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**OFFICIAL REPORT  
(HANSARD)**

**Thursday, September 27, 2001**

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**THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE***

## CONTENTS

(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Thursday, September 27, 2001

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

Prayers.

### SENATORS' STATEMENTS

#### QUESTION OF PRIVILEGE

COMMENTS BY MINISTER OF CITIZENSHIP AND IMMIGRATION—NOTICE

**The Hon. the Speaker *pro tempore*:** Honourable senators, pursuant to rule 43(3) of the *Rules of the Senate*, the Clerk of the Senate received earlier today notice of a question of privilege from Senator Lynch-Staunton. In accordance with rule 43(7), I will now recognize the Honourable Senator Lynch-Staunton.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise to speak to the notice that was delivered to the Clerk of the Senate earlier today. This matter concerns actions taken and statements made by the Minister of Citizenship and Immigration in relation to Bill C-11, now before us, being an act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or endangered.

This matter relates to a question I asked the Leader of the Government in the Senate yesterday, while preserving my right to raise such matter as a question of privilege, should the facts unfold to justify such an action on my part. I should add that the statements of the minister were only brought to my notice yesterday at 11:15; therefore, the earliest opportunity I have under our rules to bring this question of privilege to the attention of the chamber is today.

Briefly, the Minister of Immigration, after repeatedly telling members in the other place that she could do nothing to change how Canada dealt with immigrants and refugees until Bill C-11 was passed into law, stated unequivocally in an interview with the CBC broadcast yesterday, September 26, that:

...I've given the order to do in-depth security screening of all claimants at our ports of entry. That has begun, we haven't waited for Bill 11...

As well, she has authorized the printing and issuance of new permanent resident cards.

She was asked if these actions had been taken "Even though you do not have a law in place?" Her answer: "That's correct." She was then asked: "...isn't there a legal...," and her reply was, "I'm doing it."

Clearly, honourable senators, this is an action in contempt of Parliament and a breach of the privileges of all senators, as it

anticipates the passage by the Senate and Royal Assent being given to Bill C-11 while it is only at second reading before us. Ministers of the Crown cannot act without parliamentary authority. They are not above the law.

At the appropriate time, honourable senators, I will move that the Senate refer this matter to the Standing Committee on Privileges, Standing Rules and Orders.

[*Translation*]

#### WORLD HEART DAY

**Hon. Yves Morin:** Honourable senators, on Sunday, September 30, 2001, people around the world will mark World Heart Day. In Canada, the Canadian Cardiovascular Society and the Heart and Stroke Foundation are organizing the event. This foundation groups together more than 250,000 Canadian volunteers, and does remarkable work in the fight against this terrible problem, cardiovascular disease. This event will recognize the fact that cardiovascular disease is the leading cause of death among Canadians.

[*English*]

On Sunday, in more than 50 locations in Canada, these organizations will hold a mother-daughter walk.

[*Translation*]

I encourage my female colleagues in the Senate to participate in this event with their daughters.

[*English*]

Canada has become a world leader in cardiovascular research thanks to the partnership of many players, the most important being the Heart and Stroke Foundation, with \$40 million a year in support of stroke and heart research, and the newly established Institute of Circulatory and Respiratory Health of CIHR.

The new scientific director of this institute, Dr. Bruce McManus, a world-renowned pathologist from Vancouver, has recently announced a very important research program in relation with gene-environment interaction in circulatory and respiratory disease. This strategic initiative will bring our country to the forefront of post-genomic medicine, which in the future will radically transform our methods of preventing, diagnosing and treating heart disease.

[*Translation*]

Honourable senators, on the occasion of World Heart Day, we can be proud of the role that our organizations and the volunteers who are part of them, and our researchers and health care professionals have played in the fight against the number one enemy in the field of health: cardiovascular disease.

[English]

### FIFTIETH ANNIVERSARY OF STRATFORD FESTIVAL

**Hon. Laurier L. LaPierre:** Honourable senators, I rise today because my heart is full of good news and great joy of a cultural nature. Culture is, after all, the soul of a nation, and its cultural events are its heartbeat.

Last Tuesday evening, her Excellency the Governor General of Canada gave a reception in honour of the fiftieth anniversary of the Stratford Festival in the presence of stars of the festival and its brilliant artistic director, Mr. Richard Monette.

• (1340)

Begun 50 years ago in a tent in a little town in Ontario, the Stratford Festival has become the most important theatrical event in Canada and one of the prime theatrical festivals in the world.

If I may be permitted to circumvent the rules once again, I would say that this fiftieth anniversary could not have taken place without the dedication, the encouragement and the contribution of Senator Meighen and members of his family. Canada owes them a large debt of gratitude because we are able to celebrate this fiftieth anniversary.

On the same day as we were celebrating this important milestone — and there are many more of these milestones coming up — the Governor General's Performing Arts Awards were announced. What a rostrum of great artists: the maestro Mario Bernardi, the divine Diane Dufresne, the elegant Evelyn Hart of the Royal Winnipeg Ballet, the filmmaker Anne-Claire Poirier, the consummate actor Christopher Plummer, and the incomparable Max Ferguson, who for 51 years has illuminated the "radioscape" of our country.

Furthermore, this week the Minister of Canadian Heritage attended meetings of the International Network on Cultural Policy in Lucerne, Switzerland. This important international organization, which she founded, composed of some 45 countries, is devoted to the maintenance of cultural diversity and cultural sovereignty in a world of globalization and the imperatives of free trade. The network needs the support of all senators and all Canadians, for it is a most important cultural instrument.

Today, honourable senators, marks the opening of the most eclectic and interesting film festival in our country. I speak, of course, of the festival taking place in the most magnificent city of Canada, Vancouver, in the most glorious province of Canada, British Columbia. The Vancouver International Film Festival will showcase, among other great films, the largest number of Canadian films ever presented in a film festival in our country or in the world.

Honourable senators should view Canadian films and Canadian programs on television as often as they can because it will do wonders for their intellectual and emotional well-being.

The great Pierre Berton has published his forty-seventh book, *Marching as to War*. In an interview I had with him last Saturday

at the National Arts Centre, he mentioned that Canada would never become the fifty-first state of the United States as long as Canadian culture was vibrant and played a great part in our national life.

**The Hon. the Speaker *pro tempore*:** I regret to interrupt the Honourable Senator LaPierre, but his allotted time has expired.

[Translation]

### POLICE AND PEACE OFFICERS' NATIONAL MEMORIAL DAY CEREMONY

**Hon. Lucie Pépin:** Honourable senators, next Sunday, right here on Parliament Hill, the twenty-fourth annual memorial service will be held for the police and peace officers who have lost their lives in the line of duty. This ceremony, organized jointly by the Canadian Police Association, the Canadian Association of Chiefs of Police and the Canadian Peace Officers' Memorial Association, will mark Police and Peace Officers' National Memorial Day.

It cannot be said enough, that if Canadians live in good communities, this is in large part thanks to the devoted and remarkable work of these police and peace officers. They spare no effort to prevent crime and track those who commit it, for our safety and security.

Today, I wish to pay a special tribute to the police men and women and peace officers who have lost their lives in the performance of their duties. I would also like to say that my thoughts are with the families of these brave citizens who were taken from their loved ones while protecting the people of Canada. I take this opportunity as well to salute all the self-sacrificing family members and friends who daily share the concerns that go with work as a police or peace officer.

This year, particular respects will be paid to the memory of nine police officers and peace officers killed in the line of duty this past year. John Graham, Jurgen Seewald, Deidre Dunsford, Johnny Petropoulos, Alain Matte, Alain Forget, Edwin Mobley, Timothy Nicholson and Noel Sadé, we will never forget you.

[English]

### ROUTINE PROCEEDINGS

#### STUDY ON ECONOMIC DEVELOPMENT OF NATIONAL PARKS IN NORTH

REPORT OF ABORIGINAL PEOPLES COMMITTEE TABLED

**Hon. Thelma J. Chalifoux:** Honourable senators, I have the honour to table the fourth report of the Standing Senate Committee on Aboriginal Peoples, which deals with aboriginal economic development and northern national parks.

I ask that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

On motion of Senator Chalifoux, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## QUESTION PERIOD

### CITIZENSHIP AND IMMIGRATION

#### COMMENTS BY MINISTER REGARDING IMMIGRATION AND REFUGEE PROTECTION BILL

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, Senator Lynch-Staunton raised some extremely important issues yesterday in Question Period with respect to our rights as parliamentarians, in particular the duties and responsibilities of senators to be able to review legislation before the government takes action on that legislation.

I contacted the Minister of Citizenship and Immigration last evening. She expressed to me her concern that media comments had not accurately reflected her wishes.

I have a letter from the honourable minister in which she states:

As you know, Bill C-11 provides us with the legislative tools to simplify and streamline decisions as to whether a person is eligible to make a refugee claim at the Immigration and Refugee Board (IRB). Sections 100(1) and 101(1) provide that eligibility shall be determined in three days and that persons found to be inadmissible on the grounds of security, violating human rights, serious criminality and organized crime will be ineligible to claim refugee status at the IRB. In addition, sections 103(1) and 104(2) provide that a claim can be suspended and terminated if such information comes to light later in the process. While the current law provides similar grounds to bar access to the system, it requires additional steps that can pose significant delays in the final determination of eligibility.

In light of the recent terrorist attacks in the United States, I have issued instructions to intensify screening of all arrivals at our ports of entry, including persons claiming refugee status. This is a purely operational matter, which requires no new legislative authority, as per sections 19, 20 and 46.01 of the current Immigration Act. Persons found to be security threats through this intensified screening process will be dealt with under the current rules.

I regret any confusion that media reports of my comments may have created with respect to current legislative authorities and the new provisions of Bill C-11. Let me take this opportunity once again to wish you and your colleagues well in your study of this important legislation.

Sincerely,

Elinor Caplan

## TERRORISM

### INITIATIVES TO GUARD AGAINST ATTACKS

**Hon. Gerald J. Comeau:** Honourable senators, my question is directed to the Leader of the Government in the Senate.

Having witnessed the recent terrible events of September 11, 2001, and knowing that they came without warning; and given that the intent of the bin Laden-led terrorist organization is to kill rather than to bring people to his cause; and given that we could be next and that our critical infrastructure, including the Port of Halifax, the Welland Canal and the Parliament Buildings of Canada, amongst others, are vulnerable to such attacks; and given that the taxpayers have paid to set up an office for the protection of critical infrastructure — I want to ask the Leader of the Government in the Senate this question: What steps is this government taking to protect our critical infrastructure from terrorism?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his timely and important question.

• (1350)

Immediately upon the scenes that we all viewed on September 11, processes went into place to ensure that there would be adequate safety precautions. The honourable senator has identified several of the issues. Certainly, our nuclear plants were one of the issues considered to be at high risk and therefore requiring security of a very high level. So, too, were the ports, canals and pipelines. All of these measures were put immediately into place and they are still in place.

**Senator Comeau:** Honourable senators, I am pleased that the minister can respond in so timely a fashion on this subject.

My second question, which is just as important, is that a great number of Canadians have not felt that they have been given the kind of assurances they need to relieve their tensions and worries. They see the House of Commons dealing with bills on the Canada Oceans Act, Nunavut waterways, et cetera, all of which are important but not quite as critical as the need for reaction to the terrorist acts that happened on September 11. Many Canadians are watching the government to get some assurance that our critical infrastructure will be protected and that our financial centres, ports, et cetera, are protected.

When can we expect some kind of a concerted effort by ministers of departments to give the reassurance that we are not in a “don’t-worry-be-happy” mode, as has been the case to date, and that we are in fact in a mode that will respond quickly and forcefully to any acts of terrorism in Canada?

