to a rendering plant and may have entered the feed produced by the plant, which was subsequently fed to pigs and chickens. Luckily, however, there was no evidence of that. From an examination of this incident, it appears that no federal regulations exist to

monitor what goes into a rendering plant. The federal agency, the Canadian Food Inspection Agency, claims rendering is a provincial responsibility, while the provincial government and the rendering company believe rendering is a federal responsibility.

What is the position of the government with regard to the federal responsibility for substances entering a rendering plant? Also, what is the scientific basis, given the example of the mad cow disease in Britain, for feeding rendered cattle — and who knows what other remains — to pigs and poultry?

Hon. J. Bernard Boudreau (Leader of the Government): Honourable senators, I appreciate the question that the honourable senator has asked. It is a question on which I should have my deputy leader at my side, since he is the expert in the cattle industry.

Senator Forrestall: I would sooner have your colleague from Cape Breton back there!

Senator Boudreau: The honourable senator raises an important question. I am simply not familiar enough with that specific area to respond to the question today. However, I will get a response for the senator as quickly as possible.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Point of order! Honourable senators, the opposition would like to invite the government to give consideration to calling the report that was just tabled by the Chairman of the Senate Committee of Selection.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, we are in agreement and give leave to bring that matter before the Senate at this time.

[*Translation*]

COMMITTEE OF SELECTION

FIFTH REPORT ADOPTED

The Senate proceeded to consideration of the fifth report of the Committee of Selection *(Speaker pro tempore),* presented in the Senate on November 17, 1999.

Hon. Léonce Mercier: Honourable senators, I move the adoption of the report.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I would like to say a few words concerning this motion by our colleague the Government Whip and an excellent Chairman of this committee, one of the best in the history of the Senate.

I would like to express the pleasure those of us on this side feel on the appointment of our colleague Senator Losier-Cool, from the province of New Brunswick, a woman who has made some remarkable contributions since her appointment to the Senate. We are very pleased to support the motion by Senator Mercier.

[*English*]

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I should like to add a comment to the debate on this report. On behalf of this side, I wish to extend our congratulations as well to the person designated in the report to serve as Speaker *pro tempore*. She has served as a senator in this place with great distinction, and I know she will fill the role of Speaker *pro tempore* with that same distinction.

• (1420)

I, too, compliment the Chairman of the Senate Committee of Selection and all senators who participated in the deliberations and who spoke in support of the report.

Motion agreed to and report adopted.

[*Translation*]

CRIMINAL RECORDS ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Fraser, seconded by the Honourable Senator Gill, for the second reading of Bill C-7, to amend the Criminal Records Act and to amend another Act in consequence.

Hon. Pierre Claude Nolin: Honourable senators, before reading my prepared text, I would remind you that Bill C-7 is essentially the same as Bill C-69, which we had begun to consider before the end of the last session. My remarks this afternoon will refer to Bill C-69 a number of times. Do not see this as an attempt to mislead you, because Bill C-69 is the equivalent of Bill C-7.

Before I begin my speech, I would also like to thank Senator Fraser for her support for my interventions in this house and before the Standing Senate Committee on Legal and Constitutional Affairs to amend the forerunner of Bill C-7, Bill C-69, on the regulatory powers accorded the Solicitor General.

I would also like to point out that the Solicitor General kindly accepted my amendment proposals concerning this bill last June. I am grateful to him.

Honourable senators, I am pleased to speak at second reading stage of Bill C-7, to amend the Criminal Records Act. Pardons accorded under sections 5, 6, and 7 of the Criminal Records Act permit individuals to have their criminal record sealed after having been found guilty of a criminal offence, having served all of their sentence and having demonstrated that they have become law-abiding citizens. These provisions help offenders return to society. This is an important principle of our criminal law system.

Under the Criminal Records Act, the National Parole Board has the power to grant or issue, or refuse to grant or issue or to revoke a pardon. In addition, the Canadian Human Rights Act prohibits discrimination against anyone to whom a pardon has been granted by the Solicitor General of Canada. It is important to mention that the pardon does not erase the existence of the conviction and that it may be automatically revoked if the person is later sentenced for a criminal offence.

In its present form, the Criminal Records Act provides for the consequences of granting pardon, such as keeping an offender's record sealed. It also provides that any record for which a pardon has been granted that is in the custody of the Commissioner of the Royal Canadian Mounted Police or of any department or agency of the Government of Canada shall be kept separate and apart from other criminal records, and that no such record shall be disclosed to any person, nor shall the existence of the record or the fact of the conviction be disclosed to any person, without the prior approval of the Solicitor General of Canada.

Honourable senators, the purpose of the government's proposed amendments to the Criminal Records Act, in the form of Bill C-7, is to improve public safety. Their primary purpose is to prevent sex offenders from holding positions of trust with children or other vulnerable groups.

In pursuit of this goal, Bill C-7 proposes to add one additional provision with respect to the particular case of the criminal records of pardoned sex offenders. The new section 6.3 of the Criminal Records Act would require the RCMP Commissioner to make in the RCMP's automated criminal conviction records retrieval system a notation that would inform a police force doing a screening that there is a record of an individual's conviction for a sexual offence listed in the regulations in respect of which a pardon has been granted. This recommendation was approved unanimously by the federal and provincial justice ministers at their October 1998 meeting in Regina. Agencies providing services to children and wishing to hire a volunteer or paid employee will now be able to verify whether the applicant has been granted a pardon for a sex offence. This verification is subject to two conditions: on the one hand, if the position were to place the applicant in a position of authority or trust with children or other vulnerable groups, and on the other, if the applicant has consented in writing to the verification.

The notation will indicate to the police force carrying out the screening that its request for disclosure of the record of a rehabilitated individual must be accompanied by the fingerprints of the individual in question. If the verification results in the determination that the person has already been convicted of an offence of a sexual nature, the RCMP or police force that performed the check may request the RCMP Commissioner to provide the Solicitor General with any record of a conviction of that individual. The Solicitor General may decide the appropriateness of disclosing the contents of the record. If authorized by the individual, the RCMP may disclose the information to the organization that requested the verification.

However, the organization may not use this information for any other purpose than in relation to the assessment of the application. In order to avoid abuses, the bill stipulates that the verification may not be used for any other purpose except assessment of an application.

Honourable senators, I am pleased to say that I am totally in agreement with the objectives and principles underlying Bill C-7. Clearly, the safety of our children and other vulnerable groups in society cannot help but be better protected by these new measures.

However, I must point out that a number of associations, such as the Elizabeth Fry Society and the Criminal Lawyers' Association, have voiced some reservations about the policy underlying Bill C-7.

Their main area of concern is that this bill could threaten the integrity of the rehabilitation system and its role in rehabilitating and reintegrating offenders. They point out in particular that the Solicitor General has not established in a satisfactory manner that the present legislation on criminal records and rehabilitation offers society insufficient protection against rehabilitated sexual predators.

• (1430)

Moreover, the John Howard Society and the Elizabeth Fry Society feared that relying on access to rehabilitation records would give a false sense of security by overshadowing other key elements in the selection of personnel for positions of confidence with children or vulnerable people.

Honourable senators, during the work of the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-69, we took a very close look at this issue. In that regard, I would like to deal briefly with the issue of the balance between the rights of people rehabilitated by the Solicitor General of Canada and the rights of children or vulnerable people. While some feel that the provisions of this bill seem to challenge the principle of social rehabilitation, which is the foundation of our parole and rehabilitation system, this legislation achieves a certain balance between the rights of a person who has been charged, sentenced and released, and the rights of the children whom we must protect.

Honourable senators, obviously when we are dealing with people who abuse children or elderly persons, a single offence is one too many. The consequences are serious and, as parliamentarians, we must do our utmost to avoid any recurrence of such incidents. When I say that the bill achieves a certain balance between the rights of the two groups of individuals, I am

not trying to minimize or trivialize the problem, but to put it in the proper context. When we talk about criminal acts, about the treatment of criminals and about effective and realistic measures to fight this type of crime, we must put things in a comparative context.

As a lawyer, I can tell you that it is always very difficult to achieve a perfect balance between the rights of people who have demonstrated that they could lead a normal life and making sure that the rehabilitation system does not become a mechanism that hides the history of people who could be a threat for children and other vulnerable persons. This is a thorny issue.

Therefore, the federal government agreed, along with all the other provincial and legal administrations, at a justice ministers' conference, to set up such a screening system. All the ministers agreed on that initiative. It is a compromise, a proposal that does not go to one extreme or the other but that is deemed to be a balanced and achievable approach.

In response to legitimate concerns expressed by some members of the committee and certain associations who feared that the bill would jeopardize the aims of the pardon-granting process, I would point out that the bill provides for only one exception to the intended benefits of pardons. It provides for a very targeted system of notation that contains measures to protect the rights of the individual pardoned.

I would now like to address the matter of regulations — which, in passing, were at the heart of the work of the Legal Affairs Committee — as they concern the application of the provision to permit the marking of a criminal record. As you know, this point is of the highest concern to me.

Currently, clause 8 of the bill provides for the amendment of section 9.1 of the Criminal Records Act so this new provision on the marking of the records of individuals pardoned following a conviction for a sexual offence may be properly applied. Under Bill C-7 — the bill before us, as was the case in Bill C-69 — the government may make regulations, first, listing the offences covered by the term "of a sexual nature"; second, respecting the making of notations in the respect of records of conviction and the verification of such records; third, defining the expressions "children" and "vulnerable persons"; and, fourth, respecting the consent given by the individual concerned in the new section 6.3 to the verification of records or the disclosure of information in them to the organization requesting it and setting out in the regulations the factors the Solicitor General takes into consideration in deciding to approve or deny disclosure of the content of the record of a pardoned individual.

When the Solicitor General appeared before the members of the Standing Senate Committee on Legal and Constitutional Affairs, on June 14, I stated that the regulatory powers, as defined by Bill C-69, were a matter of policy. In this regard, I put a number of questions to him.

First of all, why would the offences in the paragraph in question be listed, amended, extended or reduced solely by the Governor in Council and without extensive consideration by both Houses of Parliament? Why would the definitions of "children" and "vulnerable persons" also be subject to the regulatory power of the Governor in Council?

Why does the Governor in Council have sole authority over the process as set out in proposed section 6.3 respecting the consent given by individuals to the verification of records or the disclosure of information contained therein to a requesting body? Why did the bill not mention that it was solely concerned with individuals convicted of sexual offences? Although all the speeches made by the government in the other place and in the Senate have always referred to sexual offences, the bill made no specific reference to the sexual nature of these offences.

Why did the bill not contain a schedule listing sexual offences, when other federal legislation, such as the DNA Identification Act, contains a schedule clearly identifying offences with which the bill is concerned?

Honourable senators, when I spoke on Bill C-69 last June, during debate at second reading, I said that the powers given to the Governor in Council seemed to be very broad. When the Solicitor General appeared before our committee, I mentioned to him that these matters could be resolved by having them included in the bill. Note, honourable senators, that, in recent years, both the current and the previous governments have been trying to ensure that bills do not contain legal definitions or operational procedures that could be challenged or amended when examined by members of Parliament, the standing committees of both Houses, or interest groups. This, I am sure you will agree, is very worrisome, because there is a big difference between the process of consultation when a bill is being considered and the examination of new regulations.

In the case of the definition of the terms "children" or "vulnerable persons," officials of the Department of the Solicitor General answered our concerns as follows:

In the case of "vulnerable persons," the definition was not included in the bill because it could change over the years. It would therefore have been difficult to define this term in the legislation on criminal records. In this case, it was preferable for the ministers to be able to change the definition by regulations, without having to introduce a new bill. Nevertheless, I reminded the minister and his departmental officials that part of the Quebec Civil Code deals at length and most precisely with the vulnerable and protection of their civil rights.

As for the use of the term "children," the departmental officials indicated that this was already defined in other legislation and there was therefore no necessity of including it in Bill C-69. Yet the new legislation on the youth justice system that we will be looking at in coming months contains a definition of "children." It is basically this: A child is a person under the age of 18 years. Contrary to what the minister and his staff have stated, I am convinced that this definition will not be changing very often.

• (1440)

What is more, these same departmental officials stated, in justification of these lapses, that the department had followed the same approach in the amendments to the appendixes of the Corrections and Conditional Releases Act. At the present time, these contain a number of legal and regulatory definitions that are modified by Order in Council.

Honourable senators, I would mention that a number of members of the committee, including myself, pointed out to the minister that even if clause 8 of Bill C-69, which refers to regulatory powers, indicated that the offences selected for inclusion in the list would be of a sexual nature, the bill did not indicate it applied only to those individuals who had been sentenced for a sexual offence. In a number of places in the bill, only the word "offence" is used. Accordingly, this list could include a series of infractions that would not be specifically of a sexual nature, therefore increasing the scope of the provisions of Bill C-69. Subsequent to our questions and comments, the officials of the Department of the Solicitor General said that someone had asked that the list include an omnibus clause that would provide essentially the following: "and any other infraction for which the Parole Board chose to include a marker." That is too vague and too broad.

With regard to the absence of a list of sexual offences as a schedule of the bill, the minister tried to justify this omission by saying that it would be simpler to draft and amend the list by Order in Council than by going through Parliament. The minister felt that this latitude was necessary to expedite future amendments to the list. Departmental officials said that the list already existed. It had been drafted in cooperation with the provinces so as to decide what should be included in a list containing sexual offences against children and vulnerable groups in particular. If it already exists, why not include it in the bill? That would have given us the opportunity to study it immediately.