**Senator Carstairs:** Honourable senators, contrary to what the honourable senator has said, the ministers have been quite forthright. We have had statements, day after day, by the Solicitor General and the ministers responsible for Foreign Affairs, Justice, and Customs. There has been debate to elicit the views of parliamentarians, such as was held here last week and the day before in the House of Commons.

Much of this work, of course, can be done in committees of the House of Commons. I regret to say that committees are not fully operational in the other place at the present time. This is so because, according to my information, the honourable senator's party has not submitted a list of new members.

**Senator Comeau:** Honourable senators, that is a crock, to suggest that the Prime Minister cannot set up the parliamentary committees without having the Progressive Conservative-DRC Party, or whatever they call themselves now, submit a list of members. The Leader of the Government knows perfectly well that the business of Parliament does not rest on having the Progressive Conservative Party or DRC submit its list of members. The leader knows perfectly well that the key committees of transport and finance, and a number of others, have not been struck because the Prime Minister does not want to raise this issue to a higher level. The Leader of the Government is using this piece of crock with regard to submitting a list of members as an excuse. I think the minister should apologize to all Canadians for propagating this kind of excuse.

**Senator Carstairs:** Honourable senators, the Standing Orders of the House of Commons are clear. They require that within 10 sitting days after the House resumes after Labour Day the procedure committee shall prepare and table new membership lists for committees. It is impossible for them to be prepared if they do not have the lists from the parties.

I can imagine the outrage in this chamber if I were to change a Standing Order of this chamber without having it approved by this chamber. I suggest we would also want to respect the Standing Orders of that chamber.

## TRANSPORT

### AIRPORT SECURITY—REQUEST FOR UPGRADED TRAINING

**Hon. Consiglio Di Nino:** Honourable senators, let us start talking some sense and stop playing politics.

**Some Hon. Senators:** Oh, oh!

**Senator Di Nino:** My question to the Leader of the Government in the Senate relates to an article in *The Globe and Mail* this morning dealing with the apparent desire by security people at airports for additional opportunities to further enhance their abilities. *The Globe and Mail* suggests that the airport security groups have not been able to get their officials to give them this additional training.

My question to the Leader of the Government in the Senate is this: What has the Government of Canada done to deal with this issue?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, as the honourable senator I am sure is aware, the training of security officials at airports at the present time is under the purview of the airport authorities. There has been, certainly, some serious questioning of whether that process should continue; whether in fact the security people at airports should have some form of independent agency. However, no decisions have been made at this time as to whether that is the direction in which we will go in the future.

**Senator Di Nino:** Honourable senators, the events of September 11 in the U.S. must surely have heightened the awareness of all of us as to the safety concerns of Canadians. The Government of Canada could use its full power, or at least its persuasive power, to get this issue dealt with immediately, including, if necessary, revoking the authority of the different airport authorities and transferring it either to other agencies or directly to the federal government. Is the safety of Canadians not the first and most important thing with which we should be concerned, instead of bureaucracies?

**Senator Carstairs:** Honourable senators, safety is clearly of paramount importance. That is exactly why some things have changed. If one boards a flight today, one will discover that it is no longer possible to carry on things one could carry on formerly as luggage without any comment or question whatever. Penknives are an example.

I went through security on Monday afternoon. I was asked to turn on my cellphone, which I had turned off because I knew I could not have it on in the aircraft. They wanted to know if it worked. I was asked to turn on my Palm Pilot because they wanted to know if it was a genuine Palm Pilot and not something else pretending to be a Palm Pilot. My luggage was inspected as, I can assure the honourable senator, it was never inspected before. I personally was delighted it was inspected at that level, as was every other bag that came along after mine.

All of those precautions are a direct result of September 11 and orders issued by Minister Collenette, as the Minister of Transport, that those new directions must be followed.

**Senator Di Nino:** Honourable senators, we are talking about people at the front line of this task, which is as difficult and thankless a task as exists.

• (1400)

They are saying that they are not properly trained, that they want help in order to do their jobs well. Certainly this government can respond more quickly than it has to help these folks to do their jobs properly. I am sure the minister would agree with me.

**Senator Carstairs:** Honourable senators, it has been made clear to airport authorities that they must ensure that their people are adequately trained. We have seen some evidence of that training in the more intensive scrutiny that all of our baggage is receiving.

HOURS OF WORK REGULATIONS FOR  
LONG-DISTANCE TRUCKING

**Hon. Norman K. Atkins:** Honourable senators, my question is for the Leader of the Government in the Senate. It deals with a matter usually explored by my colleague Senator Spivak. I understand that the proposed regulations dealing with hours of work for long-distance truckers are either ready now or will be ready shortly for circulation, discussion and comment by the Minister of Transport through the Canadian Council of Motor Transport Administrators.

The regulations propose to extend the number of allowable consecutive driving hours from 13 to 14 and to 84 driving hours in a seven-day period. In contrast, the United States is considering an increase from 10 to 12 hours with a maximum of 60 hours per week.

Could the Leader of the Government in the Senate explain why the government is considering a move to increase daily driving hours and weekly maximums for Canadian truckers when the United States has limited their maximum to 24 hours less per week, even after an increase of one hour per day of driving time?

Will the government give consideration to the mandatory installation of permanent onboard electronic recording devices on long-distance trucks to accurately monitor hours of work and rest?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, that question is causing increasing concern to those who travel roads like Highway 401 on which the volume of trucks seems to be increasing literally by the minute. I understand that no decisions have yet been made on the final report. When it is finally released, though, that report would be a valid target of study for our Standing Senate Committee on Transport and Communications.

**Senator Atkins:** Honourable senators, will the government give consideration to broadening the mandate of the Transportation Safety Board to include investigations of serious truck highway accidents, as has already been recommended by the Senate Special Committee on Transportation Safety, chaired by the Honourable Senator Forrestall? Will the Leader of the Government in the Senate undertake with us today to refer these draft trucking regulations to the Standing Senate Committee on Transport and Communications?

**Senator Carstairs:** Honourable senators, there are several answers that I want to give to that question, not least of which is the response that last year I asked my staff to review recent Senate studies and to forward the committees' recommendations therein to the various ministers. I requested that information be forwarded when available. When I get that information, I send it off to the chairs of the appropriate standing committees. I want you to know that reports of the Senate are important to me and they are going forward in a very proactive way.

In terms of asking the government to consider broadening the mandate, I would be delighted to take that message through to

my colleagues. As to whether draft trucking regulations could be studied by the Standing Senate Committee on Transport and Communications, I believe that is in their mandate but we can certainly make the issue available to them if it is not.

AGRICULTURE AND AGRI-FOOD

PROBLEMS IN FARM COMMUNITY

**Hon. Leonard J. Gustafson:** Honourable senators, my question is directed to the Leader of the Government in the Senate.

Every senator knows about the very dry conditions in agriculture throughout Canada. There are severe problems from the Maritimes to the West. Some reports indicate that the rainfall levels are probably the lowest since the 1930s. The Minister of Agriculture came out West and viewed the situation. For the most part, I understand we got a "no."

I want to assure honourable senators that that is not good enough. Senator Sparrow has just arrived. He instigated meetings in municipalities where the gophers were so thick they overran the municipality. For those of you who are not aware, gophers and grasshoppers follow drought and can cause severe problems.

Has the government leader observed any change in the position of the minister or of cabinet in regard to the serious problems facing farmers? Many bankruptcies will result from the drought and the low commodity prices. This drought could not have come at a worse time.

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator raises issues with respect to the drought in Canada which, in some areas, was extremely severe. There is no doubt about that. Parts of the country, though, have had an abundance of rainfall resulting in different problems in my particular province. In Saskatchewan, particularly the southern parts, as well as in the southern parts of Alberta and in some of the Atlantic provinces, the drought problem has been severe.

There is no question that the government is talking about it. As the honourable senator knows, I cannot divulge anything that takes place within the cabinet room until it becomes official government policy.

Crop insurance programs are in place and are expected to make record payouts this year as a result of the drought, which is a reflection of the genuine problem that exists in the community.

Producers have the Net Income Stabilization Account Program that is currently near \$3.2 billion. That money is available to farmers should they wish to access it. To date, only a very small portion has been accessed.

To some degree, we have just got the harvest into the bins at this point. The true extent of the problem is just now coming to light. I will bring the concerns of the honourable senator to the cabinet table as part of the discussion that takes place there.



**Senator Gustafson:** Honourable senators, many farmers have indicated that they have not taken their combines out of the sheds. I cannot emphasize enough the seriousness of the problem. I am somewhat bothered that when Air Canada is in trouble, for instance, immediately some government members speak out and say that something will definitely be done. That is the implication given in the media. The issue of agriculture is so important to this country. I am not suggesting that the airlines are not important, but we should perhaps look at all the other factors that exist within that issue.

I want to re-emphasize the importance of the government's action on agriculture. I would like assurance from the minister that this will be a high priority on her list in bringing issues before the cabinet and the Minister of Agriculture.

• (1410)

**Senator Carstairs:** Honourable senators, I come from a province in which agriculture is an extremely important part of our economy. As the senator representing that province, the honourable senator has my assurance that it is a very high priority.

[Translation]

## CUSTOMS AND REVENUE AGENCY

MEETING BETWEEN MINISTER AND UNITED STATES  
OFFICIALS—CHANGES IN PRACTICES AND PROCEDURES

**Hon. Roch Bolduc:** Honourable senators, my question is for the Leader of the Government in the Senate. The newspapers tell us that the minister responsible for Customs has met U.S. representatives, including the U.S. ambassador to Canada. Following this meeting, he announced a change in customs practices and procedures. He did not even wait for passage of the bill to amend the Customs Act.

Could the Leader of the Government in the Senate assure us that the changes in practices, regulations or procedures are within the scope of the present Act to avoid the occurrence of a situation such as the one described by Senator Lynch-Staunton with respect to immigration?

[English]

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the government has been moving slowly. For that, there has been a great deal of criticism from some areas. That the government has moved so carefully is a testament to its recognition that it cannot do what is outside the law. I will follow up further on this particular question of the honourable senator, but certainly, the policy of the government is that we must proceed slowly because we must have the legislative authority, passed by both Houses, to do that which we intend.

[Translation]

**Senator Bolduc:** Honourable senators, I mention it to the Leader of the Government in the Senate, because it has happened in the past. I sat for many years on the Scrutiny of Regulations

Committee. I can assure you that sometimes ministers or officials are overzealous and go beyond the spirit of the law. Since we are dealing with a young minister, Martin Cauchon, a good fellow, still young, but ambitious, I want to be sure he is not going beyond the law.

[English]

**Senator Carstairs:** Honourable senators, I will tell the young minister that the Honourable Senator Bolduc wishes him to proceed with caution.

## SOLICITOR GENERAL

RELEASE OF PERSONAL INFORMATION ON STUDENTS BY  
UNIVERSITIES TO POLICE AND GOVERNMENT AGENCIES

**Hon. Lois Wilson:** Honourable senators, my question is for the Leader of the Government in the Senate. Reliable information has reached me that, in the wake of the New York disaster, the RCMP and other government agencies have been investigating university students at the University of New Brunswick. The investigators are interested solely in those students with Arab backgrounds and an interest in engineering or science. The investigations appear to be widespread with reports from several campuses across Canada. The administration of UNB has a policy of confidentiality and security for students, and the release of student information records cannot be done without the agreement of the campus registrar.

However, the administration has also indicated that this policy is currently being reviewed. The release of personal information of university students could have serious implications for the privacy and academic freedom for university personnel across Canada.

What assurance have we that the RCMP and other government agencies have demonstrated the need for any actions that may encroach on fundamental rights of Canadian students?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, a very serious question has been raised. I regret to tell the honourable senator that I do not have an answer for her. I will make inquiries and I will respond to Senator Wilson as quickly as possible. Obviously, not only is the safety of Canadians important, but so too is the academic freedom that takes place in the institutions of this country. I can assure the honourable senator that I will remain vigilant until I obtain an answer for her.