Honourable senators, if we look at the evidence given by the Solicitor General and his officials, it is clear that, in its current form, Bill C-7, which is a carbon copy of Bill C-69, is open to a challenge under the Canadian Charter of Rights and Freedoms. For example, the bill does not specify that it applies only to people who were convicted of offences of a sexual nature against children or other vulnerable people and then pardoned. Consequently, the list of offences that will form the basis of this new legislation may be much too vague and could greatly exceed the intent of the lawmakers. Criminal law is fundamental in nature. A crime is a crime. In that sense, it does not seem appropriate to leave these decisions to the executive branch, rather than to the legislative branch. Moreover, one cannot deny the principle which provides that all our laws must be in agreement with the provisions of the Canadian Charter of Rights and Freedoms.

Finally, as regards the issue of consent, departmental officials admitted that they did not deem necessary to include in the act the consent process provided for in clause 6.3 of the bill. Yet this process is specifically included in several other federal acts.

Honourable senators, in an attempt to reassure committee members, the minister cited practical reasons for including all these regulatory powers in the bill. In his view, some of these changes may take an extremely long time, particularly if they are subject to extensive parliamentary review. In the case before us, the government may find itself in a situation that some would describe as urgent and will not be able to proceed as quickly as it would like if, for instance, the definition of "children" or "vulnerable persons" or the consent procedure must be amended quickly for practical or legal reasons.

Honourable senators, as I said, it is true that action to protect children and vulnerable persons from sexual predators is urgently required. That is no reason, however, to abrogate the powers of Parliament and to ignore the provisions of our Charter.

This is why certain members of the committee and I did not agree with the explanations and reasoning of the minister and his officials. We pointed out that we were concerned that the government seemed to be shielding important matters from consideration by Parliament. We therefore informed the minister of our concerns with respect to the erosion of Parliament's powers through excessive reliance in bills on regulatory powers to address such important matters.

Given the extent of the committee members' criticisms — this is a story with a happy ending, as you know — the Solicitor General made a commitment to reassess the contents of the bill over the summer. It seemed to me that quick passage was more important. On September 9, officials in the Department of the Solicitor General provided committee members with some amendments to remedy the flaws in Bill C-69. Their main intent was to do away with clause 8. All of the regulatory powers previously assigned to the minister will be included in the Criminal Records Act. As well, the bill will specify that the system of marking records will apply only to those persons who have been convicted of sexual offences. In order to clarify the process, a list of offences was added as a schedule to the act. I presume honourable senators will realize I am referring to Bill C-69. It can be amended by Order in Council. Finally, the definitions of "children" and "vulnerable persons" have been moved from the regulations to the bill itself.

In conclusion, honourable senators, I wish to state that once again, thanks to the vigilance of the members of your Legal and Constitutional Affairs Committee, marked improvements were made to Bill C-69, and I sincerely hope to Bill C-7, so that the rights of the rehabilitated individuals and those of children and vulnerable persons are properly protected.

At the very end of my remarks, I wish to indicate my support for the principles of this bill. It will be examined thoroughly in committee. I trust that the government will reintroduce the amendments it had agreed to accept for Bill C-69. Once again, we shall be most vigilant on your behalf, honourable senators.

The Hon. the Speaker: Honourable senators, if no other senator wishes to speak, I shall proceed with the motion.

It is moved by the Honourable Senator Fraser, seconded by the Honourable Senator Gill, that the bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

[*English*]

[*Earlier*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of His Royal Highness Samdech Krom Khun Norodom Sirivudh, Deputy Prime Minister of the Kingdom of Cambodia. His Highness is accompanied by Dr. Kao Kim Hourn, Executive Director of the Cambodian Institute for Cooperation and Peace.

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

• (1450)

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION REQUESTING AUTHORITY
TO APPLY PAPERS AND EVIDENCE GATHERED
ON EXAMINATION OF PREVIOUS BILL TO STUDY BILL C-7

Leave having been given to revert to Notices of Motions:

Hon. Joan Fraser: Honourable senators, I give notice that tomorrow, Thursday, November 18, 1999, I will move:

> That the papers and evidence received and taken by the Standing Senate Committee on Legal and Constitutional Affairs during its study of Bill C-69, An Act to amend the Criminal Records Act and to amend another Act in consequence, in the First Session of the Thirty-sixth Parliament be referred to the Committee for its present study of Bill C-7.

[*Translation*]

[*Earlier*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I call your attention to the presence in our gallery of a delegation of chiefs and other members of the Montagnais of Lac-Saint-Jean and Quebec's North Shore, the special guests of the Honourable Senator Gill.

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

Hon. Senators: Hear, hear!

[*English*]

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT
ON STUDY OF CHANGING MANDATE OF
THE NORTH ATLANTIC TREATY ORGANIZATION

Leave having been given to proceed to Motion No. 9:

Hon. John B. Stewart, pursuant to notice of November 16, 1999, moved:

> That, notwithstanding the Order of the Senate adopted on Thursday, October 14, 1999, the Standing Senate Committee on Foreign Affairs which was authorized to examine and report upon the ramifications to Canada: 1. of the changed mandate of the North Atlantic Treaty Organization (NATO) and Canada's role in NATO since the demise of the Warsaw Pact, the end of the Cold War and the recent addition to membership in NATO of Hungary, Poland and the Czech Republic; and 2. of peacekeeping, with particular reference to Canada's ability to participate in it under the auspices of any international body of which Canada is a member, be empowered to present its final report no later than December 15, 1999;
>
> That the Committee retain all powers necessary to publicize the findings of the Committee contained in the final report until December 24, 1999; and
>
> That the Committee be permitted, notwithstanding usual practices, to deposit its report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.

Motion agreed to.

BUSINESS OF THE SENATE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a point of order. We received a notice of motion from Senator Fraser a few moments ago. On our Order Paper for today is a similar motion made by Senator Oliver. There appears to be some confusion as to the appropriateness of a motion requesting authority to apply papers and evidence received by a Senate standing committee in a previous session of Parliament to a committee of the same name established in a new session and dealing with the same subject. There seems to be some confusion as to the rules. Could we have clarification on that point to obviate any misunderstanding?

The Hon. the Speaker: I thank the Honourable Senator Kinsella for mentioning this matter.

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, I will simply say that this may be a timely request for a ruling, although I should mention that the reason the matter has arisen is as a result of concerns expressed by Senator Cools. Perhaps I should let her speak for herself rather than try to sum up. Suffice it to say that I concur with the Deputy Leader of the Opposition in that it would be timely to have this matter resolved by His Honour.

Hon. Anne C. Cools: Honourable senators, I would be quite happy to add my remarks to the debate. First, perhaps I could receive some clarification. Is this a point of order? What is the question before us?

Senator Hays: It is a request for a ruling from the Speaker as to the orderliness of the motion, notice of which was given by Senator Fraser.

Senator Cools: Is Senator Kinsella asking about the propriety of the notice of motion put forth by Senator Fraser? That sounds odd to me.

Senator Kinsella: No. Senator Fraser has duly given a notice of motion, the substance of which we have apprehended. A similar motion was made by Senator Oliver last week. That motion legitimately raised questions from some senators, including Senator Cools. There are at least two schools of thought as to whether, after prorogation, the work done by a committee of the Senate on a subject matter in a given session can be referred to the new committee. I believe we should have this matter clarified.

Senator Cools: Honourable senators, I plan to bring some clarification to this matter tomorrow when I speak in debate on Senator Fraser's motion, but if senators wish, I am prepared to debate it now. I am attempting to ascertain under what authority I am answering Senator Kinsella's questions. I am prepared to speak to the matter.

The Hon. the Speaker: Honourable senators, we are anticipating the question. All we have, insofar as Senator Fraser is concerned, is a notice of motion. There is no debate on a notice of motion or, indeed, an opportunity to actually raise a point of order. The proper time to raise the matter is when the motion is placed before us. However, I am in the hands of honourable senators. If you wish me to deal with it now, I can, but I think it would be more orderly if we proceeded when we reach the actual item on the Order Paper.

Senator Kinsella: Honourable senators, I raised a point of order relating to the substance of Senator Fraser's notice of motion. It is similar in substance to a motion on the Order Paper made by Senator Oliver. Given that the rules lay the awesome responsibility on the Speaker to interpret our rules, I sought clarification. I have risen on a point of order requesting clarification because I believe we need clarification of the rules from time to time. I am rising not to debate the notice but rather to raise a point of order at the appropriate time, which is now.

Senator Hays: Honourable senators, perhaps I can bring some focus to the issue. I agree that the matter is one in dispute, not so much for Senator Fraser's notice of motion, as for the item standing in Senator Cools' name, namely, Senator Oliver's Motion No. 8. All I am interested in is ensuring that we deal with the matter of order. As far as this side is concerned, it can be dealt with now. We have no objection to that. Another option is to deal with it when Senator Oliver's motion is called on the Order Paper.

In any event, I feel it would be good to deal with it today in the light of the Speaker's anticipated absence. However, Senator Cools raised a concern about the form of the motion, and I believe she should give her comments.

Senator Cools: That is agreeable.

The Hon. the Speaker: Honourable senators, I believe that we are anticipating at this point. Insofar as Senator Fraser is concerned, all that is before us is a notice of motion. In other words, the matter is not before us. In my view, a notice of motion cannot be the subject of a point of order or that type of discussion. We have been told that eventually the senator will propose something. When she does, that would be the proper time to raise the matter.

If it is the wish of honourable senators, of course, we can proceed now. I am in your hands in that regard.

• (1500)

Honourable senators, I repeat that I think the more orderly way to do our business is to proceed when the items are before us. If it is to be Senator Cools' adjournment of Senator Oliver's motion, we will deal with it and then deal with the motion of Senator Fraser. However, I am in your hands.

Senator Hays: Honourable senators, if the Speaker has a sensitivity to dealing with this issue as an abstract matter now, perhaps we could deal with it today when we come to Senator Oliver's motion.

I point out that Senator Oliver's motion, which is quite properly before us, standing adjourned in the name of Senator Cools, is exactly the same in substance as Senator Fraser's notice of motion. Perhaps we can deal with it when Senator Oliver's motion is called. If that is in order, it would be my suggestion that we do so.

The Hon. the Speaker: The notice of motion and the motion are similar in that they speak to the same principle. They differ in that they deal with different items.

Senator Cools: Honourable senators, perhaps we could deal with the questions and the complexities raised in the instance of Senator Oliver's motion by proposing an amendment to it. I am in the hands of the Senate. If it is the will of senators that we try to resolve these issues today, that is fine with me. However, I am of the opinion that this is not so much a point of order as it is a substantive question. If it is a substantive question, it may be better dealt with under the rubric of the government's notice of motion, which was Senator Fraser's notice of motion.

Senator Hays: Honourable senators, we will be dealing with it when we come to Senator Oliver's motion. Perhaps it would be appropriate to speak to it at that time to be certain that we are in order in terms of our comments.

Hon. Senators: Agreed.

THE ESTIMATES, 1999-2000

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Dan Hays (Deputy Leader of the Government), pursuant to notice of November 16, 1999, moved:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2000, with the exception of Parliament Vote 10a and Privy Council Vote 25a.

Motion agreed to.

THE ESTIMATES, 1999-2000

PRIVY COUNCIL VOTE 25A REFERRED TO STANDING JOINT COMMITTEE ON OFFICIAL LANGUAGES

Hon. Dan Hays (Deputy Leader of the Government), pursuant to notice of November 16, 1999, moved:

That the Standing Joint Committee on Official Languages be authorized to examine the expenditures set out in Privy Council Vote 25a of the Supplementary Estimates (A) for the fiscal year ending March 31, 2000; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Motion agreed to.

THE ESTIMATES, 1999-2000

VOTE 10A REFERRED TO STANDING JOINT COMMITTEE ON THE LIBRARY OF PARLIAMENT

Hon. Dan Hays (Deputy Leader of the Government), pursuant to notice of November 16, 1999, moved:

That the Standing Joint Committee on the Library of Parliament be authorized to examine the expenditures set out in Parliament Vote 10a of the Supplementary Estimates (A) for the fiscal year ending March 31, 2000; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Motion agreed to.

CRIMINAL CODE CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Hon. Anne C. Cools moved the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Cools*).

She said: Honourable senators, I rise to move second reading of Bill C-247 and to begin the debate on this bill.

Currently, multiple murderers can receive no incremental sentences, not one day, not one hour, for the second, third or even the eleventh life taken in the brutal murders that they have committed. Bill C-247 challenges the notion that multiple murderers should be guaranteed a chance for parole after serving 10 or 25 years of their life sentences, regardless of the number of murders they have committed. Albina Guarnieri's bill will remove that guarantee and will give judges the opportunity to pass sentences that are proportionate to the crimes. It will give judges the full flexibility to add just one day or one year, up to an additional 25 years. The only murderers who will ever face this possibility would be murderers convicted of multiple murders.

Bill C-247 was Bill C-251 in the last session of Parliament. Bill C-251 was received here in the Senate on June 8, 1999, in the dying days of the session. On June 17, the Senate recessed for the summer and resumed on September 7. On September 17, Parliament was prorogued. Consequently, Bill C-251 died on our Order Paper. On October 19, in the House of Commons, Albina Guarnieri introduced her Bill C-247, renumbered from Bill C-251. Bill C-247 received first reading in the Senate on November 2.

Honourable senators, this bill's journey through the Commons has been a four-year journey, in four numbered incarnations, being Bill C-274 and Bill C-321 in 1996, then Bill C-251 in 1997, and now Bill C-247. Its journey tells of the relevance of the opinion of the House of Commons to the cabinet and to the responsible minister. Bill C-247 is a private members' bill developed, advanced and sponsored in the House of Commons by Albina Guarnieri, the Liberal Member of Parliament from Mississauga East, near Toronto.