## HERITAGE

MUSEUM OF CIVILIZATION DECISION TO CANCEL EXHIBIT  
BY ARAB COMMUNITY

**Hon. Marcel Prud'homme:** Honourable senators, having gone through the debate on the War Measures Act, I did my duty by voting in favour of it in the House of Commons. I keep repeating that we were wrongly informed but, unfortunately, with the information that we had I saw fit to vote in favour of the War Measures Act, even though people expected me to vote against it.

Thirty years later, I see the same kind of “paranoia” slowly creeping across Canada. Senator Wilson has referred to a part of it, and I thank her for her question. I should like to refer to another part, and on this one you will have to be in agreement with me, given the strong answer yesterday by the Prime Minister of Canada to a question asked by the leader of the NDP.

[*Translation*]

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table two delayed answers. The first is to the question raised by Senator Gauthier on May 17 concerning justice and official languages. The second is to the questions raised by Senator Nolin on June 13 concerning the June 13 meeting of the heads of NATO countries.

I received a series of letters addressed to Dr. Rabinovitch, President and Chief Executive Officer of the Museum of Civilization. The writers of these letters are appalled by the Museum of Civilization’s decision to indefinitely postpone the Arab-Canadian art exhibit.

This is a time when the Arab-Canadian community should be proud of their culture and should be able to demonstrate to other Canadians that they are part of the tapestry of Canada. Cancelling the exhibition only endorses the negative stereotypes of Arabs, which is definitely not the mandate of the Museum of Civilization.

For the reasons given in a press interview, I am appalled by the nerve of people who say, “Well, we thought we could probably deepen the kind of information that the exhibit provides to the public about Arab-Canadians.” I have never seen that done before. The Museum of Civilization has indefinitely postponed the exhibit prepared by people who have worked for five years in the expectation there would be an opening on October 18 and 19, because some people say they have certain information. This has never been done for any other group that has had exhibits.

Would the honourable senator and all honourable senators say that we are in full agreement with the Prime Minister? Thank God Mr. Day is not the Prime Minister, as I said in my speech to the press, but it was not reported. He is the only one who disagreed yesterday, it seems. The remaining members of the House gave a standing ovation to the Prime Minister, who said that it is the wrong decision at this time and that this exhibition should take place.

Would the honourable leader convey that some senators approve strongly of the answer the Prime Minister gave yesterday, and that many feel this issue is way above political partisanship?

**Hon. Senators:** Hear, hear!

**Hon. Sharon Carstairs (Leader of the Government):** I believe that the honourable senator already has his answer in the clear support indicated from all sides of this chamber for the Prime Minister’s remarks yesterday. He said in the clearest possible terms that this exhibit should go forward and it should go forward now. Although the museum has said that it will take place sometime before March 1, 2002, he indicated that if it is good enough for March 1, it is good enough for October. I concur absolutely with the Prime Minister.

**Hon. Senators:** Hear, hear!

[ Senator Prud’homme ]

## JUSTICE

OFFICIAL LANGUAGES—COURT ACTION BY COMMISSIONER  
INVOLVING QUEBEC BILL 171—INTERVENTION  
BY FEDERAL GOVERNMENT

(*Response to question raised by Hon. Jean-Robert Gauthier on May 17, 2001*)

The Superior Court of Quebec heard the arguments in the cases brought by a number of municipalities in Quebec to challenge the validity of Bill 170, *An Act to reform the municipal territorial organization of the metropolitan regions of Montréal, Québec and the Outaouais*, and of Bill 171, which amends some provisions of Quebec’s *Charter of the French Language*.

As is the usual practice in cases at the trial level, the Attorney General of Canada did not make representations to the Court in this matter. Generally, the Attorney General of Canada does not participate in cases in which she is not a party unless the case is before the Supreme Court of Canada.

As a mis-en-cause, the Attorney General of Canada is following these cases closely. We will await the decision of the Quebec court and advise in due course.

As for subsection 16(3) of the Charter, it states a very significant rule of constitutional interpretation. First expressed by the Supreme Court of Canada in 1975 in the *Jones* case, the principle of advancement of English and French recognizes that constitutional guarantees build floors for language rights, not ceilings. In the *Jones* case, the Court found in favour of the constitutional validity of the *Official Languages Act*, which added to the existing language rights.

Our Government remains firmly committed to that Act and to enhancing the vitality and development of the English and French linguistic minority communities in Canada.

## NORTH ATLANTIC TREATY ORGANIZATION

MEETING OF HEADS OF STATE—REQUEST FOR COMMENTS BY  
PRIME MINISTER—STATEMENT OF SECRETARY GENERAL  
ON CONFLICT IN MACEDONIA

*(Response to questions raised by Hon. Pierre Claude Nolin on June 13, 2001)*

### QUESTION:

Could the minister share with us the message delivered by Prime Minister Chrétien to his North Atlantic Alliance colleagues?

### ANSWER:

Because of the nature of the discussion, there is no overall text of the Prime Minister's interventions during the leaders' meeting in Brussels on June 13. However, the following are the key messages which the Prime Minister delivered through his various interventions during the meeting:

The Alliance has adapted well to the new security environment since the end of the Cold War. It must continue to make itself ready to respond to the new challenges ahead.

The further enlargement of the Alliance is the best way to extend the zone of stability and security in Europe. We must fulfill the promise of an undivided Europe.

Canada is ready to engage with the US and our other allies in a meaningful and measured exchange to explore the issues raised by President Bush in his May 1 speech about the strategic framework, including missile defence.

We share US concerns about many of the new threats and believe we need to work together to develop new approaches to address them, in particular via diplomatic measures. Missiles defences may be able to play a role in this new environment, but this will depend entirely on how they are pursued.

We would be concerned if an approach emerged which alienated Russia and/or China, which did not sustain the gains of the international non-proliferation, arms control and disarmament (NACD) regime, which jeopardized prospects for fulfilling our NACD commitments and which failed to enhance our overall security.

Canada supports the evolution of the European Security and Defence Policy, but NATO must remain the primary security and defence organization for its members.

NATO and the EU must develop a strong cooperative relationship that protects the interests of all 23 NATO and EU states.

Extremists throughout the Balkans cannot be permitted to undermine the gains we have achieved. Regional leaders need to play their role to impress upon all parties that threats to the stability of the region cannot be tolerated. NATO continues to play an essential role.

### QUESTION:

What is Canada's position on the situation in Macedonia?

To what "presence" was Secretary General Robertson referring to when he said that "Our goal is to see the democratic structures in the region become strong enough to be self-sustaining. That job is not yet done. We will therefore maintain our presence."

### ANSWER:

On June 21, following from the leaders' discussions and in response to an invitation to assist from Macedonian President Trajkovski, NATO announced its willingness to assist a voluntary disarmament operation in Macedonia provided the following conditions are met - successful outcome to dialogue between the political parties, a durable cease-fire and clear agreement to disarm by the armed groups. Canada supported NATO's initiative.

On August 13, the Macedonian coalition government announced the signing of a Framework Agreement for peace. Shortly thereafter, NATO concluded that the conditions for a weapons collection mission had been met, and initiated Operation Essential Harvest on August 27.

Canada has contributed 200 troops to Task Force Harvest. The CF contribution to Task Force Harvest is a concrete and highly visible demonstration of Canada's commitment to Macedonian and Balkan peace and security.

As of mid-September, the NATO operation has met its goals, successfully collecting two-thirds of the weapons slated to be collected from the National Liberation Army.

Canada with other NATO countries does not believe this mission should be extended. The issue of a separate subsequent and different NATO mission in Macedonia is only now being considered by NATO, and would need the agreement of the Macedonian government.

We expect the Macedonian National Assembly will recognise that the implementation of the Framework Agreement is the only path to peace and that it will strongly support the constitutional reforms.

Macedonian political leaders have courageously chosen the path to peace and we hope that all Macedonians will equally demonstrate their fortitude by accepting the outcome of this democratic process.

In conjunction with CIDA, Canada is in the process of developing a package focusing on inter-ethnic confidence buildings measures to support the implementation of the Framework Agreement.

Over the last two years, Canada has provided \$8 million to Macedonia, mainly for economic reform and democratization.

In addition, since the crisis began, we have provided \$700,000 in humanitarian assistance to those people affected by recent events in northern Macedonia.

A Canadian took charge of the OSCE Spillover Monitoring Mission on August 19, 2001. We are also considering the deployment of additional monitors to the OSCE mission.

Secretary General Robertson, in the statement cited by Senator Nolin, was referring to NATO's presence in Bosnia and Kosovo. NATO currently has some 43,000 troops in Kosovo and some 21,000 troops in Bosnia. Canada has concentrated the Canadian Forces Balkans' deployment in Bosnia where we have some 1700 troops in Multinational Division South West. A Canadian, Major General Rick Hillier, commanded the forces in MND SW which include UK, Dutch and Czech troops, from September 2000 until September 2001.

#### QUESTION:

What is the Canadian position with respect to the following statement by the NATO Secretary General, "If we want NATO to be as successful in the future as it has been in the past, we must all invest wisely and enough, to ensure that we have the military capabilities for any crisis of the future."

#### ANSWER:

Canada has been a strong supporter of an initiative to strengthen the capabilities of allies called the Defence Capabilities Initiative.

We agree that there is a need to improve interoperability among NATO forces and believe that this initiative will improve the overall effectiveness of NATO, as well as trans-Atlantic cooperation.

Canada must remain interoperable with our allies. DCI is a key step in helping to modernize our forces in conjunction with NATO allies, particularly the US.

Over the past two years, this government has increased defence spending by some \$3 billion. These funds are focused on people, leadership and equipment.

The funds are focused on quality of life initiatives aimed at making the Canadian Forces a career of choice. Retaining and attracting quality people is critical to enhancing operational capability.

[ Senator Robichaud ]

Second, we are placing a great emphasis on leadership and education as an investment in the future.

Finally, the Department of National Defence is pursuing an ambitious equipment program which includes the purchase of Upholder-class submarines and new ship-borne helicopters, as well as the modernization of our maritime patrol aircraft and the upgrading of our CF-18 aircraft.

In addition, the Army is receiving state-of-the-art equipment, such as the Light Armoured Vehicle (LAV) III and new individual equipment for all soldiers.

These initiatives will continue to increase the operational effectiveness of Canada's Forces.

#### ANSWER TO ORDER PAPER QUESTION TABLED

CUSTOMS AND REVENUE AGENCY—RULES AND RESTRICTIONS CONCERNING DUTY-FREE SHOPS

**Hon. Fernand Robichaud (Deputy Leader of the Government)** tabled the answer to Question No. 1 on the Order Paper by Senator Comeau on February 7, 2001.

#### L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

CANADIAN DELEGATION TO MEETINGS OF JULY 6 AND JULY 8 TO 10, 2001—REPORTS TABLED

Leave having been given to revert to Tabling of Reports from Inter-Parliamentary Delegations Reports:

**Hon. Rose-Marie Losier-Cool:** Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, two reports of the Canadian delegation to the Assemblée parlementaire de la Francophonie and the related financial report. The first report deals with the meeting of the Bureau held in Quebec City on July 6, 2001, while the second one deals with the twenty-seventh regular session, from July 8 to 10, 2001.

• (1420)

[English]

#### THE SENATE

INTRODUCTION OF PAGES

**The Hon. the Speaker:** Honourable senators, before proceeding to Orders of the Day, I should like to introduce additional pages who are with us for this session.

I shall start with Maxime Gagné.

[Translation]

Maxime Gagné is from Alma, Quebec. He begins his second year as a page in the Senate and will be the Deputy Chief Page. He is currently studying toward his licenciante in civil law at the University of Ottawa, with a specialization in contracts and new technologies.

**Hon. Senators:** Hear, hear!

[*English*]

**The Hon. the Speaker:** Grant Andrew Holly is a proud native of Chatham, Ontario. Grant is a fourth-year public administration student at Carleton University. He is pleased to serve as a second-year page in the Senate.

**Hon. Senators:** Hear, hear!

[*Translation*]

**The Hon. the Speaker:** I should like to introduce Nathanael Joshua Alexander Watt. Josh was born in St. Boniface, Manitoba. He is currently pursuing an honours degree at Carleton University with a major in political science, Canadian politics and law. This is Josh's second year with the Senate Page Program.

**Hon. Senators:** Hear, hear!

[*English*]

**The Hon. the Speaker:** Catherine Cecchini is from Timmins, Ontario. This is Catherine's first year at the University of Ottawa, where she is studying psychology. Good choice. Catherine joined the page program this September.

Pierre-Philippe David was born in Timmins, Ontario. He is currently studying in his third year of a three-year English program at the University of Ottawa. This is Pierre-Philippe's first year in the Senate Page Program.

**Hon. Senators:** Hear, hear!

[*Translation*]

**The Hon. the Speaker:** Also in the gallery is Suzanne Gallant. Suzanne is from Moncton, New Brunswick, in the heart of Acadia. She is currently in her second year of an honours degree in social sciences, with a specialization in international and comparative political science, and with a concentration in globalization. Suzanne enthusiastically joined the Senate Page Program in September.

**Hon. Senators:** Hear, hear!

[*English*]

**The Hon. the Speaker:** Michelle Suzanne Jones is a proud Western Canadian, born in Kamloops. Currently, she is in her second year of a four-year honours degree program studying international politics, with a minor in Canadian studies, at the University of Ottawa. This is Michelle's first year with the Senate Page Program.

**Hon. Senators:** Hear, hear!

## ORDERS OF THE DAY

### IMMIGRATION AND REFUGEE PROTECTION BILL

#### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Cordy, seconded by the Honourable Senator Morin, for the second reading of Bill C-11, respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger.

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to put on the record some comments with respect to Bill C-11. I do not intend to go into the details of the bill. However, I feel it is important to underscore the valuable comments that some of our colleagues have made with respect to this bill.

In particular, I commend the comments made about the worth, value and the essential nature of immigration in Canada. I do not think that anything we do in this chamber should undermine the valuable contribution of the immigrants who have come to Canada, settled here, became Canadian citizens and made our country what it is.

Honourable senators, it is incumbent upon us to ensure that we make no distinctions when we become Canadians about whether we were born here or we arrived here. We must always be mindful that it is not an issue that we should make note of once citizenship has been obtained.

In fact, this Senate and the Standing Senate Committee on Legal and Constitutional Affairs spent many hours studying a bill that dealt with citizenship. One of the difficulties we found was that wording at the beginning of the bill referred to citizenship and to all Canadians, but only in one provision. Thereafter, the bill really spoke to issues separating those who were not born on our soil. In that respect, I fundamentally disagreed with that bill. We should not use a citizenship act and a process of denaturalization to make up for errors that should be corrected within immigration policy and practice. We went so far as to say that it was difficult to assess the Citizenship Act because we did not have the Immigration Act before us.

My reason for standing today is the fact that we have before us Bill C-11, a bill that deals with many of the same issues of balancing security and protection for Canadians. As well, the bill deals with the integrity of the values for which we stand as we welcome new people to this country. We want to ensure that they come here legally and that they understand the responsibilities as well as the rights that they obtain by coming to Canada.

As we studied the citizenship bill, the Standing Senate Committee on Legal and Constitutional Affairs gained great insight into the balancing act among protection, security and the rights of an individual. Therefore, I strongly suggest that in expediting Bill C-11, it would be in the best interests of Canadians and the Senate if the bill were referred to the Legal and Constitutional Affairs Committee.

I do not think many people would argue with the intent of Bill C-11; that is, to have some orderly manner of ensuring that those who come to our shores are ready and able to assume a responsible role in our society, whether it be at the stage of residency or full citizenship.

We are also mindful that many people do come to Canada. They choose Canada for valid reasons. Many of them choose Canada for the values that we have, as opposed to the values of the countries in which they find themselves.

In addition, we know that some 40 million people worldwide could be classed as in flux or migration, either within one country or between countries. Certainly, Canada has a legal obligation under international conventions and a moral obligation as citizens of the world to accept many of these people on our shores.

We know that these people would prefer to come and would come in a legal manner, but for the fact that there are forces trafficking in migrants. We should not be targeting migrants who wish to come to Canada but, rather, those who profit by bringing them here. That is where I believe Bill C-11 was heading. The issues that led to the drafting of Bill C-11 included issues of proper and orderly migration, ensuring that migrants do not have backgrounds that would preclude them from coming to Canada on an honest and sincere basis, and our understanding that there are some nefarious forces that need to be dealt with.

I was pleased to see that Canada has not only entered into some international covenants, but has also worked to pass enabling legislation in Canada to support these international activities.

My concern — and the concern of many in the other place as well as many constituents across Canada — is to ensure that Canada will have a due process for those who come to our shores, as well as the proper tools and methods for CSIS, the RCMP and the immigration authorities to do the kind of screening and analysis that they should do.

If we look at the present act, I am mindful of the fact that we are thin on the ground. Often, we have allowed people with criminal records to come to Canada, or people who have been involved in atrocities in other countries. If one were to review the background of some of these cases, one might easily see how these people slipped into our system. It has become an administrative malfunction as opposed to a need for change. The debate on Bill C-11 could address whether we need to strengthen the bill or whether we need to change some of the administrative practices.

For example, how can an RCMP or CSIS officer based in Paris properly investigate those who wish to immigrate to Canada from Algeria or Morocco? Staffing has been cut to the bone, and many of our systems are not modernized. That kind of debate is necessary and should continue, as it did in the other place.

The essential element of Bill C-11 revolved around the fact that, whatever the issue, Canada would set a high standard to ensure that we deal with immigrants, whoever and wherever they come from and whatever their backgrounds, in a fair and reasoned manner. Therefore, the entire focus is on a legal issue of due process, fairness and compliance with the Charter of Rights

[ Senator Andreychuk ]

and Freedoms. These are all issues that honourable senators pride themselves in, in the work done in this chamber and in the work of the Standing Senate Committee on Legal and Constitutional Affairs.

Honourable senators are proud that we have built up a body of expertise in these areas. That is why we are competent to deal with some of the issues in a manner different from the other place. The other place seems to deal with ideologies that affect public policy. Honourable senators concern themselves with issues such as the adequacy of the legislation, whether protections are in place, whether the Constitution has been properly taken into account, the federal-provincial responsibilities with respect to the issue, and whether the provisions of the Charter of Rights have been adequately met.

I believe there is a need to scrutinize the immigration bill in the same manner as the citizenship bill. In addition, there is a need to look at the rights and responsibilities of refugees vis-à-vis those of immigration. The immigration process is entirely different from the refugee process. Immigration involves a choice of standards, rules and impediments, in some cases, that we put in place for those who wish to come to this country. Immigration is not a right; it is an opportunity that Canada affords to others. We benefit, and we have some obligations. Once the process starts, we hope it is a legal process that benefits both Canadians and those who apply.

I am mindful of the speeches made at the time of the citizenship bill that addressed these issues.

With respect to refugees, not only do we need to do the screenings to ensure that we adequately protect the Canadian public, but also we must look at whether we adequately and properly discharge our responsibilities as international players.

As Canadians, we pride ourselves on being a multinational country, being part of the world community and part of the United Nations machinery. Part of that is our responsibility to accept refugees and to deal with them in the most humane way possible. That does not mean simply putting refugees on notice that if they come here they must abide by certain rules. There is some obligation to understand where they come from. Terrorism is one issue. The torture and the treatment that many of these refugees have endured in the countries from which they have come is horrific. We know that many of these people have been brutalized.

I was pleased to see in my time in the foreign service that Canada, under a previous government, instituted support systems for those who would immigrate to Canada. If an individual has been in a foreign jail cell or has been tortured, the ability of that person to integrate into Canadian society is surely affected, and we have some responsibility to understand these difficulties. Those are issues that demand a different approach from those we adopt in immigration.

Consequently, it has troubled me that we have talked about refugees, immigration, denaturalization and citizenship as one issue. These subjects are separate and distinct. Whether these items are addressed as one or are separate, they demand a different scrutiny and process. The level of protection and the level of risk we take in each should also be analyzed.

These are legal issues. Consequently, Bill C-11 is not an issue that divides this chamber or Canadians along party lines. What Bill C-11 demands is some degree of scrutiny, not only to ensure that the best possible legal means are there to protect Canadians in this process, but also to live up to the standards and values that we say we hold and to the Constitution to which we adhere.

• (1440)

When we come to the events of September 11, they colour all of us. Much has been said in the newspapers, in this chamber and elsewhere that the world has changed, and that we must quickly put in place systems to ensure that Canada is protected from the kind of international terrorism we witnessed on September 11 and from which we are no longer immune.

If we look at Bill C-11 clause by clause, honourable senators, we see that it represents a fraction of what needs to be done. We should proceed according following the announcement by the government that the entire field of terrorism must be looked at and, perhaps, that it needs specific legislation. We should not mislead the public into believing that the passage of Bill C-11 will protect us against the kind of international terrorism witnessed on September 11. We must look at the definition of "terrorism" in the CSIS Act, which must be updated. We must look at the practices, procedures and powers we have given to the RCMP and to CSIS.

**The Hon. the Speaker:** I regret to advise the Honourable Senator Andreychuk that her 15 minutes have expired.

**Senator Andreychuk:** May I have just a few more minutes?

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

**Hon. Senators:** Agreed.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** We are certainly willing to grant leave for Senator Andreychuk to finish her speech.

**Senator Andreychuk:** Suffice to say, I believe that Bill C-11 does not address the issue of terrorism; therefore, that issue must be studied.

I remind honourable senators that if we want to look at what we need to do with respect to this new form of terrorism, we should look at the security and intelligence report tabled here in January of 1999 as a start. Immigration was only one small factor in our report. We must look elsewhere for our protections.

If we are to analyze Bill C-11, we must look at the new issue of terrorism because the bill was based on the concept of terrorism we knew before September 11, or at least as most of us knew it. This type of terrorism was restricted to a region. We were looking to protect ourselves against that kind of terrorism.

We now know, as the Americans are also stating, that there are no borders to this type of terrorism. Consequently, we must look at global terrorism and its impact on Canada, not how to shore up our treatment of traditional types of terrorism.

Honourable senators, there is a heightened need to study Bill C-11 to ensure that the security measures contained therein are meaningful in light of the new international terrorism. We must ask whether any of our rights and freedoms will be curtailed. Again, we must balance security, which all of my colleagues have talked about, against rights and Charter implications.

These issues should be legitimately and appropriately dealt with by the Standing Senate Committee on Legal and Constitutional Affairs. I believe that committee would deal with Bill C-11 expeditiously given the committee's background. The makeup of that committee has not changed much since the analysis of case law and the discussions with witnesses called to testify on Bill C-16, the Citizenship Act.

Honourable senators, I look forward to deliberation and discussion in greater detail on the issue of immigration. I caution, however, that we must study this bill in a reasoned way.

Most of us have as hallmarks our birth date, perhaps a date of marriage and an anniversary date. I often receive letters asking me to send letters of congratulation to people who want to remember an anniversary, and that is the anniversary of the day they became a Canadian. Rarely do I receive a letter from Canadians who want to have a date set aside other than July 1 to honour their good fortune to be Canadians.

Honourable senators, we must not undermine and we must not make any segment of Canadian society feel that it is somehow different and less Canadian. This constitutional protection must be examined cautiously in dealing with the issue of immigration.

I support previous speakers who asked that there be a thoughtful and reasoned debate of this matter by the Standing Senate Committee on Legal and Constitutional Affairs.