This bill responds to a major and pressing social issue — the condition of criminal justice in Canada. Albina Guarnieri has asked me to sponsor her bill here and to shepherd it through the Senate. I hold her in high esteem. She has endeavoured tenaciously to bring this bill forward in the face of many deliberately placed hurdles. I commend her. I thank her. All Canadians are indebted to her. I have supported her in these efforts, particularly in the difficult business of enduring the brutal blows that are meted out within one's own political party caucus, an area of human relations in need of serious introspection.

• (1510)

Honourable senators, Albina Guarnieri and I together attended the section 745 hearing of inmate Clifford Olson in Surrey, British Columbia, on August 18, 1997. There were no arrangements made by the Attorney General or the courts for members of Parliament to observe this hearing. Liberal House of Commons members Dan McTeague and Paul Steckle also attended, as did John Nunziata, a former Liberal member and now an independent, as did several Reform Party members. Christie Blatchford aptly described that hearing. In her *Toronto Sun* article of August 19, 1997, entitled "Clifford Olson's 'macabre circus'," she wrote:

> Liberal Sen. Anne Cools was so outraged she was almost incoherent, mumbling that the "macabre circus" inside the court was so malevolent she had to do something fast to get her blood sugar up or she couldn't listen any more.

Honourable senators, on December 1, 1998, during her testimony before the Commons Standing Committee on Justice and Human Rights on Bill C-251, now Bill C-247, Albina Guarnieri described that day's section 745 hearing, presided over by the British Columbia Supreme Court Justice Richard Low, with an insight of inmate Olson. She said:

> For me, the most alarming moment in the Olson hearing occurred when Olson read out a letter from his lawyer advising him to admit to all his murders at once. This way, the lawyer indicated, Olson could take full advantage of concurrent sentencing.
>
> Inmate Olson said that his lawyer advised him to take full advantage of concurrent sentencing.

Albina Guarnieri continued:

> Olson mocked in the court, "They can't do nothing. They can only give me a concurrent sentence."
>
> Just to give you a little taste of the other advice coming from Olson's esteemed member of the bar, Olson quoted a letter to him from his lawyer that said:
>
> Let's plan a program, of which the first thing is to see that you are thoroughly protected from repercussions by overzealous boy-scout policemen.

Concurrent sentencing is advantageous for malevolent first- and second-degree multiple murderers. Albina Guarnieri has placed this burning public policy issue of criminal sentencing squarely before us, particularly the sentencing of cruel, wilful, incorrigible and malevolent multiple first- and second-degree murderers. This is sentencing for truly evil acts. "Evil" is a word rarely used because its use demands a definition of "good" and of the source of "good". Further, these words "good" and "evil" compel a moral debate and a debate on the notion of a transcendent being, a deity, God as a source of all goodness. In today's public square, public policy development and debate on these questions are devoid of moral conviction, resulting in what some have called "the naked public square." Many current political leaders have sought to divorce politics from morality and to divorce public office from personal conviction, claiming that they do so in the name of moral neutrality. Public and political debate in Parliament, in the public square, in the absence of principles and moral convictions, is a hollow and a failed debate. Debate in the public square and in Parliament absolutely requires that the participants bring their moral and ethical convictions to the debate, and that debate must include moral grounds.

Honourable senators, in recent times, many have declined to admit to the existence of human evil and that it has few explanations and theories. The very few explanations of evil that have been developed are theological. Yet, theological explanations are dismissed today in the name of moral neutrality. However, those who work in prison services, in policing, in prosecution and criminal law, and in human services — also in politics and political relations — understand that human evil exists. It does exist. They know also that human evil will damage anyone who comes too near. The nature and character of evil is to damage, hurt and impair good.

A psychiatrist, also a Roman Catholic, Dr. M. Scott Peck wrote about evil in his book, *People of the Lie: The Hope for Healing Human Evil.* About evil, which rightfully frightens most people, Dr. Peck wrote at page 42:

> It is a reflection of the enormous mystery of the subject that we do not have a generally accepted definition of evil. Yet in our hearts I think we all have some understanding of its nature.

This learned psychiatrist informs us that there is no generally accepted definition of evil and of the enormous mystery and deficit in our comprehension of human evil. Dr. Peck also wrote at page 46:

> Suffice it to acknowledge that although we do not yet have a body of scientific knowledge about human evil worthy of being dignified by the term 'psychology', behavioral scientists have laid a foundation that makes the development of such a psychology possible. Freud's discovery of the unconscious and Jung's concept of the Shadow are both basic.

Understanding our deficit in the knowledge of evil, he upheld Dr. Eric Fromm's attempt to study it. Dr. Peck added at page 47:

> My own experience, however, is that evil human beings are quite common and usually appear quite ordinary to the superficial observer.

Honourable senators will recall that many commentators reported on how normal and ordinary Paul Bernardo and his wife Karla Homolka looked and seemed.

Honourable senators, the Clifford Olsons and the Karla Homolkas are not ill, mentally or physically. They are just bad. All can agree that the wilful, deliberate, cold-blooded, repeated taking of lives of other human beings is evil. The repeated acts of wilful, cold-blooded murders of humans, especially vulnerable, defenceless children, in brutal ways, in brutal acts of disordered sexual impulses, in paraphilias, and disordered sexual gratification, is evil. Such evil is not amenable to treatment or cure. Further, the current concept of mental illness and mental disease fails to explain and respond to evil because these offenders are not in a state of sickness or disease. The word "disease" means "dis" "ease" — without ease. They are not "dis" "eased" with their behaviour; they are quite at ease with it.

Inmate Olson is quite at ease with his condition. He signs his letters "Clifford Robert Olson, SERIAL KILLER of 11 Children." I received a letter from him signed in that manner. I raised a question of privilege here in the Senate on April 23, 1996, under rule 43(1) in respect of this letter. The Speaker of the Senate ruled that there was no *prima facie* case of breach of privilege. The fact is that letters from inmates in prison to senators and members of Parliament must be forwarded to them by prison authorities precisely because of parliamentary privilege. Inmate Olson's condition is not curable by medical doctors who treat persons who are ill. Inmate Olson is not ill and he is not sick — he is bad.

Honourable senators, this public policy question of sentencing and punishment in criminal justice is demanding Parliament's attention. Yet sadly this question continues to be ignored and neglected by Parliament. It appears that ministers and departments are content that Parliament be shut out of policy development on this crucial issue. This fact was made clear to me when my own two separate Senate initiatives, my bills about inmate Karla Homolka and the questionable plea agreements, were arrested summarily and withdrawn from Parliament's consideration. In the first instance, in 1995, my first bill, Bill S-11, an act concerning one Karla Homolka, was defeated when the Senate Speaker ordered it struck off the Order Paper prior even to my motion for second reading and without any debate whatsoever. When reintroduced in 1997, renumbered as Bill S-16, an act concerning one Karla Homolka, the Speaker again ordered it struck off the Order Paper.

In the second instance, in 1996, on Bill S-3, an act to amend the Criminal Code (plea bargaining), my bill on plea bargaining was arrested without, in my opinion, proper and sufficient committee study, without proper debate and without hearing a single public witness. The only witnesses heard by the Legal and Constitutional Affairs Committee on Bill S-3 other than myself were Department of Justice officials, Mr. Yvan Roy and Mr. Fred Bobiasz, counsel in the Criminal Law Policy Section. They basically told the committee to defeat the bill. The committee never granted me my parliamentary right to reappear before the committee to answer Mr. Roy's and Mr. Bobiasz's testimony, testimony which I believed was political advice and not legal advice, as the committee rushed to defeat the bill.

• (1520)

My opponents were unwilling to have any debate or study whatsoever. They could have amended the bill or even defeated my parliamentary measure after robust study and debate. Instead, they withdrew the question from parliamentary consideration and debate. This country needs a proper and thorough parliamentary study of plea bargaining and plea agreements, particularly plea agreements with multiple murderers, including inmate Homolka and inmate Olson.

Honourable senators, at inmate Olson's section 745 hearing in Surrey, British Columbia, I learned that the same Mr. Yvan Roy of the Department of Justice was on site, providing helpful assistance to the media. Christie Blatchford, as already cited, noted the presence of these government persons in Surrey. She wrote:

> ...the folks from justice had gathered to provide 'information' about the controversial section.

She reported that those folks were Irene Arsenault, Manager, Media Relations, Public Affairs Division of the Department of Justice; Fraser Simons, Regional Director of the National Parole Board, Abbotsford Region; and, in Blatchford's own words, "the wheel" Yvan Roy. As you will recall, the engineers of the Homolka plea-bargain agreement were Ontario's Deputy Attorney General George Thomson and his Assistant Deputy Michael Code. I further note that, when my Homolka bills were before the Senate, that same George Thomson had become Deputy Minister of Justice to Minister of Justice Allan Rock here in Ottawa and, simultaneously, had become Mr. Roy's — "the wheel's" — boss.

Honourable senators, in Canada, parliamentary opinion on the administration of criminal justice is unwanted, particularly on the subject of punishment and sentencing. Bill C-247 is an unwanted parliamentary opinion that passed the Commons by majority vote, despite the fact that it was unwanted by the Minister of Justice. Clearly, the minister's desired opinion was not the opinion of the majority of the Commons. Observers are watching to learn if the Minister of Justice's opinion will prevail here in the Senate.

Albina Guarnieri asked us to consider this important question related to criminal justice, that is, the sentencing and punishment of malevolent murderers. She also posed the question of the representative parliamentary principle in making sentencing public policy, and most important, she posed the question of the value of a single human life in a judge's sentencing. Her real question is the value, the actual worth, of a single human life in the sentence of the murderer who has taken the lives of those for which he or she is being sentenced. On December 1, 1998, Albina Guarnieri told the Commons Standing Committee on Justice and Human Rights that:

> I have come here today to ask for a full hearing on a perverse manipulation of justice that takes place without public input and without the support of Canadians. Concurrent sentencing is a mutation of justice that has resulted in sentences that bear no reflection on the severity of the crimes committed and all too often completely disregard the impact of a predator on the second, third, or eleventh victim.
>
> Canadians never voted for concurrent sentencing. They were never asked if their identity, their Canadian identity, depended on having a more lenient sentencing system that includes volume discounts for rapists and murderers. Concurrent sentencing is foreign to the basic concept of justice.
>
> The fact is, Canadians believe every act of murder or sexual assault, every victim, should matter in the sentencing equation.

In giving the committee the results of a poll that she herself had commissioned, one conducted by Liberal Party pollster POLLARA, she continued:

> That is why 90% of Canadians support changing the law to ensure that people convicted of several murders or sexual assaults serve consecutive sentences for each offence.
>
> That is the result of a national survey by POLLARA, conducted just last month. It also found that a mere 8% of Canadians support the status quo.

Our political and parliamentary condition is made manifest when members, who are representatives, must use pollsters rather than reasoned debate to convince the political masters of the body public opinion. Albina Guarnieri continued to explain her bill as follows:

> Bill C-251 seeks the recognition that each crime committed of the gravity of murder and sexual assault requires a response from the justice system. It is based on the principle that law and the rule of law must operate to protect individuals equally. If all victims, after the first victim of a sex offender or a murderer, are disregarded through concurrent sentencing, this principle is compromised.
>
> The intent of my bill is to require that there be a consequence for each violation of the law. Consecutive terms of parole ineligibility for multiple first- and second-degree murders and a consecutive sentence for each sexual assault would result in proportional justice that is closer to the fair and balanced justice system Canadians want.

Honourable senators, Bill C-247 builds legislatively on the government's ground in the government's own Criminal Code section 745, even as amended in 1996 by Bill C-45, to amend the Criminal Code (judicial review of parole ineligibility). As we know, life imprisonment is the minimum sentence for first- and second-degree murders. This was the 1976 political compromise to obtain agreement for the abolition of capital punishment. Life as a minimum sentence for first- and second-degree murders was enacted with a fixed quantum of that imprisonment that the offender actually must serve in the penitentiary before eligibility to apply for parole. For first-degree murder, the parole eligibility date was set at the completion of 25 years of imprisonment and for second-degree murder at the completion of 10 years.

Honourable senators, the life sentence for first-degree murder and the 25 years of imprisonment actually served before eligibility for parole is frequently confounded in the public mind. A sentence of life imprisonment means precisely that — a sentence of imprisonment for life. The length of the inmate's warrant is that of his natural life. The inmate's warrant of sentence expires on the day the inmate dies. The terminology used by Corrections Canada is "warrant expiry date," abbreviated as WED. Their sentence is life imprisonment. There is much confusion about this. Many believe that the sentence of life imprisonment means 25 years and not life. The specified 25 years refers to the quantum of that life sentence that must be served in prison before the date of parole eligibility, at which time the inmate may apply for parole to the National Parole Board. Parole is that system of royal mercy, or royal clemency, that allows a sentenced prisoner to continue to serve his sentence outside the prison walls within the community. Another form of royal mercy was the commutation of death sentence to life imprisonment. That was statutorily achieved administratively in the 1976 political compromise to abolish capital punishment, but

it is now compromised by developments in the sentencing process which compromise justice itself. The reality is that the 25 years to parole eligibility date has now become the real and practical sentence for murderers and multiple murderers.