**The Hon. the Speaker:** Are honourable senators ready for the question?

**Hon. Senators:** Question!

**The Hon. the Speaker:** It was moved by the Honourable Senator Cordy, seconded by the Honourable Senator Morin, that this bill be read the second time.

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

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

**Hon. Jane Cordy:** Honourable senators, I move that the bill be referred to the Standing Senate Committee on Social Affairs, Science and Technology.

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

**Hon. Consiglio Di Nino:** Honourable senators, the suggestion by Senator Beaudoin, a foremost expert on the Constitution of this country and on the implications of this bill —

**The Hon. the Speaker:** Senator Di Nino, this is not a debatable motion. Thus, I must ask honourable senators if they give leave for this question to be asked.

Is leave granted?

**Hon. Senators:** Agreed.

**Senator Di Nino:** I thank honourable senators for their courtesy. I have just one comment.

Obviously, Senator Beaudoin and our side feels that the bill should go to the Standing Senate Committee on Legal and Constitutional Affairs. We know the numbers, so we cannot really fight the bill. We believe it would best be studied under that particular authority rather than the Standing Senate Committee on Social Affairs, Science and Technology.

Can Senator Cordy or the Leader of the Government tell us about the schedule of the Social Affairs Committee in terms of dealing with this issue? I have been told, not officially, that the committee intends to sit all of next week as much as possible to study the bill, which I applaud. I understand we will come back on Monday for that, and I think that is fair as well.

One of the concerns I have is about trying to discharge our responsibilities while committee chairs are setting up conflicting times for committee meetings. For example, I am told that we may sit on Tuesday as well to discuss this bill. At same time, the Foreign Affairs Committee and the Rules Committee will be sitting. Has any consideration been given to having a cooperative discussion to ensure that those who are interested can be there to deal with this bill at committee and participate in hearing and questioning the witnesses?

• (1450)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, in response to the questions that have been posed by the Honourable Senator Di Nino, rule 86(1)(m) makes it very clear that matters of employment and immigration go to the Standing Senate Committee on Social Affairs, Science and Technology. Of course, if we wanted to use the broad terms of mandate of the Standing Senate Committee on Legal and Constitutional Affairs, we could send it to that committee, but we have already sent two bills to the Standing Senate Committee on Legal and Constitutional Affairs this week, the bill dealing with youth justice and the bill dealing with criminal organizations.

In order to even the workloads of the various committees, and because it is specifically mentioned in the mandate of the Standing Senate Committee on Social Affairs, Science and Technology, the bill will be referred to that committee.

As to the meetings of the committee, unfortunately meetings of that committee usually do conflict with sittings of the Standing Senate Committee on Foreign Affairs because their time slots are similar. Senators will have to decide individually which committee they will attend on a particular day.

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

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** On division.

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

[Translation]

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw to your attention the presence in the gallery of Les cyclistes des mineurs de l'amianté, from Thetford Mines and Asbestos, in Quebec. They are guests of Senator Setlakwe. On behalf of all senators, I welcome you to the Senate of Canada.

[English]

## STATUS OF LEGAL AID PROGRAM

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Callbeck calling the attention of the Senate to the status of legal aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal assistance, for both criminal and civil matters.—(Honourable Senator Hubley).

**Hon. Elizabeth Hubley:** Honourable senators, it is an honour to rise today in support of the inquiry of my colleague Senator Callbeck into the status of legal aid in Canada. At the outset, I wish to commend Senator Callbeck for bringing this important issue to the forefront and for pointing out the inequities and flaws in our present system.

Indeed, as Senator Callbeck has demonstrated, legal aid in Canada is really not a national system at all but rather a collection of programs and services that vary greatly from one province to another. This inconsistency is the result of different rules respecting access and the funding that is accorded legal aid in each jurisdiction.

The federal government, for its part, has allowed funding for legal aid to whither away, and federal assistance to provinces for civil legal aid is now part of the general Canada Health and Social Transfer.

The result, honourable senators, for smaller provinces like Prince Edward Island is that legal aid services are severely underfunded. This means that many of the people whom legal aid is supposed to help are denied access to what I believe should be a basic right of every citizen — the right to be represented before the courts, the right to a fair trial.



I should like to conclude my remarks on this important subject matter at this time and to adjourn the debate in my name.

On motion of Senator Hubley, debate adjourned.

### QUESTION OF PRIVILEGE

#### COMMENTS BY MINISTER OF CITIZENSHIP AND IMMIGRATION

**The Hon. the Speaker:** Honourable senators, having reached the end of the Orders of the Day, we will now hear debate on the question of privilege of which Senator Lynch-Staunton gave proper notice under Senators' Statements.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise to speak on the question of privilege of which I earlier gave both written and oral notice.

The facts of this case are, I believe, quite simple, but I think it is necessary to spell them out. I will take a few minutes to do so.

In the days following Parliament reconvening after the summer recess, the Minister for Citizenship and Immigration has been subjected to questions in the other place about Canada's immigration laws because of the tragedy of September 11. The nature of the questions have been along the line of requesting her to take action to secure our immigration and refugee system from abuse, especially abuse at the hands of possible terrorists posing as refugees or those seeking to immigrate to Canada.

Her answers to these questions, until yesterday, in the House of Commons have been a model of consistency. On September 17, she stated:

I will say that Bill C-11 gives us important new tools to ensure that we are able to do things such as up-front security screening and to bar access to the refugee determination system for anyone that we believe poses a security threat to Canada. We need the bill.

On September 19 she stated:

Mr. Speaker, as the member knows the protection of Canadian documents and security protection for Canadians is a priority for the government. In Bill C-11 we referred to a new permanent resident card which will replace the IMM 1000. That has policy approval and we are hoping it will move forward as quickly as possible. It is under development.

On September 25 she stated:

Mr. Speaker, I would remind the hon. member that Bill C-11 is at the Senate. It is having hearings next week.

I have asked the Senate to ensure that the bill is passed as quickly as possible. It contains important tools for my department so that we can more quickly identify and streamline our procedures. Everyone knows that at the present time it takes too long, and we feel it is an important tool for us to do what needs to be done for all Canadians.

• (1500)

Clearly, it was the opinion and belief of the Minister of Immigration that Bill C-11, the new immigration bill, would have to be passed into law before she could act to enhance the screening of refugees and to move forward with new ID cards.

As everyone in this chamber is aware, Bill C-11 has only just received second reading and has been moved to committee. As we have been informed by Senator Di Nino, it will be the subject of intense committee scrutiny starting on Monday. It has not, therefore, received third reading and has certainly not received Royal Assent. It is not law.

Therefore, it was not without some degree of shock that we learned yesterday that the Minister of Immigration had decided to go ahead and implement clauses of Bill C-11. I have the transcript here of a radio interview with Peter Armstrong of the CBC from yesterday morning. I am willing to table it, but I will read it all anyway. It is not that long. It is pertinent.

**The Hon. the Speaker:** Honourable senators, is leave granted to table the document?

**Hon. Senators:** Agreed.

**Senator Lynch-Staunton:** Thank you.

Here is the transcript.

PETER ARMSTRONG (CBC Reporter): Officials in both Canada and the United States have raised serious concerns about the border. From U.S. Attorney General John Ashcroft to New York Senator Hillary Clinton, American officials say security needs to be increased along the frontier. In Ottawa, Immigration Minister Elinor Caplan says new measures on both sides of the border are already in place.

ELINOR CAPLAN (Immigration Minister): We are increasing, I've given the order to do in-depth security screening of all claimants at our ports of entry. That has begun, we haven't waited for Bill C-11 and that will cause delays for people trying to enter Canada.

ARMSTRONG: Bill C-11 is Canada's new immigration law. It recently received Cabinet approval but it's still before the Senate. Caplan says the measures outlined in that bill need to be implemented now.

CAPLAN: We have operationalized the policy, which was approved by Cabinet, Bill C-11.

UNIDENTIFIED (Reporter): Even though you do not have a law in place?

CAPLAN: That's correct.

UNIDENTIFIED: So isn't that..., I mean if there's..., isn't there a legal...,

CAPLAN: You think that's a bad idea?

UNIDENTIFIED: No, I'm asking you, isn't there a legal...,

CAPLAN: I'm doing it.

It is clear from this interview, and other reports, that the minister has deliberately decided to ignore the proper, legitimate and constitutional role, not only of our chamber, honourable senators, but of the Crown as well, as demonstrated through Royal Assent, which must follow any bill before it can become law.

Honourable senators, the minister has shown contempt for Parliament by adopting measures for which, by her own admission, she believes she has no parliamentary authority.

Senator Carstairs quoted earlier a letter from the minister explaining what she was doing and claiming that it was under parliamentary authority. However, nowhere in that letter does she retract statements that are on the record, that have been recorded and listened to and can be heard again. All she says is that she regrets any confusion that media reports of her comments may have created.

There are no media reports that have created confusion. It is the quotations from the minister that are creating consternation. If the minister had only apologized for them and retracted them — and I know that she and other ministers key to recent developments and trying to find solutions to them are under a great deal of stress — we would not be having this debate today. Unfortunately, by not retracting them, so far, she obviously maintains them.

Honourable senators, therefore, this is certainly a breach of the privileges we enjoy as members of Parliament and is surely a contempt of Parliament of the worst kind.

The classic definition of privilege is found in the 22nd edition of Erskine May, page 65:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members.

[ Senator Lynch-Staunton ]

Erskine May goes on to further define contempt at page 108:

Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent to the offence.

With regard to our own Parliament, both Beauchesne's 6th edition and the new procedural text entitled *House of Commons Procedure and Practice* by Robert Marleau and Camille Montpetit are quite helpful. Let me quote from Beauchesne at pages 11 and 12, paragraph 25:

The Speaker has stated: "On a number of occasions I have defined what I consider to be parliamentary privilege. Privilege is what sets Hon. Members apart from other citizens giving them rights which the public does not possess. I suggest that we should be careful in construing any particular circumstance which might add to the privileges which have been recognized over the years and perhaps over the centuries as belonging to members of the House of Commons.

In my view, parliamentary privilege does not go much beyond the right of free speech in the House of Commons and the right of a Member to discharge his duties in the House as a Member of the House of Commons."

Now I quote from Marleau and Montpetit, who describe contempt of Parliament as follows, at page 52:

Any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed, is referred to as a contempt of the House. Contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a Member, it merely has to have the tendency to produce such results.

Speaker Sauvé reminded the House of Commons in a ruling dated October 29, 1980, that the definition and application of the concept of contempt is ever-changing:

While our privileges are defined, contempt of the House has no limits. When new ways are found to interfere with our proceedings, so too will the House, in appropriate cases, be able to find that a contempt of the House has occurred.

As stated by Marleau and Montpetit at page 95:

...the privileges and powers of the House of Commons as a collectivity do not lend themselves to specific definition. The privileges needed by the House to perform its constitutional duties require the power to protect itself and punish any transgressions against it.

This, of course, is true here in the Senate.

It is the individual privileges of senators that have been breached by the actions and remarks of the Minister of Immigration. As well, the rights of the collectivity, the Senate, have been breached by her actions, which may be properly categorized as a "contempt of Parliament."

As stated in Maingot's *Parliamentary Privilege*, 2nd edition, page 183, it is "...the right of our Chamber to regulate its own internal affairs especially with regard to our agenda and proceedings." What the minister has done is interfered with that right. She has determined that the proceedings of the Senate and subsequently the Crown, in the act of Royal Assent, are irrelevant. This is clearly a contempt of Parliament. She has anticipated the work of this chamber, something she clearly cannot do as a minister of the Crown.

I should like to refer specifically to two cases that are relevant to this argument. In one, the Speaker issued a stern warning to the government not to ignore Parliament; in the other case, the Speaker found a prima facie case in circumstances amounting to a contempt, which are instructive in the situation before us today.