Honourable senators, section 745, popularly styled the "faint-hope clause," enables first- and second-degree murderers, after having served 15 years of their sentences, to apply to a superior court for a judicial review of their parole eligibility date, asking the court to reduce the quantum of imprisonment to parole eligibility date. In 1996, the government's Bill C-45 amended this section 745 to disallow multiple murderers from applying for judicial review of their parole eligibility date. By this, the government accepted a large part of Albina Guarnieri's reasoning, admitting that multiple murderers must serve longer sentences prior to their parole eligibility date.

Honourable senators, I had questioned the very existence of section 745 and proposed that it be repealed because of its obvious insufficiencies in my 1996 Bill S-6, to amend the Criminal Code (period of ineligibility for parole). About Bill C-45, I had asserted that it was an amendment to an already flawed section 745. In debate on December 12, 1996, I said:

> Honourable senators, in 1976, section 745 of the Criminal Code granted the courts unusual powers to review the sentences of upper courts — powers normally reserved to courts of appeal, to clemency agencies, or to governor generals themselves. It granted courts the unusual powers to alter sentences imposed by the sentencing courts. This is something reserved for the courts of appeal and for the clemency authorities.
>
> • (1530)
>
> Section 745 took the unusual step of conferring the power of clemency upon the courts. Such powers of clemency rightfully belong with the clemency granting agencies. The power to grant clemency to the already convicted and sentenced belongs with the National Parole Board of Canada, the Crown, the Sovereign and the Governor General's royal powers of mercy, and royal prerogative of mercy, which are exercised on the advice of a responsible minister. That is to say, exercised on the advice of the executive.
>
> Bill C-45 will grant these powers to chief justices which will diminish the powers of Parliament to respond to the will of the people. It will, in turn, enhance the powers of the chief justices. As we know, constitutionally, these powers do not properly belong with the chief justices or the courts because they are political powers. These are powers exercised by the representatives of the body politic.
>
> The issue of imposing sentences belong to the courts, but the issue of sentence mitigation, sentence alteration and mercy are political questions and belong in political hands — that is, in the hands of responsible ministers and exercised by cabinet, who are responsible to Parliament. These questions should be dealt with by people who will answer to the public will for the exercise of these powers. Her Majesty's clemency and mercy powers are not the proper business of the courts or of judges but, rather, are matters for the executive. They are executive powers.

Honourable senators, to create her bill for consecutive sentencing, Albina Guarnieri built on the very same ground created by the government in section 745, which granted judges the jurisdiction to determine parole eligibility dates. For multiple malevolent murderers**,** Bill C-247 enacts that on sentencing for additional murders, judges may expand the parole ineligibility period by adding years to be served before parole eligibility dates, but limits these additional years to a maximum of 25 additional years. Alternately stated, it limits judges' powers in sentencing to a total of 50 years imprisonment before the inmate's eligibility for parole date. Section 745 was a 1976 political solution resulting from a 1976 compromise. New solutions are required, and the absence of new solutions for the virulent psychopathies will fuel the public's lack of confidence in the system and fuel the public clamour for a return to capital punishment. Bill C-247 is a year 2000 compromise, resulting from the current practices and insufficiencies in section 745, and in sentencing malevolent offenders in general.

Honourable senators, the reality of homicidal psychopathies and psychopathologies is that psychopaths and sociopaths are more devious, cunning and more ingenious and resourceful than the authorities. Apprehension and successful prosecution of malevolent offenders is difficult, and these offenders take advantage of prosecutorial difficulties. The cases of inmate Olson and inmate Homolka make that abundantly clear. The fact that inmate Homolka is going back to court to sue the government proves my point.

Honourable senators, criminal justice, its processes of prosecution, plea agreement, sentencing and parole are compelling Parliament's review. At inmate Olson's section 745 hearing, I witnessed this colossal caricature of justice. The presiding judge presided over a political hearing. That hearing was a political one, not a legal one. The judge and jury and everyone present in that room knew this. We do judges and judicial independence a terrible disservice to engage judges this way. I have no doubt that the majority of Canadians could see inmate Olson drawn, quartered, pilloried and beheaded without flinching, because his crimes were and are so repugnant to our own sense of humanity, but we do not believe in capital punishment. That is why we are where we are today. Inmate Olson has cost this country billions of dollars with his many legal frolics, lawsuits, and so-called legal battles, including his section 745 hearing. Sadly, the one good purpose that his notoriety has served is to keep him behind bars. I can tell you that no one will let him out. His most natural equivalent is Karla Homolka.

Honourable senators, I served as a member on the National Parole Board. I studied many files, autopsy reports, police reports, judgments and judges' sentencing statements. I interviewed many inmates and granted and revoked many paroles. I learned that the wilful homicidal impulse of such offenders, accompanied by their predatory instincts, executed by their characteristic for deceit is very rare, but it is more common than either we think or we care to admit. These predators' ability to choose victims by attaching and exploiting their victims' vulnerability is diabolical. Little is said in these chambers about paraphilias and psychopathy, psychopaths, sociopaths, character disorders and evil. The disordered erotic, homicidal impulses of the Homolkas and the Olsons and their consequence for justice need debate. Their lack of human pity, their calculated deception, their disordered sexual lusts, their aggression, and their total narcissism and corrupted self-extravagance is beyond the comprehension of most of us. However, their ability and their success in manipulating people and systems, particularly democratic systems, and their reliance on people's disbelief and naiveté is needing our study. In his book *On Sexuality: Three Essays on the Theory of Sexuality and Other Works,* Volume 7, Dr. Sigmund Freud wrote about disordered sexual impulses. He said, at page 111, 1979 Penguin edition, that:

> The absence of the barrier of pity brings with it a danger that the connection between the cruel and the erotogenic instincts, thus established in childhood, may prove unbreakable in later life.

We are talking now about malevolent sexual deviants here. We are talking about sentencing for crimes and murders actuated by cruel, incorrigible, homicidal, erotogenic impulses.

Honourable senators, the exercise of the sovereign power in the punishment of crime is one of the essential aspects of the administration of justice. Michel Foucault, France's scholar on punishment, in his masterpiece book *Discipline & Punish: The Birth of the Prison,* wrote about the sovereign's rights and powers in justice, retribution, and the royal prerogative under which all prosecutions, trials and sentencing ensue. He wrote, at page 48:

> The right to punish, therefore, is an aspect of the sovereign's right to make war on his enemies: to punish belongs to 'that absolute power of life and death which Roman law calls *merum imperium*, a right by virtue of which the prince sees that his law is respected by ordering the punishment of crime....But punishment is also a way of exacting retribution that is both personal and public, since the physico-political force of the sovereign is in a sense present in the law': ...

Honourable senators, I repeat, retribution. In our system, the language we use is the royal prerogative in justice. The Queen's presence in the law, as in the lexicon *Regina v. Homolka*, proves clearly the right of every citizen to justice from the Queen, the fount of justice. It proves the right to justice of both the accuser, the Queen, and the victims, like little Leslie Mahaffy and little Kristen French, mere children. Debra Mahaffy, Mr. Mahaffy, Mr. and Mrs. French, Darlene Boyd, Wendy Carroll and countless others have a right to the Queen's justice, in whose name each prosecution and trial is undertaken, and in whose name mercy and clemency, as in parole and remission, are granted. Punishment and sentencing for crimes stand on the principles that are described as deterrence, incapacitation, rehabilitation, and retribution. Retribution, as distinct from vengeance, is the just result of the offender's own injury offered by that offender against the Queen's peace and against the persons who are the Queen's subjects and, in the cases mentioned, all children. Retribution of the Queen's justice can always be tempered by the Queen's mercy.

• (1540)

Honorable senators, the need for reform in criminal justice is evident. It is overdue. Nova Scotia Court of Appeal Justice MacKeigan articulates the case for consecutive sentencing most soundly. In his 1975 judgment in *R. v. Muise,* he wrote at page 443:

> That belief, to which I still adhere despite the very able argument of counsel for Muise, flows from my conviction that the law, in conferring the power and imposing the duty on a Judge of sentencing a convicted person to a term of imprisonment, should not be construed as forcing the Judge in any case to make a term of imprisonment on a second offence concurrent with the term imposed by him or some other Judge for another offence. A so-called concurrent sentence does not sentence the convicted person to a term of any imprisonment at all since it does not require him to serve a single day of imprisonment; a person cannot serve in jail the same day twice any more than he can be successfully hanged twice. A Judge in imposing a concurrent sentence is therefore not carrying out his duty unless he can find in the *Code* or the general criminal law authority so to do.

I ask all honourable senators to give Bill C-247 appropriate consideration and study. My experience of the universe and my career path have been different from others', but I tell you that one sees life quite differently when one has studied the kind and quality of cases that I have studied. I want to make it clear that, in this instance, we are speaking about malevolent, multiple murderers. We are not talking about the poor young fellow who is in a state of upset or anger with parents and who manages to find himself involved in an armed robbery. We are not talking about the traditional juvenile delinquent here. We are talking about people who set out very cold-bloodedly to take life and do so wilfully with premeditation and cruelty. Clearly it is time for the system and for us in this chamber to come to terms with psychopathy.

Hon. Sheila Finestone: Honourable senators, I would like to pose a question on the articulate, well-presented and carefully designed presentation about a very contentious and difficult bill. It would not be appropriate for me in this environment to say Senator Cools could have done a one-woman play — she could have — but I do suggest that the issue is a very difficult one.

Senator Cools is a very enlightened person in this field. Perhaps she could explain something to us, before we must make our decision: If a judge or a parole board cannot make a decision about a perpetrator of a heinous crime, for whom there is really no sufficient justice, then is there no way to prevent the use of this section 745?

Senator Cools: I thank the honourable senator for her question. That is the dilemma which has been posed by section 745 of the Criminal Code. As far as I know, most senators here are strong abolitionists who do not wish to see capital punishment ever used again as a system of punishment.

At the time that section 745 was enacted, it was not anticipated that each and every convicted murderer would avail himself or herself of that clause. What has developed in point of fact is an extremely routine use of that clause, and that is problematic.

The record on this is quite clear. In Bill C-45, the government and Mr. Rock, the justice minister at the time, made some changes to section 745 to provide some limitations. Bill C-247 advances the position that all those changes have been insufficient and that more are required.

I know many senators wish to speak on this bill. In my speech to close second-reading debate, it is my intention to bring forward the history of punishment and parole. I will lay out before the Senate the history of case law as it has developed in the last 20 years and how it has led to the current situation in sentencing.

Honourable Senator Finestone has hit the nail on the head. The issue needs our attention. I hope some of these issues will come out in debate.

Why do the judges not currently avail themselves of consecutive sentencing? We can look to Mr. Olson as an example because it is easier to use a particular subject who is well known and notorious.

Senator Finestone: He was very unusual.

Senator Cools: All murder is unusual, I submit. If one wanted to use the argument of unusualness, then we would need no laws against murder because murder, in and of itself, is an unusual occurrence. Otherwise our race would be extinct. That is quite true.

I have a host of information about these kinds of individuals. What is not that unusual among murderers are those committing murder again and again. That is not that unusual among that class of persons whom we would now describe as multiple murderers.

Some people, including Albina Guarnieri, believe a statute is necessary because of a need to codify the common law. Essentially, case law over the last 20 years has developed in a direction which has not encouraged judges to impose consecutive sentences. If one could roll the clock back to 1980 and try the case of a murderer such as Mr. Olson, perhaps he could have had a different sentence than his present 11 concurrent sentences of life imprisonment and the case law would be different.

We must remember the principle that a human being only has one life to serve. That is absolutely true. For example, in the United States of America sentences are imposed of 200 years or 300 years. We do not do that in this country. In the history of capital punishment there was a time when people were executed many times.

• (1550)

Therefore, a person could be sentenced to die for one crime by being beheaded, which was usually the path for the aristocrat. A person could be sentenced to die by being quartered, then dismembered, then boiled in oil. There used to be many, many different ways to kill the same person many times. In the 1790s, when Mr. J.J. Guillotin introduced the guillotine, however barbaric it seems to us in today's community, it was at that time thought to be a fantastic advance in the development of punishment.

It was deemed at the time that every human being had only one life to give; they should die one time only. When Mr. Guillotin introduced his reform, he said that a human being should die once only and it should be swiftly and quickly.

I hope I have assisted the honourable senator somewhat.

Hon. Pierre Claude Nolin: Did the Honourable Senator Cools say that Mr. Olson will never be free?

Senator Cools: Yes, I said something to that effect.

Senator Nolin: If this man will remain in jail for the rest of his life, would the honourable senator explain why the rule of law will permit this individual to remain in prison for the rest of his life?

Senator Cools: This is not a question of the rule of law. The sentence that was imposed on Mr. Olson was the sentence of life imprisonment, and the powers of the courts provide for a judicial review of his parole eligibility date after 15 years.

When I said that Mr. Olson would never be free, perhaps I should not have said "never". What I should have said is that, at this point in time, the entire system and every single person involved in the system with Mr. Olson is very well aware of the height of public repugnance and the depth of public feeling toward Mr. Olson. I am saying to honourable senators that that very strong public sentiment is a constraining factor. That was evident that day at the hearing in Surrey, British Columbia.

I am here to tell honourable senators, and Senator Nolin in particular, that if the public were to stop their Olson-watch for a moment, there is a possibility that, somehow or other, the man could be released. I have seen many inmates of whom I have heard it said that they will kill when they leave prison. When I say that I heard them say these things, I mean it was in the reports that they meant to go out of prison and kill. I tell the honourable senator that if he ever comes face-to-face, as I have in the system, with some of these individuals, he will find them pretty scary.

When we were studying Bill C-45, we had a list of section 745 inmates, some of whom I saw myself when I was on the National Parole Board. In particular, in looking at that list, I remember the name of one inmate who had pledged to everyone around that he would go out and kill again.