**Senator Graham:** Which two cases?

**Senator Lynch-Staunton:** The first is a Speaker's decision in the House of Commons dated December 10, 1989, found in the *House of Commons Debates*, pages 4457 to 4461. The case involved the Department of Finance anticipating the passage of legislation and publishing in newspapers across the country an advertisement that stated:

On January 1, 1991, Canada's Federal Sales Tax System will change. Please save this notice. It explains the changes and the reasons for them.

The question of privilege raised in this case was that this advertisement was published while the bill authorizing the change was still in the House of Commons. It was argued that the advertisement prejudiced the future proceedings of the House and the Finance Committee, which had undertaken a technical study on the subject. Second, it was argued that it left the reader to infer that the House of Commons had no role in the passage of the tax.

While the Speaker did not find that the privileges of members had been breached by the action of the Department of Finance, he did make some comments on the actions of the department, which should be repeated here today. In concluding his judgment that, on balance, there was not a prima facie case of contempt, the Speaker said, as reported at page 4461 of Hansard:

I want the House to understand very clearly that if your Speaker ever has to consider a situation like this again, the Chair will not be as generous. This is a case which, in my opinion, should never recur. I expect the Department of Finance and other departments to study this ruling carefully and remind everyone within the Public Service that we are a parliamentary democracy, not a so-called executive democracy, nor a so-called administrative democracy. This advertisement may not be a contempt of the House in the

narrow confines of a procedural definition, but is, in my opinion, ill-conceived and it does a great disservice to the great traditions of this place. If we do not preserve these great traditions, our freedoms are at peril and our conventions become a mockery. I insist, and I believe I am supported by the majority of moderate and responsible members on both sides of the House, that this ad is objectionable and should never be repeated.

• (1510)

The second case is much more recent, being a decision made only last March by Speaker Milliken. It involved a media briefing held by the Department of Justice on Bill C-15, which had yet to be introduced in the House.

The Speaker dealt with the issue of confidentiality and the importance of departments and ministers to safeguard the rights of the House of Commons. He said:

Thus, the issue of denying to members information that they need to do their work has been the key consideration for the Chair in reviewing this particular question of privilege. To deny to members information concerning business that is about to come before the House, while at the same time providing such information to media that will likely be questioning members about that business is a situation that the Chair cannot condone.

Even if no documents were given out at the briefing, as the hon. Government House Leader has assured the House, it is undisputed that confidential information about the bill was provided. While it may have been the intention to embargo that information as an essential safeguard of the rights of this House, the evidence would indicate that no effective embargo occurred.

In this case, it is clear that information concerning legislation, although denied to members, was given to members of the media without any effective measures to secure the rights of the House.

He concluded that there was a prime facie case of contempt of the House.

I quoted that passage because I believe that Speaker Milliken has demonstrated the wide meaning that may be given to contempt, in order to protect the institution of Parliament.

It is clear from the text and from the precedents cited that a minister or minister's department that ignores the rights and privileges of Parliament, be it the House of Commons or the Senate, does so at his or her own peril. It is clearly a contempt of Parliament and specifically the Senate for Minister Caplan to behave as though the passage of Bill C-11 by the Senate and subsequent Royal Assent were irrelevant. If we are to carry out our work effectively as parliamentarians, we cannot be the object of a minister who believes that the Senate is irrelevant and the Constitution is irrelevant.

Therefore, I believe that my privileges as a senator and the privileges of all senators have been breached by this action, which I think should be properly categorized as a contempt of Parliament. I ask His Honour to find a prima facie case accordingly.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the Leader of the Opposition has raised a matter of privilege. Matters of privilege are, in my view, the most important matters that we ever discuss as parliamentarians. I thank the Leader of the Opposition for treating this matter with such seriousness.

I conducted four-hour seminars with the new senators on Monday morning. I told them that one of the things that sometimes gets confused in parliaments is the difference between a point of order and a matter of privilege, and that they should never confuse those two.

Senator Lynch-Staunton has raised this afternoon an extremely important matter, a matter that he raised yesterday. We could argue, I suppose, whether the timing would have been more appropriate yesterday. However, as the honourable senator said in his opening statement earlier today, he was not aware of potential violation of privilege until 11:30. At that point, the timing set out in our rules would have made it impossible for him to raise the matter at that time. So he has raised it today. I will not make an argument about appropriate timing because I think in this case it is quite irrelevant.

What is extremely relevant, though, is the matter of a prima facie case. Honourable senators, when I left the chamber yesterday, I was extremely concerned about the questions raised by Senator Lynch-Staunton. I had been given a briefing note and I used that briefing note in Question Period, as I am sure Senator Lynch-Staunton knows. To my mind, I still lacked sufficient information on this particular incident.

That is why Minister Caplan and I spoke last evening. We did, in the first instance, speak about the potential of her making the statement that the honourable senator has referred to. However, today, as many of you know, is Yom Kippur, the holiest day of the Jewish calendar, and Minister Caplan is in Toronto with her family, in synagogue, participating in that particular day of atonement. That is why she is not in Parliament and that is why no statement was made.

We then agreed, therefore, that she would communicate to me by letter outlining why it was not a violation of the provisions of Bill C-11 for her to be taking the kinds of actions that she did. I read that letter into the record during the Question Period this afternoon. I am prepared to table that letter, but, unfortunately, at the present time I only have it in one language; I do not have it in French. I have given Senator Lynch-Staunton a copy of the letter. I am pleased to give it to the Speaker or to any other senator individually, but I am reluctant to table it until I have it in both official languages. If I have permission, I will do that on Tuesday, when I have it in both languages.

[ Senator Lynch-Staunton ]

The letter is very clear. Minister Caplan outlines the new authorities she will have under Bill C-11 as the Minister of Immigration. She indicates clearly that there are new tools, and that statement is very similar to the statements that she made on September 17, 19 and 25, that she would indeed get new tools under Bill C-11. That is why we have sent that bill to committee. I know the committee will give it very careful study.

Minister Caplan indicates that she has tools presently available to her. She particularly quotes the legislative authorities under sections 19, 20 and 46.01 of the current Immigration Act. Persons found to be security threats through this intensified screening process will be dealt with under the current rules. Therefore, I do not believe there is a prima facie case in this instance for a matter of privilege.

As the honourable senator indicated, a great deal of pressure has been placed on the ministers. Her comment was made, I understand, in her car when a microphone was thrust in her window, and she now recognizes that it was not an appropriate comment for her to have made.

Having said that, the legislative authority by which the actions are now taking place are already in our Immigration Act. She already has the authority to act as she is acting. Therefore, there is no question of privilege here. The honourable cabinet minister has assured me that there will be no actions taken under Bill C-11 until Bill C-11 has passed this chamber and has been given Royal Assent.

**Senator Lynch-Staunton:** The question before His Honour is not whether the minister is acting under parliamentary authority or not. The question is whether she said that she would exercise some of the powers that would be granted to her if Bill C-11 were passed before Bill C-11 was passed. That is the question. If her current actions are covered by current legislation, that is irrelevant. What is relevant is what she has announced publicly and has not retracted. Of course, I honour her commitment to her family on this day. However, I am sorry to see even in the letter written yesterday that she referred to her remarks as anything but confusion caused by media reports.

• (1520)

There is no confusion here. Unfortunately, it is too clear. What she said is on the record. Until it is taken off the record, changed, amended or whatever, we have before us a minister of the Crown telling the Senate of Canada and the Crown, "Whatever you do with my bill, I have given myself the authority to exercise all or part of it, whether it is passed or not."

**Hon. Anne C. Cools:** Honourable senators, I have just received a copy of the letter that Minister Caplan wrote to Senator Carstairs. I was trying to capture the attention of Senator Carstairs so that, perhaps, she could read the letter again, so that it would form part of the record of this debate. Some of us were not in the chamber when she first read it. I am now attempting to read the letter as quickly as I can.

Essentially, the letter says that the minister admits that she has not acted, perhaps, to the highest standard that might have been expected of her. My eyes are falling to the very last paragraph, which states, in part:

I regret any confusion that media reports of my comments may have created with respect to current legislative authorities and the new provisions of Bill C-11. Let me take this opportunity once again to wish you and your colleagues well in your study of this important legislation.

I would like to commend Senator Carstairs as well for rising to speak to this matter because the custom of Parliament and the custom of this place used to be that, on matters of privilege, the leader should speak and should lead. For many years, we have had situations in this chamber when that has not been the practice. I am pleased to see Senator Carstairs meeting this challenge.

Honourable senators, we are now in an interesting situation because the role of the Speaker of the Senate in this entire matter is really quite limited. It is not up to the Speaker to determine whether or not the privileges of the Senate or any individual senator have been breached. His role is extremely limited. It has to do with a prima facie question of privilege to determine the urgency of the debate so that a debate can take place and take precedence over other matters. For those senators who are quite new at this business, it should be crystal clear that His Honour's role is not to make a decision on the substance of the question; the substance of the question is one that belongs to the Senate as a whole.

Honourable senators, "contempt of Parliament" and "breach of privilege" are two terms that we have heard quite extensively. They have to do with an area of activity that has been grossly negligent, in particular in this chamber, in the last 40 to 50 years. We must be mindful that a contempt of Parliament is one of the unique offences in which a finding and an accusation are one and the same. Thus, it is a troubling and difficult subject matter.

On the surface, Minister Caplan essentially said in the interview, a copy of which I was able to secure, that, yes, she needs an authority from Parliament; however, knowing that she needs that authority, she is quite prepared to ignore it and to act without it. Those are very strong words.

I should like to read from the transcript of the CBC radio interview, which is entitled "Security at the Border." The interview was conducted by a Mr. Peter Armstrong, and I think it has been cited already. He said:

Bill C-11...recently received Cabinet approval but it's still before the Senate. Caplan says the measures outlined in that bill need to be implemented now.

Minister Caplan is quoted as saying:

We have operationalized the policy, which was approved by Cabinet, Bill C-11.

Obviously, according to this interview, Minister Caplan believes that cabinet's approval of a policy is sufficient in and of itself.

The reporter continues:

Even though you do not have a law in place?

Minister Caplan responded:

That's correct.

The reporter continued:

So isn't that..., I mean if there's..., isn't there a legal...,

Minister Caplan responded:

You think that's a bad idea?

The reporter said:

No. I'm asking you, isn't there a legal...,

Minister Caplan replied:

I'm doing it.

There is a very clear statement here from Minister Caplan, and it is a very strong statement. I am of the opinion that Minister Caplan should be given the opportunity to give proper explanation of this. In the interests of magnanimity alone, in the interests of justice alone, and in the interests of proper relations between a minister and Parliament, I believe the minister should give a proper explanation.

The minister should be allowed to give a proper explanation. On first reading, it would appear that the minister is saying that she really does not believe that the Senate's input or agreement is necessary. I cannot help but believe that this is not the case. If this sounds possible, then, yes, Senator Lynch-Staunton has a very valid point.

As I have said in many interviews some months ago on behalf of Minister Hedy Fry, I cannot believe there would be any deliberate attempt on the part of the minister to mislead or to act improperly. I want to be recorded today as saying that.

There has to be an explanation, and there is an explanation. We should proceed in a manner as to give the minister an opportunity to make a full and sufficient explanation. There are some who might say, "She can give the explanations later," but I should like us, if at all possible, to find a way in this proceeding to deal with it, if we can. Perhaps the debate could be adjourned today in order that we could speak about it again next week, on Tuesday. We could then examine the matter a little more fully. This is one of the problems with this rule about the earliest opportunity.

When I first read this document, I concluded that the minister was acting under some authority other than the bill. At first I thought that, obviously, the problem has to be that the minister is relying on other elements of the Royal Prerogative or the law of prerogative to be able to take the initiatives and the actions that she is taking. In other words, my assumption was that the minister would not set out to invoke the anger and the wrath of members here, that she had to have been relying on another authority, and that she should have an opportunity to tell us that. I am still of that opinion.

I am not asking in any form or fashion for Senator Lynch-Staunton to withdraw his question of privilege or to retreat from it. However, I am prevailing upon the members of this chamber to slow this down just a little bit so that we may bring a bit more information, knowledge and consideration to the debate.

• (1530)

The issues are of such great fundamental importance, particularly when you understand that section 18 of the BNA Act gives members of the Senate an uncontroverted, critical and wholesale say in such matters. Section 18 of the BNA Act states clearly:

The privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.

Very clearly section 18 is a reception clause, by which the BNA Act received into Canada the powers and privileges that are currently held by members of Parliament. There can be no doubt that members of the Senate and that the Senate as a whole have an undisputed and uncontroverted right to vote on Bill C-11 before the minister or any department of government may attempt to implement a single one of its provisions.

In addition to section 18, honourable senators should be mindful that every single minister of the Crown, in addition, has a duty within our constitutional system to adhere to the Constitutional requirement that there be harmony and conformity between the two Houses of Parliament. In other words, a fundamental premise of our constitutional system is that every minister of the Crown is expected to get concurrence between the two Houses on every critical policy issue. That is why, for example, it is the law of the land as contained in the Constitution and in the law of Parliament that all bills, to become law, must have so many readings and the agreement of the House of Commons and then vice versa.

[ Senator Cools ]

I will move quickly to the last point about the Crown and the prerogative, and Senator John Lynch-Staunton's statement about the minister ignoring the Crown. Section 17 of the BNA Act tells us that:

There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Clearly, again, the Queen is a part of Parliament, so a minister cannot rely on the Royal Prerogative or on the powers given to ministers of the Crown through the law of the prerogative, as against the law of a statute being a piece of legislation that has received Royal Assent or is pending Royal Assent from the Queen.

However you cut it, honourable senators, the matter is important. The matter is deserving of members' study but, honourable senators, I cannot help but believe that, as valid as Senator John Lynch-Staunton's point is, and I do think his question is very valid, we should not rush in any form or fashion into this. It seems to me that if the minister has been unduly arrogant, or unduly insensitive, or unduly thoughtless, we should deal with this as a political problem and not as a legalistic problem invoking the punitive powers of Parliament.

I do not know what this means, whether someone should take the adjournment of the debate as we figure out how to proceed, but those are my submissions, in summary.

[*Translation*]

**Hon. Pierre Claude Nolin:** Honourable senators, you have only one decision to take for the time being. What Senator Cools has laid out is the second stage of the process.

First, you have in front of you, in addition to speeches, the transcript of a public conversation between a journalist and a minister. Whether or not the latter relied on the Royal Prerogative is something we will debate after you have first decided whether, *prima facie*, she breached a privilege.

The expression "*prima facie*" is very important. Was what the minister said correctly reported? Is the transcript inaccurate or incomplete? This is what the rules mean by "*prima facie*". The rule reads as follows:

The Speaker shall determine whether a *prima facie* case of privilege has been made out.

Therefore, you need only ask yourself whether the minister's words seem justified.

Second, if so, we can talk about the minister's motivation. Was she forced to make this statement? What was her state of mind? What was her intention? We will have to answer these questions later. For the time being, you need only ask yourself whether, in light of her conversation with a journalist, the minister has breached the privilege of this institution.

[English]

**Hon. Nicholas W. Taylor:** Honourable senators, I wish to add my comments because I have a great deal of sympathy for Senator Lynch-Staunton's motion. As you recall, I was chairman of the committee that was setting up a sustainable development area, and I was quite chagrined about it. When we reported it, we slapped the hands of the energy minister. Nevertheless, we complained about the fact that he had gone ahead with the sustainable development \$400 million hiring of the directors before the bill had gone through the house. Even the house leader at that time — the same house leader as now — was worried about it.

I have a great deal of sympathy for Senator Lynch-Staunton, but as I said, I know the Speaker has to decide whether there is prima facie evidence of privilege. I thought that perhaps I would refer him or his researcher to page 149 of Erskine May, which mentions that this, of course, is not in support of Senator Lynch-Staunton. It states that any privilege moved against an officer or member of a house has to come from that house itself. In other words, basically, my interpretation of that paragraph is that the House of Commons could not discipline the House of Lords on privilege and vice versa, The House of Lords cannot discipline the House of Commons on privilege. There is a question of whether you have any authority.

• (1540)

On page 117 of Erskine May there is a term I had not seen before, which is "constructive contempts." One could argue that the cabinet minister in the other House, by proceeding before the bill receives Royal Assent in the Senate, could be in constructive contempt of our house. Therefore, I submit to His Honour, when researching the subject, that these are two items he might consider: first, whether we have the authority to declare that a member of the other House is under privilege and, second, whether we can claim a constructive contempt of our house because the minister made that announcement.

**Hon. Bill Rompkey:** Honourable senators, I simply wish to draw the attention of the Senate to paragraph 31(3) of Beauchesne's, which reads:

Statements made outside the House by a Member may not be used as the basis for a question of privilege.

I also wish to draw the attention of the Senate to the fact that honourable senators have been quoting from a journalistic transcript.

**Senator Lynch-Staunton:** No. There is a sound recording.

**Senator Rompkey:** That remains to be seen. However, I make the point that all honourable senators have been in politics long enough to know that what we say to a journalist one day is not necessarily what appears in the story the next day. I have gone through that process many times. When this institution was under siege, Senator Nolin and I spent a whole year talking to a reporter whose name I shall not bother to mention today. The

stories that appeared the next day had absolutely no relation whatsoever to the statements I made.

Honourable senators, we must be careful about bringing stories here as evidence, particularly in view of paragraph 31(3).

**Senator Lynch-Staunton:** Honourable senators, if I may be allowed to make a correction, what has been tabled is an exact transcript of a radio broadcast on the CBC national news yesterday morning at around 8:15. If the honourable senator wishes, I can send him a copy of the tape.

**Senator Rompkey:** Would that be a full tape, part of the tape or an edited tape?

**Senator Carstairs:** Honourable senators, we must be very careful here. The breach, if there is a breach, is whether the minister has taken action without legislative authority. If she had done that, then clearly she would be in violation of our privileges as members of Parliament. However, in her letter, she is very clear. Her letter states that she has the legislative authority to do what she is doing. Her hope, should we in our wisdom give her Bill C-11, is to get more legislative authority from Bill C-11 to do more things. That is very clear in her letter, which I have shared with senators. At present, the actions she is taking are provided for under the current immigration law. Therefore, in my view, there is no prima facie case of a matter of privilege.

I would also reiterate what Senator Rompkey said. Beauchesne's is clear in paragraph 31(3) that statements made outside of the House are not the basis for a matter of privilege. However, if there is a matter of privilege, it is certainly based on whether she has taken an action that she cannot take. Her letter to me is clear. She quotes the sections that give her the legislative authority, under the present act, by which she can take the steps that she is taking.

**Senator Lynch-Staunton:** Let us not confuse the issue. At least three times in the House of Commons the minister said she would not proceed with any of the procedures arising out of the clauses of Bill C-11 until it is passed. On CBC radio — an exact transcript of which has been tabled that the honourable senator can compare with the tape — the minister said words to the effect that whether she gets Bill C-11 or not, she will apply today whatever is in this bill that she may need. If that is not contempt, I do not know what contempt would be.

**Hon. Lowell Murray:** Honourable senators, I have one point. Senator Rompkey has opened up a new issue, which I hope His Honour will consider and perhaps say a word on in the course of his ruling.

Senator Rompkey quoted Beauchesne's — and I do not have the paragraph in front of me — to the effect that statements made by a member outside the House are not grounds for a question of privilege. I emphasize the words "by a member." I believe that means if a member of the Senate makes a statement outside the house, it is not grounds for a question of privilege in the house. It certainly would not apply to a situation such as the Leader of the Opposition raised today.

**Senator Rompkey:** She is a member of the House.

• (1550)

**Senator Murray:** She is not a member of this house. She is a minister of the Crown, and she appears to have stated her intention to implement provisions of a bill before that bill is enacted into law.

Honourable senators, my point is that I think my friend has opened up a new issue and I believe it is not applicable. Were it applicable, we would never be able to raise a question of privilege on the basis of anything a minister of the Crown had said in the course of his or her duties with regard to the legislative process. That simply does not make sense.

In any case, I believe His Honour understands the points that both Senator Rompkey and I have been making and, *obiter dictum* in his ruling, he will take the occasion to clarify that matter for us.

**Hon. A. Raynell Andreychuk:** Honourable senators, I will enter the debate on the points Senator Rompkey made about proceeding on the basis of a newspaper or radio announcement. I should remind this chamber that both Senator Bacon and I raised questions of privilege at one point based on a newspaper article. The ruling that His Honour needed to make at that time was whether there was a *prima facie* case. The second stage was whether there actually was a breach and the circumstances surrounding the breach. Filing a newspaper document in this place was accepted in two cases as being within our rules.

**Senator Rompkey:** That may not have been good judgment, though.

**The Hon. the Speaker:** If no other senator wishes to participate in the debate on the question of privilege raised by Senator Lynch-Staunton, I thank honourable senators for the arguments that have been presented. I draw attention to rule 43(12) of the *Rules of the Senate*, which indicates that when the Speaker makes a ruling on a matter such as this:

...the Speaker shall state the reasons for that ruling, together with references to any rule or other written authority relevant to the case.

A number of authorities have been quoted, and we have a record that has been referred to in terms of the substantive presentation on the question of privilege. I should like an opportunity to review both the authorities and the record carefully before ruling on the question of a *prima facie* case. Accordingly, I take the matter under consideration and will return with a ruling at the earliest possible time.

## ABORIGINAL PEOPLES

COMMITTEE AUTHORIZED TO STUDY ISSUES AFFECTING URBAN ABORIGINAL YOUTH

**Hon. Thelma J. Chalifoux,** pursuant to notice of September 26, 2001, moved:

That the Standing Senate Committee on Aboriginal Peoples, pursuant to the input it has received from urban Aboriginal people and organizations, be authorized to examine and report upon issues affecting urban Aboriginal youth in Canada. In particular, the Committee shall be authorized to examine access, provision and delivery of services; policy and jurisdictional issues; employment and education; access to economic opportunities; youth participation and empowerment; and other related matters;

That the Committee report to the Senate no later than June 28, 2002; and

That the Committee be authorized, notwithstanding customary practice, to table its report to the Clerk of the Senate if the Senate is not sitting, and that a report so tabled be deemed to have been tabled in the Senate.

Motion agreed to.

[*Translation*]

## ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

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

That when the Senate adjourns today, it do stand adjourned until Tuesday next, October 2, 2001, at 2 p.m.