Senator Nolin: Let us be clear.

[*Translation*]

The Hon. the Speaker: Honourable senators, the allotted time for speeches and questions is over. Is it your pleasure, honourable senators, to extend this period?

Hon. Senators: Agreed.

[*English*]

Senator Nolin: Honourable senators, we need to be clear now. If the parole board is entitled to take a decision, the board is entitled because the law gives the board the authority to do it. When I speak about the rule of law, that is exactly what I am speaking about.

I am shocked that Senator Cools, as a former commissioner, was entitled to take such a decision as a commissioner. She is now telling us that at the time she was convinced that some of the individuals who came in front of her were future criminals, and she did not take action.

Senator Cools: Yes, we did.

Senator Nolin: Are they still in jail?

Senator Cools: In that particular instance, I revoked his mandatory supervision absolutely. He was returned. I am speaking of years later.

Senator Nolin: You are proving my case.

The law in Canada gives all the authority to the board and to different justice ministers and provinces.

[*Translation*]

I do not think such an individual can be rehabilitated.

[*English*]

What I am saying is that the laws presently in place, if properly administered, can cure such problems. That is my question; "yes" or "no"?

Senator Cools: I would say "no". The law and the administration of the law are insufficient and inadequate to the task.

Senator Nolin: If it is not sufficient, does the honourable senator think that two or three consecutive sentences would cure the problem?

Senator Cools: What I am saying to the honourable senator — and I think he knows quite well what I am saying to him — is that the principles of sentencing are four-fold, and any judge or jury that is looking at sentencing must balance those four principles one after the other.

One of the principles of sentencing is incapacitation — that is, whether the individual will be incapacitated from committing another crime. What I am saying to the honourable senator — who is reluctant to agree, but I shall do my best to persuade him in the next little while, although I admit it will be difficult — is that there is something needing correction.

Honourable senators, I happen to have with me a newspaper article which someone gave me a few days ago. I had never heard of this particular inmate before, but it is an inmate by the name of Adrian Kinkead. I can pass the clipping to the honourable senator, but this is an individual who was out and killed in between sentences.

I do not have all the details, as I have not read the case, so I am really at a disadvantage. It is just a newspaper article upon which I am relying for information. In this particular case, the Crown attorney asked the judge to reserve judgment until this bill had been enacted.

What I am saying to the Honourable Senator Nolin is that whether it is this case or another, the fact of the matter is that we are at a stage in our political development where Parliament must give these issues some attention and study. I do not expect to change the honourable senator's mind today. What I would like to persuade him to do is to study the matter carefully.

Senator Nolin: The honourable senator is asking this chamber to vote at second reading on a change in principle.

Senator Cools: There is no change in principle.

Senator Nolin: That is what the honourable senator is asking. You need to make your case because as yet you have not done so.

Senator Cools: There is no change.

Senator Nolin: In the honourable senator's last answer she referred to the four principles. I think colleagues should be informed or remember that up until a few decades ago we were whipping rapists in Canada.

Senator Cools: Sure, we used to execute them.

Senator Nolin: Why have we changed that? By the way, we do not call them "rapists" any more.

Senator Finestone: What do you call those people now?

• (1600)

Senator Nolin: I believe they are referred to as "sexual aggressors."

We have evolved. Our sentencing involves not only punishment.

Senator Cools: It is a bad example, but that is all right.

Senator Nolin: Let me finish my question, please. I allowed the honourable senator to finish her speech.

We are no longer in the punishment business only. Sentencing operates on certain principles, and the honourable senator must explain to this chamber, before we vote on second reading, which principle she wants changed, why she wants it changed, and how that change will affect other principles. If she is able to convince me, I will gladly support her in second reading. I do not think, as of now, from what I have heard, that the honourable senator has made her case. Perhaps we should send the bill to committee for study before we vote on second reading because many principles are at stake here.

The honourable senator stated that we all agree that the death penalty should no longer be available as a sentencing tool. Why? There are some reasons for that. Perhaps those reasons should be examined now. Please do not question my motives.

Senator Cools: I am not questioning the honourable senator's motives. I said that I wish he had been as enthusiastic when we were considering Bill C-45, for example. There is no doubt that Bill C-247 builds particularly — and the committee is welcome to hear from witnesses such as Professors Manfredi and Knopff — on the four principles of sentencing. What it does, very clearly, is deal with, in a more streamlined way, the particular principle of proportionality, which is that the sentence be proportionate to the crime.

The basis for the honourable senator's suggestion that this bill is not in concert with the principles of sentencing eludes me somewhat, and I will tell the honourable senator why. This bill has already been passed by the House of Commons and, in the course of its passage, I suspect that many people have had a look at this bill. This is not a private member's bill that has just been introduced. This bill has had four years of examination and scrutiny in the House of Commons.

I say to the honourable senator, very clearly, that the bill upholds and asserts the principle of deterrence, the principle of rehabilitation, the principle of incapacitation and the principle of proportionality. Those are the principles of sentencing. This bill is perfectly consonant with those principles. In addition, this bill builds exactly, politically and legally, on the groundwork that the government has laid. The government created section 745, which gave judges — previously unknown — the ability to set parole eligibility dates. This bill builds on that section. It is not only consonant with the principles of sentencing; it is quite consonant with the government policy of the last many years as developed in its legislative drafting and in its legislative development of its initiatives, particularly Bill C-45, the current version of that bill, and the addition of section 745 to the Criminal Code.

Senator Nolin: I am sure that, in her study of this matter, the honourable senator is aware that one of the principles at stake is the Charter of Rights and Freedoms. I am sure the honourable senator has considered that.

Senator Cools: I would assure the honourable senator that I have examined most issues he could raise. He must just trust me on that. I have looked at the Charter.

Senator Nolin: Just to make it very clear, would a double life sentence mean a minimum of 50 years imprisonment?

Senator Cools: That is not what the bill is proposing at all. Perhaps the honourable senator does not understand the bill.

Senator Nolin: What would be the minimum life sentence?

Senator Cools: The minimum would remain consistent with what is in the statute. Whatever the law currently prescribes as the penalty is what this bill prescribes.

Perhaps it is not clear to the honourable senator so maybe there is some hope that I can persuade him yet. This bill allows the judge, in the cases of multiple murder sentencing, to add an additional day, or an additional year or an additional six months or whatever, to the particular parole eligibility date. Therefore, if an inmate is tried, convicted and sentenced to life on multiple charges of second-degree murder, the judge can sentence him to 10 years imprisonment on one murder conviction, and add two or three years as a part of the quantum of life sentence that must be served in prison before the date of parole eligibility.

The honourable senator seems to believe that this bill just adds another 25 years to the sentence. It does not. The bill sets limits on any sentence a judge may hand down. Therefore, the bill gives a judge the power to add an additional year, or two or three or 10, but limits the power of the judge to an additional total of 25 years.

I hope the honourable senator understands it now.

Senator Nolin: The honourable senator must be clear for our colleagues. We are talking about life sentences. We are not talking of one year, two years, five years or even seven years. If the evidence is there to prove that a certain gentleman has killed three people on separate occasions, and in different environments, he can be sentenced to three life sentences. We are not talking about one, two or three years.

Senator Cools: Yes, we are.

Senator Nolin: Would the honourable senator explain that to me, please?

Senator Cools: I would be happy to explain it to the honourable senator. As I said before, Albina Guarnieri has built on the legislative ground created by section 745, which relates to judges expanding or postponing the parole eligibility date. That is the current regime.

This bill will allow a judge, in the instance of another sentence, to add another five years or another two years to the parole ineligibility period. That aspect of the bill is quite cleverly designed because it is built on the reasoning behind the development of section 745 and the amendments to section 745 contained in Bill C-45. The reasoning is exactly the same.

Senator Nolin: What would be the maximum?

Senator Cools: I just told the honourable senator. The bill allows — perhaps the honourable senator is just testing me to see if I know what I am saying — a judge, in his discretion, to extend the parole ineligibility date in accordance with the details of the crime and in accordance with the personal circumstances of the inmate. The bill then specifies, however, that the extra power being given to judges to extend that parole ineligibility date is set, eclipsed and sealed to an additional total of 25 years. That is the limit.

Senator Nolin: An addition of 25 years.

Senator Cools: There is no one additional 25 years. There is an addition to a total of 25 years.

Senator Nolin: You just said that.

Senator Cools: I did not. I said that it is time added for each charge to the period of the sentence served prior to the parole eligibility date. In other words, in the case of a life sentence, the life sentence remains. The inmate's sentence is still life. It is the day of parole eligibility that is postponed. The inmate must still serve his life sentence. Therefore, the exact powers that were given to a judge in section 745 are the same powers that Bill C-247 is proposing, except that they are an expanded version of what is contained in section 745.

• (1610)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, before adjourning the debate in the name of one of my colleagues, Senator Cools, in a most important and interesting address this afternoon, raised a number of questions. I must confess that my attention was drawn to her citation from Sigmund Freud providing an explanation of sociopathic character disorder.

I am sure that many in the school of psychoanalysis, which was founded by Sigmund Freud, would develop their particular understanding of why people behave the way they do, particularly those people in the population that this legislation will address. It would be somewhat remiss, however, if we did not point out that there are many theories of personality. I would think, for example, that the individual school of psychology of Alfred Adler has a far more positive view of human personality, and that, indeed, even the school of psychoanalysis developed by Carl Gustav Jung has a more hopeful view of the human personality, including those who might clinically be diagnosed has having sociopathic character disorder.

There is also the whole school of psychology, clinical and social, that views the human personality as very much subject to and amenable to social learning and correction.

The point I wish to bring to the debate is that the human person, according to psychologists of many other schools, is indeed subject to correction and radical behavioural change. I would not want the debate to be left untested in terms of the more pessimistic view, which I think is the view developed by Sigmund Freud.

Having said that, honourable senators, I move the adjournment of the debate in the name of Senator Di Nino.

On motion of Senator Kinsella, for Senator Di Nino, debate adjourned.

COMMITTEE OF SELECTION

CONSIDERATION OF THIRD REPORT—ORDER WITHDRAWN

On the Order:

> Consideration of the third report of the Committee of Selection (*Speaker pro tempore*), presented in the Senate on November 2, 1999.—(*Honourable Senator Mercier*).

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, in that the Senate has now dealt with the fifth report of the Committee of Selection, this third report is no longer relevant to our proceedings and I would ask for leave that it be withdrawn from the Order Paper.

The Hon. the Speaker: Is it agreed, honourable senators, that this order be withdrawn from the Order Paper?

Hon. Senators: Agreed.

Order withdrawn.

LEGAL AND CONSTITUTIONAL AFFAIRS

MOTION REQUESTING AUTHORITY TO APPLY PAPERS AND EVIDENCE GATHERED ON EXAMINATION OF PREVIOUS BILL TO STUDY BILL S-6—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Di Nino:

That the papers and evidence received and taken by the Standing Senate Committee on Legal and Constitutional Affairs during its study of Bill S-17, to amend the Criminal Code respecting criminal harassment and other related matters, in the First Session of the Thirty-sixth Parliament be referred to the Committee, when and if it is formed, for its present study of Bill S-6.—(*Honourable Senator Cools*).

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, the item to which we were going to revert relates to Senator Kinsella's point of order on the wording of this motion.

I have already commented on this. Senator Kinsella may wish to add a comment. There is a request for clarification on the orderliness of this motion, in particular the direction that papers and evidence previously received be taken as evidence before the Standing Senate Committee on Legal and Constitutional Affairs.

I will defer to Senator Cools at this time.

Hon. Anne C. Cools: Honourable senators, having been on my feet for the past hour, I would move that this matter be adjourned until tomorrow.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we would not oppose the adjournment of the motion of Senator Oliver. However, it would be helpful if the point of order I raised could be addressed because we now have a motion from this side and a notice of motion from the other side. I understand that Senator Cools has been active this afternoon on another item and that His Honour will be absent later. However, there may be other occasions on which senators would want to have previous testimony referred to committees. There being two schools of thought on this, I believe that we must settle this today before His Honour leaves the chamber.

On page 90 of the *Debates of the Senate* of November 3, 1999, Senator Oliver indicated that there are precedents. He said that the exact wording of his motion appeared in a motion dealing with the Standing Senate Committee on Aboriginal Peoples.

This afternoon, we had on our desks the report of the Standing Senate Committee on Foreign Affairs relating to its study on Europe. On the second page of that report, the order of reference is reproduced. In that order of reference we find exactly the same wording, that is, that papers and evidence received and taken on the subject and work accomplished by the Standing Senate Committee on Foreign Affairs during the first session of the Thirty-sixth Parliament ought to be referred to the committee.

It is our position that the appropriate way in which we have dealt with these matters in the past ought to continue.

Senator Cools: Honourable senators, I will respond in order not to lose the opportunity to say a few words on this point of order.

I would make it clear at the outset that the issue before us is not simply that of making a reference to a committee; the issue before us is our appropriate parliamentary response to a prorogation. The fact is that Parliament prorogued some months ago and is now in session again. In order to give this matter proper consideration, we must study the issue of committee deliberations that were not completed before prorogation.

I believe that Bill C-7 is totally different from Bill S-17.

• (1620)

We must remember that when a bill is committed to a committee, in this instance the Standing Senate Committee on Legal and Constitutional Affairs, the bill is precisely there. It is still in a state of committal. It was left in the committee. With prorogation, everything there died.

The question is this: How does the Senate go about the business of referring to a committee something of which it has never had cognizance? When a committee receives a reference from the Senate, the way it obeys the reference is to study the bill. Its obedience to the reference is indicated through the committee report to the Senate.

I happen to have with me, Senator Kinsella, a particular citation. We are talking about a bill that was committed, and the word is "committed".

Beauchesne's sixth edition, paragraph 874, states clearly:

When committees have not completed their enquiries before the end of the session, they may report this fact to the House together with any evidence which may have been taken.

The report is proof itself that evidence has been taken.

In their report, they may recommend that the same subject matter, with the evidence taken in that session, be referred again in the new session.

Therefore, in the instance of Bill C-7, which was a government bill backed by the entire machinery of government and the entire power of a party caucus here, the proper way to have proceeded at the time was for the chairman of the committee to rise in the Senate and to make a report stating that the study of the bill was incomplete and that the committee would like to position itself for the future, as we know governments want to resuscitate all important questions and material put before them.

If we slide our eyes down from paragraph 874 to paragraph 875, we read the following:

A committee cannot report the evidence taken before a similar committee in a previous session, except as an appendix, unless it has received authority from the House to consider that evidence.

The operative words here are "to consider that evidence." In other words, in the instance of Senator Milne, who was chair of the committee and is a hard-working senator, the government has an interest in being able to look again at all the evidence placed before that committee and being able to expedite the business of the committee. Senator Milne and her committee want to be able to report the evidence in this session.

We also must be aware that, in general, any committee at any time can study and use documents and proceedings from any other committee, or even its own proceedings and evidence. In this instance, the Legal and Constitutional Affairs Committee wants to be able to report the evidence taken. It is in order, I believe, to come to the Senate to look for that authority because Beauchesne very clearly shows that some authority is needed from the Senate. The question is, authority for what?

To the extent that the Senate has never received a report from the committee on either of those bills, the Senate has no cognizance or no possession of the study of those two bills. Consequently, we do not need in this session an order from the Senate referring the evidence and testimony back to the committee because the Senate does not have possession of the evidence in order to refer it. What is required is for the Senate to give the committee an instruction, in the proper format, asking the committee, in its consideration of this new bill, to consider the evidence that was placed before it by witnesses on the other bill. What is required is an order from the Senate, an instruction, asking the committee in its deliberations to include and to consider that evidence, not for the Senate to refer what it does not have.

Honourable senators, they are two different bills, and Bill C-7 deserves proper and sufficient procedural treatment. Bill C-7 was reintroduced in the House of Commons and fast-tracked. Basically, they put down an order authorizing themselves to fast-track it and deemed it passed. Therefore, if Senator Milne and her committee and Senator Fraser want to give Bill C-7 due diligence and study, it appears to me to be a matter of moving ahead procedurally in an appropriate way. The proper way to proceed is not to ask the Senate to refer evidence it does not have, but to ask the committee to consider that evidence taken in its deliberations. I hope I have made that clear, but I would be happy to explain further.

When Senator Oliver proposed his motion, which he did with unanimous consent, I rose and asked him if it was an instruction to the committee. Perhaps he had not read the rule, but I believe his motion was moved pursuant to rule 58(1). In response to my question, he said it was not an instruction to the committee. I read rule 58(1)(*f*), and it states:

> for an instruction to a committee.

Therefore, the motion substantively is an instruction to the committee.

I had intended to speak to Senator Oliver's motion more fully tomorrow and to suggest an amendment that could have been satisfied easily — changing the word "refer" to "consider". However, that is now an academic point.

I think it incumbent upon us as a functioning and vital part of the Parliament of Canada to pay due attention to the proper execution of proper motions. We are sometimes a little careless, although that is a very strong word. We do many things that, with very little effort, we could do much better. The intention of Senator Fraser's notice of motion is to put the subject matter before the committee fairly, squarely and properly so that the committee can give the bill the kind of study and diligence it deserves.

• (1630)

Honourable senators, I probably could have done better had I waited until tomorrow to address these issues, but I did not want to lose the opportunity to do so today. The fact of the matter is that the committee is free to study all the other witnesses' testimony. The only thing it is not free to do is the item as articulated in section 875, namely, they cannot report it except as an appendix. The committee has as much power as it needs. This was an additional requirement.

The Hon. the Speaker: If no other honourable senator wishes to speak, I am prepared to rule on the question.

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, when this issue was raised originally, I went to the precedents of the Senate. I shall try now to deal with this matter in a logical sequence.

First, I wish to deal with the question concerning whether or not Senator Oliver's motion was properly before us. Senator Cools referred to rule 58(1), which requires a day's notice. However, if you go back to the *Debates of the Senate* for November 3, it is clear that when Senator Oliver proposed the motion he said:

> ...with leave of the Senate, and notwithstanding rule 58(1)...
>
> **The Hon. the Speaker:** Is leave granted, honourable senators?
>
> **Hon. Senators:** Agreed.

Senator Oliver's motion was quite properly before the Senate because leave had been granted.

Second, I wish to refer all honourable senators to the *Rules of the Senate*, Part I, "Interpretation", which states:

> 1. (1) In all cases not provided for in these rules, the customs, usages, forms and proceedings of either House of the Parliament of Canada shall, *mutatis mutandis*, be followed in the Senate or in any committee thereof.

It is clear that our rules, practices, customs, and usages take precedence over Bourinot or Beauchesne or other such references. We first go to our rules and then we go to our practices and precedents. Two of our practices and precedents have been detailed by the Honourable Senator Kinsella. Regarding the motion by the Honourable Senator Stewart earlier today, the order of reference is clear:

> That the papers and evidence received and taken on the subject and the work accomplished by the Standing Senate Committee on Foreign Affairs during the First Session of the Thirty-sixth Parliament be referred to the Committee;

As well, Senator Oliver, as indicated by Senator Kinsella, had indicated again on November 3, in the *Debates of the Senate,* page 90, that there had been a previous occasion where this was done. He refers to the *Journals of the Senate* on April 2, 1998, at page 584, where papers and evidence received on Bills S-10 and S-12 were referred to the committee for its study of Bill S-14. I can find other precedents if honourable senators require them. However, my understanding is that this has been a common practice in the Senate. The reason for doing it is not to force witnesses to come a second time to speak on the same subject and also not to have to do all the research a second time on a matter that has already been discussed in a Senate committee or before the Senate. That is the reason for the past practice and that is how it has evolved.

Reference was made by Senator Cools to Beauchesne. As I pointed out, our practices take precedence over Beauchesne. However, even if you read Beauchesne, paragraph 874, it does not say that they shall report to the House; it says that "they may report to the House." In my view, that does not exclude, then, the Senate from taking another practice because there is no compulsion. It does not say that if this has not been done, you cannot take another practice. Our practice has been different. I rule that it is in order for us to proceed with Senator Oliver's motion.

Do you wish the matter to remain standing in Honourable Senator Cools' name?

Hon. Anne C. Cools: Yes.

The Hon. the Speaker: It will remain standing in Honourable Senator Cools' name, then.

CONFERENCE ON WOMEN'S EQUALITY AND PARTICIPATION IN PUBLIC LIFE

INQUIRY

Hon. Lorna Milne rose pursuant to notice of November 2, 1999:

> That she will call the attention of the Senate to her recent participation, respecting the 70th anniversary of the Person's Case, at a conference on Women's Equality and Participation in Public Life in Canada and the United Kingdom on October 21 and 22, 1999, in London, England.

She said: Honourable senators, a month ago I was asked by the Women's Liberal Caucus to represent them at the Conference on Women's Equality and Participation in Public Life in Canada and the United Kingdom, the first in a series that will highlight women crossing borders, women in business and, finally, women in science. The series was organized by Debra Davis and held in Canada House, on Trafalgar Square, to celebrate the seventieth anniversary of the ruling by the Judicial Committee of the British Privy Council that women are persons in law. Since no Canadian senators had been invited to or even informed of this conference, I agreed that our presence was necessary. After all, we women senators on both sides of this house are the direct beneficiaries of the tremendous efforts put forward by the Famous Five: Nellie McClung, Irene Parlby, Louise McKinney, Henrietta Muir Edwards and Emily Murphy. I travelled to London — at my own expense, I hasten to add — to represent Canadian Liberal parliamentarians at the conference.

The conference was divided into several panels, some of which I will highlight for you. Nancy Ruth, whose grandfather had been the lawyer for the Famous Five, opened the conference on Thursday, October 21, and gave us a slightly different aspect of the history of the Persons Case. In 1929, the Ramsay MacDonald government had just been elected in Great Britain, a labour government. The make-up of the Privy Council Judicial Committee had changed and the timing was right for such a decision. The justices declared, as part of their decision, "The Constitution is like a living tree," and so must change with the times. However, back in Canada, in spite of the battle that she had won, Emily Murphy was a Tory from the West and the first opening in the Senate was in Ontario. When the Right Honourable R.B. Bennett, a Progressive Conservative, became prime minister, there was an opening in the West, but Bennett claimed that he wanted "a Roman Catholic since the last appointee was a Protestant." I think it was just an excuse not to appoint Emily.

The next speaker was Frances Wright of Calgary. She is President and CEO of the Famous Five Foundation. She has single-handedly raised the money, with the generous help of five Canadian women, one of whom sits in the Senate, namely, Senator Poy. She was one of the very generous donors for this wonderful statue that now stands in Calgary. This statue was unveiled on October 18, the fiftieth anniversary of the Privy Council decision. Next year another statue will be unveiled on Parliament Hill, just out here between the East Block and the Senate end of the Centre Block.

Last week, I made a brief stopover in Calgary after attending the Liberal Party of Canada in Alberta Annual General Meeting held in Edmonton. While in Calgary I visited this impressive new monument. As I sat for a moment on Emily's chair, a woman came running from a nearby restaurant in her shirt sleeves. It was Frances Wright, just keeping a friendly eye on her statues.

The next speaker at the conference was Cherie Booth, Q.C. She is Tony Blair's wife, and it was a real coup for Canada to have her as a speaker. She is an extremely intelligent and capable woman in her own right. She spoke "off the record" and at length on "Equality in the Workplace: Our Ongoing Challenge." She was very open about her opinions and also about the situation, still, of women in the professions in Britain. Some of the non-confidential statistics that she cited are the fact that there are no women in the highest court in Great Britain, and very few women have been named Queen's Counsel, in spite of the fact that 25 per cent of all barristers in Great Britain are women. She said:

> You have all heard the story of Allerednic —

That is Cinderella spelled backwards. She continued:

> The prince marries a princess and turns her into a scullery maid.

This is, apparently, the true-life situation of many British women.

• (1640)

The second panel was titled, "From the Periphery to the Centre: Making Women's Voices Heard." It was chaired by Sandra Anstey, President of Anstey Associates, of Toronto. She pointed out that the UN has rated Canada number one in the world for women's equality.

Baroness Crawley, Chair of the Women's National Commission in Britain, participated in this session. She said:

> Canada has led the way so often by being brave in leading the way for gender equality.

In the United Kingdom, the last Labour government brought an influx of women into the House of Commons but they are still less than 20 per cent. However, in the new Scottish Parliament, there are 48 women MSPs out of 139 members. Forty per cent of law students in England now are women, but the upper levels of the legal profession and the judiciary are solidly male and they have an enormous impact on U.K. life.

The Equal Opportunities Commission is 25 years old in Great Britain. It is an independent statutory body with 15 commissioners and centres in London and Manchester. They have the power to hold formal investigations but have not done so for years. Women's pay has stuck at about 80 per cent of men's for the past 12 years. This has led to the launching of a new equal pay campaign in Britain.

The keynote speaker Dr. Sylvia Bashevkin, Professor of Political Science at the University of Toronto, was introduced by Mary Clancy, our Canadian Consul General in Boston, who pointed out that Canada was the first country in the world to declare rape a war crime and to allow domestic violence as a grounds for claiming refugee status. Dr. Barshevkin's subject was "The Challenge of Personhood: Women's Citizenship in Contemporary Perspective." She claimed that many regressive changes since the Persons Case have profoundly influenced the position and rights of less-advantaged women. The present "third-wave" leaders of the U.S., Canada and Great Britain have not yet moved to repair this damage. Many of the interventions and much of the discussion afterwards centred on the Canadian Charter of Rights and Freedoms and how much the British women wished they also had one.

Susan Tanner, Senior Advisor on Gender Equality, also known as SAGE, at the Canadian Department of Justice, pointed out that the Canadian Charter is based on the collective rights of groups, not of individuals, and that fact alone has changed Canadian law and jurisprudence vastly. However, she admits there is still a very male environment and culture, even within the Department of Justice and certainly within the Canadian Department of Finance.

In contrast, Lucy Makinson, a Policy Advisor in Her Majesty's Treasury, claimed that great strides have recently been made to address women's concerns within that department. However, the Treasury still has not "mainstreamed" women's issues, not when 45 per cent of British working women still work part time and women's wages are 80 per cent of men's wages for work of equal value.

In the following debate, British Columbia's Rosemary Brown, now President of Match International Centre, mentioned that the Charter is a two-edged sword and there have been cases where men have used it, with their greater resources and contacts, to disadvantage women.

The Friday morning session began with a panel on "Breaking the Media Mould: Promoting Women's Successes and Issues" with Mary-Ann Stephenson, Director of the Fawcett Society, in the chair. She made the point that there indeed may be women political commentators now on British TV but the political editors are still solidly male.