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

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, October 2, 2001, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(1st Session, 37th Parliament)**  
**Thursday, September 27, 2001**

September 27, 2001

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act respecting marine liability, and to validate certain by-laws and regulations	01/01/31	01/01/31	—	—	—	01/01/31	01/05/10	6/01
S-3	An Act to amend the Motor Vehicle Transport Act, 1987 and to make consequential amendments to other Acts	01/01/31	01/02/07	Transport and Communications	01/05/03 amended 01/05/09	3	01/05/10	01/06/14	13/01
S-4	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	01/01/31	01/02/07	Legal and Constitutional Affairs	01/03/29	0 + 1 at 3rd	01/04/26	01/05/10	4/01
S-5	An Act to amend the Blue Water Bridge Authority Act	01/01/31	01/02/07	Transport and Communications	01/03/01	0	01/03/12	01/05/10	3/01
S-11	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	01/02/06	01/02/21	Banking, Trade and Commerce	01/04/05	17 + 1 at 3rd	01/05/02  Senate agreed to Commons amendments 01/06/12	01/06/14	14/01
S-16	An Act to amend the Proceeds of Crime (Money Laundering) Act	01/02/20	01/03/01	Banking, Trade and Commerce	01/03/22	0	01/04/04	01/06/14	12/01
S-17	An Act to amend the Patent Act	01/02/20	01/03/12	Banking, Trade and Commerce	01/04/05	0	01/05/01	01/06/14	10/01
S-23	An Act to amend the Customs Act and to make related amendments to other Acts	01/03/22	01/05/03	National Finance	01/05/17	11 + 2 at 3rd (01/06/06)	01/06/07		
S-24	An Act to implement an agreement between the Mohawks of Kanesatake and Her Majesty in right of Canada respecting governance of certain lands by the Mohawks of Kanesatake and to amend an Act in consequence	01/03/27	01/04/05	Aboriginal Peoples	01/05/10	0	01/05/15	01/06/14	8/01

S-31	An Act to implement agreements, conventions and protocols concluded between Canada and Slovenia, Ecuador, Venezuela, Peru, Senegal, the Czech Republic, the Slovak Republic and Germany for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	01/09/19
S-33	An Act to amend the Carriage by Air Act	01/09/25

**GOVERNMENT BILLS  
(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-2	An Act to amend the Employment Insurance Act and the Employment Insurance (Fishing) Regulations	01/04/05	01/04/24	Social Affairs, Science and Technology	01/05/03	0	01/05/09	01/05/10	5/01
C-3	An Act to amend the Eldorado Nuclear Limited Reorganization and Divestiture Act and the Petro-Canada Public Participation Act	01/05/02	01/05/10	Energy, the Environment and Natural Resources	01/06/06	0	01/06/12	01/06/14	18/01
C-4	An Act to establish a foundation to fund sustainable development technology	01/04/24	01/05/02	Energy, the Environment and Natural Resources	01/06/06	0	01/06/14	01/06/14	23/01
C-7	An Act in respect of criminal justice for young persons and to amend and repeal other Acts	01/05/30	01/09/25	Legal and Constitutional Affairs					
C-8	An Act to establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions	01/04/03	01/04/25	Banking, Trade and Commerce	01/05/31	0	01/06/06	01/06/14	9/01
C-9	An Act to amend the Canada Elections Act and the Electoral Boundaries Readjustment Act	01/05/02	01/05/09	Legal and Constitutional Affairs	01/06/07	0	01/06/13	01/06/14	21/01
C-11	An Act respecting immigration to Canada and the granting of refugee protection to persons who are displaced, persecuted or in danger	01/06/14	01/09/27	Social Affairs, Science and Technology					
C-12	An Act to amend the Judges Act and to amend another Act in consequence	01/04/24	01/05/09	Legal and Constitutional Affairs	01/05/17	0	01/05/29	01/06/14	7/01
C-13	An Act to amend the Excise Tax Act	01/04/24	01/05/01	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	15/01
C-14	An Act respecting shipping and navigation and to amend the Shipping Conferences Exemption Act, 1987 and other Acts	01/05/15	01/05/30	Transport and Communications					
C-17	An Act to amend the Budget Implementation Act, 1997 and the Financial Administration Act	01/05/15	01/05/30	National Finance	01/06/07	0	01/06/11	01/06/14	11/01
C-18	An Act to amend the Federal-Provincial Fiscal Arrangements Act	01/05/09	01/05/31	National Finance	01/06/12	0	01/06/12	01/06/14	19/01
C-20	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	1/01
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/03/21	01/03/27	—	—	—	01/03/28	01/03/30	2/01

C-22	An Act to amend the Income Tax Act, the Income Tax Application Rules, certain Acts related to the Income Tax Act, the Canada Pension Plan, the Customs Act, the Excise Tax Act, the Modernization of Benefits and Obligations Act and another Act related to the Excise Tax Act	01/05/15	01/05/30	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	17/01
C-24	An Act to amend the Criminal Code (organized crime and law enforcement) and to make consequential amendments to other Acts	01/06/14	01/09/26	Legal and Constitutional Affairs					
C-25	An Act to amend the Farm Credit Corporation Act and to make consequential amendments to other Acts	01/06/12	01/06/12	Agriculture and Forestry	01/06/13	0	01/06/14	01/06/14	22/01
C-26	An Act to amend the Customs Act, the Customs Tariff, the Excise Act, the Excise Tax Act and the Income Tax Act in respect of tobacco	01/05/15	01/05/17	Banking, Trade and Commerce	01/06/07	0	01/06/12	01/06/14	16/01
C-28	An Act to amend the Parliament of Canada Act, the Members of Parliament Retiring Allowances Act and the Salaries Act	01/06/11	01/06/12	—	—	—	01/06/13	01/06/14	20/01
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2002	01/06/13	01/06/14	—	—	—	01/06/14	01/06/14	24/01

#### COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.

#### SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	01/01/31	01/01/31	National Finance	01/03/28	5			
S-7	An Act to amend the Broadcasting Act (Sen. Finestone, P.C.)	01/01/31	01/02/07	Transport and Communications	01/06/05	0	01/06/07		
S-8	An Act to maintain the principles relating to the role of the Senate as established by the Constitution of Canada (Sen. Joyal, P.C.)	01/01/31	01/05/09	Rules, Procedures and the Rights of Parliament					
S-9	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	01/01/31							
S-10	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	01/01/31	01/02/08	—	—	—	01/02/08		
S-12	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	01/02/07	01/03/27	Social Affairs, Science and Technology					

S-13	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	01/02/07	01/05/02	Rules, Procedures and the Rights of Parliament				
S-14	An Act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day (Sen. Lynch-Staunton)	01/02/07	01/02/20	Social Affairs, Science and Technology	01/04/26	0	01/05/01	
S-15	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	01/02/07	01/03/01	Energy, the Environment and Natural Resources	01/05/10	0	01/05/15	<i>Bill withdrawn pursuant to Commons Speaker's Ruling 01/06/12</i>
S-18	An Act to Amend the Food and Drugs Act (clean drinking water) (Sen. Grafstein)	01/02/20	01/04/24	Social Affairs, Science and Technology (withdrawn) 01/05/10 Energy, the Environment and Natural Resources				
S-19	An Act to amend the Canada Transportation Act (Sen. Kirby)	01/02/21	01/05/17	Transport and Communications				
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	01/03/12						
S-21	An Act to guarantee the human right to privacy (Sen. Finestone, P.C.)	01/03/13		Subject-matter 01/04/26 Social Affairs, Science and Technology				
S-22	An Act to provide for the recognition of the <i>Canadien</i> Horse as the national horse of Canada (Sen. Murray, P.C.)	01/03/21	01/06/11	Agriculture and Forestry				
S-26	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	01/05/02	01/06/05	Transport and Communications				
S-29	An Act to amend the Broadcasting Act (review of decisions) (Sen. Gauthier)	01/06/11						
S-30	An Act to amend the Canada Corporations Act (corporations sole) (Sen. Atkins)	01/06/12						
S-32	An Act to amend the Official Languages Act (fostering of English and French) (Sen. Gauthier)	01/09/19						

**PRIVATE BILLS**

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of the Conference of Mennonites in Canada (Sen. Kroft)	01/03/29	01/04/04	Legal and Constitutional Affairs	01/04/26	1	01/05/02	01/06/14	
S-27	An Act to authorize The Imperial Life Assurance Company of Canada to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	
S-28	An Act to authorize Certas Direct Insurance Company to apply to be continued as a company under the laws of the Province of Quebec (Sen. Joyal, P.C.)	01/05/17	01/05/29	Legal and Constitutional Affairs	01/05/31	0	01/05/31	01/06/14	

# CONTENTS

**Thursday, September 27, 2001**

	PAGE		PAGE
<b>SENATORS' STATEMENTS</b>		<b>Justice</b>	
<b>Question of Privilege</b>		Official Languages—Court Action by Commissioner Involving Quebec Bill 171—Intervention by Federal Government. Question by Senator Gauthier.	
Comments by Minister of Citizenship and Immigration—Notice. Senator Lynch-Staunton .....	1314	Senator Robichaud (Delayed Answer) .....	1320
<b>World Heart Day</b>		<b>North Atlantic Treaty Organization</b>	
Senator Morin .....	1314	Meeting of Heads of State—Request for Comments by Prime Minister—Statement of Secretary General on Conflict in Macedonia. Question by Senator Nolin.	
<b>Fiftieth Anniversary of Stratford Festival</b>		Senator Robichaud (Delayed Answer) .....	1320
Senator LaPierre .....	1315	<b>Answer to Order Paper Question Tabled</b>	
<b>Police and Peace Officers' National Memorial Day Ceremony</b>		Customs and Revenue Agency—Rules and Restrictions Concerning Duty-Free Shops. Senator Robichaud .....	1322
Senator Pèpin .....	1315	<b>L'assemblée parlementaire de la francophonie</b>	
<hr/>		Canadian Delegation to Meetings of July 6 and July 8 to 10, 2001—Reports tabled.	
<b>ROUTINE PROCEEDINGS</b>		Senator Losier-Cool .....	1322
<b>Study on Economic Development of National Parks in North</b>		<b>The Senate</b>	
Report of Aboriginal Peoples Committee Tabled.		Introduction of Pages. The Hon. the Speaker .....	
Senator Chalifoux .....	1315	<hr/>	
<hr/>		<b>ORDERS OF THE DAY</b>	
<b>QUESTION PERIOD</b>		<b>Immigration and Refugee Protection Bill (Bill C-11)</b>	
<b>Citizenship and Immigration (Bill C-11)</b>		Second Reading. Senator Andreychuk .....	1323
Comments by Minister Regarding Immigration and Refugee Protection Bill. Senator Carstairs .....	1316	Senator Robichaud .....	1325
<b>Terrorism</b>		Referred to Committee. ....	1325
Initiatives to Guard Against Attacks. Senator Comeau .....	1316	Senator Cordy .....	1325
Senator Carstairs .....	1316	Senator Di Nino .....	1326
<b>Transport</b>		Senator Carstairs .....	1326
Airport Security—Request for Upgraded Training.		<b>Visitors in the Gallery</b>	
Senator Di Nino .....	1317	The Hon. the Speaker .....	
Senator Carstairs .....	1317	1326	
Hours of Work Regulations for Long-Distance Trucking.		<b>Status of Legal Aid Program</b>	
Senator Atkins .....	1318	Inquiry—Debate Continued. Senator Hubley .....	
Senator Carstairs .....	1318	1326	
<b>Agriculture and Agri-Food</b>		<b>Question of Privilege</b>	
Problems in Farm Community. Senator Gustafson .....	1318	Comments by Minister of Citizenship and Immigration. ....	
Senator Carstairs .....	1318	Senator Lynch-Staunton .....	
<b>Customs and Revenue Agency</b>		Senator Carstairs .....	
Meeting Between Minister and United States Officials—Changes in Practices and Procedures. Senator Bolduc .....	1319	Senator Cools .....	
Senator Carstairs .....	1319	Senator Nolin .....	
<b>Solicitor General</b>		Senator Taylor .....	
Release of Personal Information on Students by Universities to Police and Government Agencies.		Senator Rompkey .....	
Senator Wilson .....	1319	Senator Murray .....	
Senator Carstairs .....	1319	Senator Andreychuk .....	
<b>Heritage</b>		1334	
Museum of Civilization Decision to Cancel Exhibit by Arab Community. Senator Prud'homme .....	1319	<b>Aboriginal Peoples</b>	
Senator Carstairs .....	1320	Committee Authorized to Study Issues Affecting Urban Aboriginal Youth. Senator Chalifoux .....	
<b>Delayed Answers to Oral Questions</b>		1334	
Senator Robichaud .....	1320	<b>Adjournment</b>	
		Senator Robichaud .....	
		1334	
		<b>Progress of Legislation</b> .....	
		i	





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