Trina McQueen, the Executive Vice-President of CTV, said that "the media just does not get it." She cited some recent Canadian stories. First, Canada's new Governor General, Adrienne Clarkson, came under instant attack in the media about her supposed shortcomings as a mother — mainly by women columnists. Second, the Supreme Court ruled that natives were able to fish for food at any time. When the CBC used the gender-sensitive language "fishers," there were screams of outrage from a group of women fishermen. When the Supreme Court decided that the federal government does indeed owe their female employees back-pay for "work of equal value," the *National Post* claimed the Supreme Court is in the hands of radical feminists.

Yvonne Roberts, a freelance journalist, quipped:

> The British media is a power complex — men have the power, women the complex!

Women who achieve success and then quit to raise their children or to pursue a different career are usually attacked as not being able to "hack it." The situation in Britain for both women's coverage in the media and their participation in it seems to be dreadful.

During the session on "Women and the Law: Promoting Women's Rights Through the Courts," Carissima Mathen, the Director of Litigation for LEAF, talked about "Raising our Voices," about the Canadian experiment with equality rights which has lasted for 20 years now under the Charter. She made the point that since judges are not elected in our British system of law, "Judges have the freedom to be politically unpopular," and to make politically unpopular but legally correct judgments.

Anuja Dhir, a London barrister, talked of some of the most troubling recent cases in Britain. First, marital rape was legal in Britain for 400 years following an infamous 1678 verdict. In 1991, the verdict of a Court of Appeal overturned the fact that a husband had pled guilty in the lower court to marital rape. The wife then appealed to the House of Lords, much as the Famous Five did in our own history. A group of "Law Lords," all men, heard the appeal and decreed that "the whole proposition of a woman being her husband's property was no longer applicable and was offensive to women." In 1991 this happened. She spoke of forced marriages most movingly because this is a common custom within her own South Asian culture. The high court has intervened and labelled such behaviour as kidnapping and criminal behaviour.

The third example that Ms Dhir used was that of battered women who have killed their violent spouses. Even though this syndrome is now recognized as a valid defence here in Canada, in the U.K. the defences of self-defence or provocation still require immediate reaction to be valid. The battered women's syndrome is not recognized there. She argued strongly that "equality does not mean the same treatment but the same end result." The end result is the only valid measure of true equality.

In the next segment, the first speaker was the Right Honourable Baroness Jay of Paddington, Lord Privy Seal, Leader of the House of Lords and Minister for Women. She listed legislation that the Blair government has introduced recently including, just this month, a child tax credit to benefit women. A national minimum wage has been introduced. Can you imagine? For the first time ever in Britain, they now have a minimum wage, and 1.3 million women got a pay hike because of it.

The Honourable Hedy Fry, our Secretary of State for the Status of Women, spoke next and did Canada proud. She reiterated Canadian statistics and how they have improved so greatly over recent years. She spoke eloquently of our own Employment Equity Act and of "gender-based analysis," which is now required by Canadian law. She pointed out that the whole idea of "one size fits all gender-equal policy has been debunked." We now measure equality by the end result here in Canada and not by a strictly equal process.

The conference was not only very informative and educational; it was a public relations coup for Canada. We got more column inches in the British press in just one article than we have received in total for over a year. It was written by Yvonne Roberts and it was called "Northern rights." She did a follow-up piece the week after the conference and, in equal column inches, she wrote "Under a blaze of Northern rights" which again praised the Canadian record. It was a most remarkable conference and I am so glad that I went.

The Hon. the Speaker: If no other honourable senator wishes to speak, this inquiry shall be deemed to be debated.

[*Translation*]

• (1650)

FEDERALISM AND GLOBALIZATION

INQUIRY

Hon. Gérald-A. Beaudoin rose pursuant to notice of Tuesday, November 2, 1999;

> That he will call the attention of the Senate to the fundamental principles of modern federalism: Federalism and Globalization, in light of the debates that have occurred at the Forum of Federations.

He said: Honourable senators, I had the privilege in October of participating in the Forum of Federations held at Mont-Tremblant and bringing together over 550 representatives and experts.

[*English*]

More than 20 federal states or quasi-federal states had delegated representatives. They included South Africa, Argentina, Germany, Australia, Austria, Belgium, Brazil, Canada, Scotland, Spain, the United States, India, Italy, Malaysia, Mexico, Nigeria, Pakistan, Russia, St. Kitts and Nevis, Sri Lanka and Switzerland, *inter alia*.

[*Translation*]

This conference covered four major themes: federalism, citizenship and social diversity; economic and social federalism; intergovernmental relations in federations; and social policy and federalism.

[*English*]

More than 30 panels were established and dealt with a great number of subjects, including division of powers, globalization, intergovernmental relations, citizenship, et cetera. Jurists, political scientists, economists, parliamentarians, federal ministers such as Minister Stéphane Dion, provincial ministers such as Minister Joseph Facal, senators, former prime ministers and heads of state have been very active in the plenary sittings and in the workshops.

[*Translation*]

President Clinton, Prime Minister Chrétien, and Mexico's President Zedillo spoke. Premier Bouchard gave an address.

The two co-chairs, Bob Rae and Henning Voshereau, did a remarkable job and chaired more than one plenary, including one entitled New Directions in Federalism.

The Forum of Federations will be an ongoing event. The next meeting is scheduled to take place in Switzerland two years hence. This forum cost the Canadian government $10,500,000.

In my view, there was a need for the forum. I had the good fortune to chair a roundtable on globalization and federal systems, and it is on this topic that I wish to speak briefly today.

Canada is one of the oldest federations in the modern era, preceded by the United States, in 1789, and Switzerland, in 1848. Our Constitution has evolved considerably. History teaches us that we go through alternate phases of centralization and decentralization. Right now, we are in a phase of decentralization. Few countries have spent as much time and energy as we have on the advent of balanced federalism. There is a growing interest, worldwide, in federalism. As Professor Ronald Watts, an influential participant in the Forum of Federations, said:

> Twenty-five years ago there was only one journal and two centres for research on federalism in the world. There are now several journals, and the International Association of Centres for Federal Studies (IACFS) meeting annually now, encompasses 23 centres and institutes in 15 countries on five continents.

It is good to examine certain features of our Constitution and to ask ourselves questions about the possible consequences of globalization.

With respect to treaties, Canada has adopted a dualist system. In many countries, the signing of a treaty changes the law of the land. In Canada, enabling legislation is also required to implement a treaty that has been signed. The courts have established that treaties must be signed by the federal authority. When it comes to implementation of a treaty, the division of legislative power between the federal and provincial governments must be observed. This was the decision arrived at in 1937 and it has not been varied since. As I see it, this division of power is a good reflection of Canada's needs, particularly as we have two systems of private law: the civil law of Quebec and the common law of the other provinces.

In Canada, it is the federal authority that can legislate extraterritorially, deliver passports and manage foreign policy.

Within the Francophonie, two Canadian provinces have the status of "participating government" at international meetings, namely Quebec and New Brunswick. These provinces have the right to speak, but they do not vote separately. They are part of the Canadian delegation.

Quebec and New Brunswick also have the status of participating government within the Agency for Cultural and Technical Cooperation.

The federal government has agreed, in some cases, to allow provincial ministers to be part of Canadian delegations abroad and sometimes to act as chair or vice-chair at certain functions.

On November 17, 1965, Canada and France signed a cultural agreement which allowed the provinces to directly conclude cultural agreements with France.

Under this framework agreement, a province can directly sign agreements with France. If such agreements exceed the scope of the framework agreement, they must be ratified by the federal government to be valid. A significant number of agreements between France and Quebec have been signed under this framework.

Administrative arrangements add greater flexibility to our federation. These arrangements do not amend the Constitution, but facilitate its implementation. Such arrangements are necessary in a modern federation.

An administrative agreement was signed in December 1975 by the federal government and the provinces regarding human rights. It defines the mechanisms for cooperation and joint action by the two levels of governments in the enforcement, in Canada, of human rights policies.

As for the Francophonie, summits were held in Quebec City, in 1988, and in Moncton, in 1999. These events provide greater visibility to the provinces.

In the context of globalization, modern federalism is rapidly moving to the forefront. For example, the North American Free Trade Agreement accelerated globalization on the American continent. Trade and commerce are almost no longer restricted by borders. This is also true in other parts of the world, for example in Europe.

Certain features of a confederation, and even of a federation, albeit more rarely, are found in some major economic associations.

• (1700)

The impact of globalization can be felt on the commercial, cultural and political levels. Similarly, states are increasingly seeing their sovereignty eroded by larger entities such as NAFTA and the European Union.

A federal state can facilitate its components' participation in the globalization process while insuring a coherent foreign policy. A case in point in Canada is the Francophonie summits. There could be others.

As professor Richard Simeon said at the Forum of Federations in Mont-Tremblant:

> No matter the point of view, it is clear that with globalization, federalism does not stop at the border: global forces have a powerful impact on relationships at the national level, and the federal nature of a nation is inevitably reflected on the international scene.

[*English*]

In conclusion, I shall quote some extracts from the paper of Professor Earl H. Fry, at the Forum of Federations at Mont-Tremblant in October 1999.

> Without any doubt, more intergovernmental consultations and collaboration will be needed if federal systems are to take advantage of the many opportunities and to minimize the negative effects of globalization.
>
> As we enter the new century, the odds are very high that the trend toward globalization will intensify and that the interconnectedness of local, national and international economics will solidify.
>
> This Canadian model is perhaps a good starting point for federations to commence the process of developing or refining the intergovernmental institutions and procedures needed to cope effectively with globalization in the 21st century.

[*Translation*]

The Hon. the Speaker *pro tempore***:** If no other senator wishes to speak, this will end debate on this inquiry.

PRESENT STATE AND FUTURE OF ABORIGINAL PEOPLES

INQUIRY—DEBATE ADJOURNED

Hon. Aurélien Gill rose pursuant to notice of Thursday, November 4, 1999:

> That he will call the attention of the Senate to the situation of Aboriginal Peoples, to enable us to take stock and consider appropriate measures for the future.

He said: Honourable senators, I do not have to tell you how proud and overwhelmed I am to find myself in such a great institution, the Canadian Senate. Nor will it surprise you if I also share my enthusiasm and my faith. For a year now, I have been observing, listening and learning. The time has now come for me to speak up.

My identity and my life bear witness to my principles and my convictions. I am the son of an Abenaki father and a French-Canadian mother. I was born and raised among the Montagnais of Mashteuiatsh in the Lac-Saint-Jean region of the province of Quebec.

Looking back, I can see what a struggle it has been during my lifetime to merely gain recognition of who and what I am. I was part of that struggle, that battle, that awakening, and along this long path my principles have often been put to the test.

I consider it my duty to make use of my position in the Senate to express my beliefs and the reasons I have lived my life the way I have. Words carry messages, and the message must be delivered and repeated, with increasing wisdom and gravity. Often words are all we have left.

Honourable senators will see that I take my role seriously and will continue to do so for as long as I have the opportunity to speak out in public. The Senate is precisely the right place to record these grave words we all bear within ourselves, words that concern us all and concern the entire nation. The Prime Minister of Canada, Jean Chrétien, demonstrated his open-mindedness by appointing me to the Senate.

The First Nations issue is one of great significance for Canada. Its future depends on it. All too often we view it as an annoyance, a reminder of those little recurring nightmares we try so hard to forget. The heart of the matter is rarely addressed, however.

It is timely to speak of the new millennium opening before us. The 20th century has not been a good one for the aboriginal peoples of this country. The 19th century was a catastrophic one, filled with misery, so our First Nations have been the whipping boys of history for 200 years now.

We have been stripped of our identities. Our lands have been despoiled. Treaties have not been respected. We have been put under guardianship. We have been left forgotten in a parallel universe of dependency, paternalism, subject to perverse legislation, held prisoner on Indian reserves, subjected to all of the pressures to assimilate. Can we hope the next century will be the century of reparation, of redress, of rebirth?

As I have long been in the front lines of these struggles, my opinion must have some weight. As a former chief of the Montagnais and Attikamek nations, as a former chief of my community of Mashteuiatsh at Pointe-Bleue, I am one of those who claim that we are out of time. There is urgency. I insist: We have all run out of time. If no basic change is soon forthcoming in our political landscape, I think things will go sour.

For the time being, we live from crisis to crisis in the hope that each will deflate. For the past 20 years, it has been so: Kanesatake, Ipperwash, Gustafsen Lake and Burnt Church. It is fortunate that none really went off the rails. Each of them could have plunged us into dramas far more unfortunate than what we have faced so far. I cannot remain silent on subjects of such importance, because in this case, silence makes things worse.

We have of course made progress in the past 40 years. We have even reached a point we would never have imagined when I was a young man.

No one now disputes the fact that we are the first inhabitants of this country. We have lived on this land, now called Canada, for millennia. Our seniority is recognized, as is our right to exist. The Canadian Constitution bears witness to our rights. However, while our rights are affirmed in the nation's founding document, the content of these rights remains a mystery to many.

In the not so distant past, our ancestors welcomed the newcomers and helped them.

• (1710)

The first part of the history of our relations is one of partnership. It was only later that the mood of the guest changed. Since 1800, we have been subjected to the demands of our partner-turned-master and we have been declared foreigners in our own land.

Yes, history must be rewritten. A history that is less insulting to us, the First Nations, must be written. We played a major role in this history, but this role was also denied us, as was our attachment to our lands and our contributions to survival, life and philosophy.

We must share this history. We must all share it together, leaving no one out. It is urgent that we teach it and pass it on — in short, learn to tell it.

Let it be known that the concept of two founding nations has done the First Nations much harm. When it comes to constructing its national image, Canada suffers from a fundamental flaw. How can anything at all be based on such an oversight, such a misunderstanding?

We have been here from time immemorial. We were useful in wars, in trade, in the establishment of wealth, in alliances, in friendships, in the building of this country.

We, the Montagnais Innu, the Cree, the Wendat, the Ojibway-Anishinabe, the Blackfoot-Siksik, the Assiniboine, the Lilioet, the Tsequoitin, the Haida and the Gwitch'in, have been here from time immemorial.

We are forced to conclude that, despite all the efforts, despite the passage of time, the great majority of Canadians are ignorant of what matters most with respect to First Nations.

The last royal commission on this subject, the Erasmus-Dussault commission, once again pointed out dramatically that Canadians' ignorance has political consequences.

I would say that it has an impact on political will because, as we all know, ignorance leads to prejudice and prejudice exacerbates situations. It is downright scandalous to hear and re-hear the jarring background buzz of these prejudices that ends up weakening our political convictions: Indians do not pay taxes; they are exempt from paying taxes; they are given houses and money; they are supported by taxpayers; they are always claiming their rights; they are complainers; they are lazy; they make up rights and treaties; they terrorize governments, which cave in to their demands. This is what we hear.

The existence and persistence of such views in the year 2000 is a sign of painful failure for all Canadians. The First Nations had absolutely nothing to do with the drafting, the enactment and the enforcement of the Indian Act. But who, in Canada, even knows that act? Who knows its nature? Who can assess its tragic scope and its historic impact?

The status of Canadian Indian is one of second-class citizenship. The act applies the concept of guardianship. This long guardianship has made children of us, and history shows that we have lost everything, including our dignity. Even though the Indian Act was revised and amended, its general spirit still remains. Over a period of 125 years, it has created a horrible situation, a parallel world, the complex world of Indian reserves, dependency on the bureaucracy and the closed universe of Indian Affairs.

Canadians in general, and particularly well-educated ones, are unaware of the existence of the treaties. Much less do they know that the Canadian state and the other governments did not abide by one single treaty.

Whether people claim there were misunderstandings, whether they make all sorts of excuses, it does not change the outcome. We were duped on every facet of our identity, on every one of our most fundamental rights. But this remains a well-kept secret. One only has to read and to hear our most distinguished analysts and experts to realize, day after day, how much damage ignorance can create. Canadians have a better grasp of what is going on in East Timor than of the deteriorating situation in our country.

Canada has not always listened to the voice of its conscience regarding its treatment of First Nations. Without doing so, our country cannot see what it has done, which means nothing will change.

A serious injustice was done to those who have been called all sorts of names, including savages, then Indians, then Amerindians, then aboriginals, and heaven only knows what else. That injustice still persists in a Canadian society that claims not to tolerate such action. Nothing is possible without first attending to this deep wound, without ensuring that justice is done.

As I have said, over my lifetime some progress has been made. Unfortunately, recognition of our rights seems to play against us. What those rights are still seems to be a mystery. Many balk at their recognition. As a people, we are perceived as a threat. Our future has become a legal issue. We find ourselves caught between the narrow, if not abstract, corridor of the law and the hard, if not tortuous, reality of the prejudices of the real world. That has always been the history of the First Nations, promises from one side and refusals from the other.

The day will come when we must move beyond this. The First Nations aspire to self-sufficiency, to responsibility, to dignity. To attain that, we must break free of the vicious circle of guardianship and the hell of dependency. Indian Affairs costs Canadian taxpayers dearly, with negative results.

It is necessary and urgent to restore to the First Nations a place in the Canadian landscape — and a political, economic and geographical place. We defend our rights, we defend our identity, we are fighting for our rights within the Canadian nation.

I am both a senator and an aboriginal person. I do not want to feel ashamed of my country. I have worked lifelong for the restoration of our rights, for we have the right to be Dene, Inuit, Sarcee or Métis, and to be proud of it. There is a huge amount of catching up to do, but it must be done.

In the coming years, my intention here in the Senate is to continue to make my humble contribution to the value of words and of wisdom. My bet is on wisdom. I will therefore call upon all of the advice I can get in preparing my communications, for it is vital for the message to get through.

• (1720)

We must all work for open-mindedness. In my future interventions, I intend to come back before you with more information. I intend to participate fully in the deliberations of the Standing Senate Committee on Aboriginal Peoples. I am determined, from my position in the Senate and with the means at my disposal, to do everything to fuel the debate in a positive sense.

We must raise the level of this debate, and the most pressing action involves informing the Canadian public of the real issues. We must together fight the devastating effects of misinformation, quick analysis and empty accusations. If we cannot have this debate in the Senate, who can?

Despite all the ambient ignorance that generates so many mistruths, despite the lack of information on which many judge the situation, the situation of the aboriginal peoples remains desperate.

Try telling the Algonquin in Abitibi, the Ojibway of Western Ontario, the Cree of Western James Bay and the Tutchones of the Yukon that everything is fine in this brave new world. Go and see the Indian reserves in the year 2000, and you will see there is no cause for cynicism or sarcasm. This is no play on words. These are not pictures of the mind. Like poverty, the issue of the First Nations is what I would call a national emergency.

There are too many images of warriors, of favouritism, of crises and confrontation in the minds of Canadians. There is not enough knowledge of the realities of our dying languages, our dying people, the despair of our youth, of the marginality, of substance abuse and of the devoted efforts by the anonymous thousands, native and non-native alike, working day in and day out in real life situations to avoid the worst.

We must have our responsibilities back. A structure must be invented nationally that does not yet exist. We must go beyond the affirmations of rights and we must act. Natives must take hold of their present and of their future. Already the challenge is colossal. Is it not right to give us the chance to meet it?

In conclusion, honourable senators, it goes much further than that. If Canada does not find a way of resolving this situation, it will resolve nothing as a nation. Our collective identity is at stake, and this is a matter that should concern all Canadians. We are talking about making amends for a very serious historic injustice, but we are also talking about the collective right to a healthy existence as distinctive identities within a modern nation. Urgent corrective action is required, of course, but we must also develop, grow and contribute to the economic and cultural wealth of this country.

"Indianness" is not limited to moccasins, dancing and traditions. The Canada of tomorrow will also belong to the First Nations. We have survived a very sad history. We are taking back our place, and we must succeed in restoring the old partnerships. There is no need to reinvent the wheel. How many great minds, commissions, consultations, special committees, and research will it take? I think that, during the past 50 years, everything has been said. It remains to truly launch the historic process that will enable us to achieve a collective and dignified existence.

As a senator, I intend to steadfastly stay the course. The moment of truth has arrived. First Nations must govern themselves. There is no turning back. To become self-sufficient, we need a territory and resources. We need a place of our own in this country. We must inform, open minds, help put in place what does not exist yet, promote creativity, political innovation, a return to accountability, self-sufficiency and dignity.

I want Canada to be a shining light; I do not want it to be disgraced. First Nations must take care of themselves with a treasure that was not stolen, with definite rights, resources and a voice in national affairs. This is an uphill battle. We cannot be denied the right to do ourselves what nobody else can do for us.

On motion of Senator Watt, debate adjourned.

[*English*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

COMMITTEE AUTHORIZED TO MEET
DURING SITTING OF THE SENATE

Hon. Dan Hays (Deputy Leader of the Government): Honourable senators, prompted by the fact that we are sitting a bit longer than we normally do on a Wednesday, with leave of the Senate and notwithstanding rule 58(1)(*a*), I move:

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit while the Senate is sitting today, 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.

[*Translation*]

TRANSPORT AND COMMUNICATIONS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Lise Bacon: Honourable senators, with leave of the Senate and notwithstanding rule 95(4), I move:

That the Standing Senate Committee on Transport and Communications have power to sit while the Senate is sitting today, 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.

[*English*]

OFFICE OF CHILDREN'S ENVIRONMENTAL HEALTH

MOTION TO ESTABLISH ADOPTED

Hon. Mira Spivak, pursuant to notice of November 2, 1999, moved:

That the Senate urge the Government to establish an Office of Children's Environmental Health, an arm's-length agency to promote the protection of children from environmental hazards.

She said: Honourable senators, there are many good reasons to support this motion. Senators who sat in the committee on Bill C-32 and heard representatives from the Canadian Institute of Child Health ask for this office will be familiar with much of the reasoning. The first and certainly sufficient reason is because an office of children's environmental health is badly needed.

Children are particularly vulnerable to environmental pollutants. In committee we heard why in scientific terms, and it is worth repeating because it is the key to everything else. During the first six months of life, for example, a child drinks seven times more water per kilogram of body weight than an adult. Between the ages of one and five, a child eats three to four times more food per kilogram of body weight. The volume of air that a sleeping infant breathes is twice that of an adult at rest. All of this means that polluted water, food or air have a far greater impact on a child than they have on you or I.

• (1730)

Sometimes that impact is lifelong; sometimes it is irreversible. When the environment is the womb or when babies are breast fed by mothers whose bodies warehouse pollution, a small amount of toxin at the wrong point in time can cause everything from blindness, deafness and seizures to lower intelligence. In the past few decades, scientists have learned this much from their studies of children who were exposed to lead, or whose mothers ate PCB tainted fish from the Great Lakes, or who were born into communities that suffered methyl mercury poisoning.

This month, a substantial body of new information was released by the U.S. Centre for Health and Environment and Justice on the effects of a very toxic pollutant — dioxin. The report's most striking finding is that the dioxin commonly found in food is enough to harm children's growth and development. Ground beef typically has 1.5 parts per trillion dioxin, blue cheese has 0.7, and a chicken drumstick or haddock 0.03. According to the report, the average adult daily diet contains 2.2 parts per trillion dioxin; however, because it is stored in our bodies, our average concentration in fat tissue is 10 times greater.

Nursing infants get considerably more dioxin each day than adults. That is because dioxin accumulates in breast milk. Studies suggest, surprisingly, that breast-fed babies in Canada are getting 26 parts per trillion dioxin, which is about 30 per cent more than babies in the United States, more than twice as much as babies in Russia, and more than eight times as much as babies in Thailand. I do not know why.

What precisely does dioxin do to children? Prenatal exposure has been linked to lower intelligence, withdrawn or depressed behaviour, hyperactivity and weaker immune systems. There is also evidence that dioxin can affect the development of permanent teeth, alter thyroid hormones and increase respiratory diseases in children. Dioxin is so potent that it has also been seen to alter the sex ratio of infants. More girls are born than boys in regions where exposure is high. The same trend has been noted in Canada in the past few decades, although no one has linked it directly to dioxin.

The dioxin report has scores of recommendations to prevent future harm. It suggests, for example, that we replace the burning of municipal garbage, the number one source of dioxin, with more intensive recycling, waste reduction and better packages. Another suggestion is sunsetting the burning of medical and hazardous waste, phasing out plastics, which are another major source of dioxin, or banning dioxin-contaminated pesticides. We do have a choice.

Some children have paid a high price to give us knowledge that can lead to prevention, but no one is steering the government to apply it. That is one thing an office of children's environmental health would do. It would determine the existing body of knowledge and work with other government departments and agencies to see that science about children informs regulation. Without it, standards for tolerable levels of pollution in all likelihood will continue to be set to protect adult males, not women and children.

However, that is only part of why we need this office. We also need such an office to direct research on troubling questions for which we do not yet have good answers. Why has asthma in children quadrupled in the last few decades? Why has childhood cancer increased 50 per cent? What are the critical developmental points at which hormone-mimicking chemicals must be avoided? An office of children's environmental health could promote that research, as could the centres of excellence for children's wellbeing. More than two and one-half years ago, the government promised to dedicate $20 million over five years to children's health research through new centres of excellence. Some 30 months later, none have been created. I hope these centres will be something the government will consider, along with the other recommendations in the Speech from the Throne.

Children's health is barely a factor in much of our spending, regulation or policy. We do not even know what pollutants are commonly found in play areas, day care centres and schools. We have no guidelines to help reduce children's exposure to pollutants in areas they commonly use. There are other things an office of children's environmental health could do.

The second reason to support this motion is to ensure our country lives up to its promises under the 1998 declaration of the environmental leaders of the G-8 on children's environmental health and the 1989 Convention on the Rights of the Child. Fulfilling these sorts of pledges takes political leadership, something we have certainly seen in the U.S. About the same time that our leaders were promising voters all sorts of things for children, President Clinton ordered every federal agency to make it a high priority to identify environmental health and safety risks that may disproportionately affect children and to change policies, programs, activities and standards to correct the imbalance. Soon after, the U.S. Environmental Protection Agency created its office of children's health protection to implement the president's executive order and an EPA program was announced in 1995 — the national agenda to protect children's health from environmental threats. It is not clear how much the agency's office and programs can be credited with bringing about change. However, we do know, for example, that the U.S. Food Quality Protection Act now requires the re-evaluation of tolerance levels of nearly 10,000 pesticides, a new air standard for ozone is expected to mean 1 million fewer cases a year of decreased lung function in children, and the EPA is directing staff to consider infants, children, and pregnant women when setting standards for drinking water.

The agency is also funding new research into children's exposure to pesticides, how smog impairs their breathing, and their vulnerability to a chemical used in dry cleaning, all of which bring me to the final reason to support this motion to create an office of children's environmental health. It is, in the long run, in the self-interest of every Canadian. If our laws and our policies are only concerned with protecting the healthy, adult male in the prime of his life, then we will be increasing the burden on everyone else, but particularly the young and the elderly. If, however, we focus attention on the most vulnerable among us, the developing child, all of us have a better chance at protection.

I know the proposed office elicited quite a response from senators opposite when it was discussed in committee. I sincerely hope that some of them have continued their interest, will engage in this debate, and will persuade their colleagues to support this motion.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

CONTENTS

Wednesday, November 17, 1999