Debates of the Senate

1st SESSION • 37th PARLIAMENT • VOLUME 139 • NUMBER 73

OFFICIAL REPORT
(HANSARD)

Tuesday, November 27, 2001

THE HONOURABLE DAN HAYS
SPEAKER

CONTENTS

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

Debates and Publications: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate
Available from Canada Communication Group — Publishing,
Public Works and Government Services Canada, Ottawa K1A 0S9,
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Tuesday, November 27, 2001

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

Prayers.

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

Hon. Anne C. Cools: Honourable senators, pursuant to rule 43(7) of the *Rules of the Senate*, I hereby give oral notice that I will rise later this day to address a question of privilege. My question of privilege shall be in respect of statements made by a senator during Senators' Statements on Thursday, November 22, 2001, which statements were widely reported in the national newspapers on November 23, 2001, including the *Ottawa Citizen*, *The Edmonton Journal*, and *The Vancouver Sun*, which statements purport to link senators participating in a Senate debate sponsored by myself on Bill S-9, to reserve certain doubts regarding the meaning of marriage, to the terrible murder of a homosexual man in Vancouver's Stanley Park, which connection is not only tasteless but also disrespectful of senators and the Senate.

Honourable senators, I will be asking the Speaker of the Senate to rule that a prima facie question of privilege has been established. If he so finds, I am prepared to move the necessary motion.

Also, honourable senators, earlier today, pursuant to rule 43(5), I gave the requisite written notice to the Clerk of the Senate.

CHAIRMAN OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE

ALLEGATIONS OF CONFLICT OF INTEREST IN STUDY ON STATE OF HEALTH CARE SYSTEM

Hon. Michael Kirby: Honourable senators, some of you may recall that in March 2000 and again in March 2001, during debate on the order of reference for the health care study, which is now being done by the Standing Senate Committee on Social Affairs, Science and Technology, I stated publicly in this chamber that I was a director of a private sector nursing home company. On both occasions, I also filed a letter with the clerk of the committee declaring this interest, even though under the Senate rules I was not required to do so. I took these steps because I was concerned that the committee's work on health care policy might be controversial and that some people might decide to discredit the work of the committee by attacking me personally for sitting on the board of directors of a nursing home company while simultaneously chairing a health care study. I was concerned that such people would claim that I had a conflict of interest. After all, it is always easier in politics to shoot the messenger than to engage in a meaningful debate on difficult and controversial policy questions.

Unfortunately, in spite of the preventive measures I took, some people who are upset with the committee — including with its recently released options paper that contains some options with which they strongly disagree — chose to attack me personally rather than debate the options.

Honourable senators, I believe that the work of the Social Affairs Committee on the health care issue is so important that its reports must be above reproach. The committee is rapidly becoming regarded as one of the best forums in Canada for discussion and debate of health care issues, a role that the committee hopes to continue for some years to come. Nothing should be allowed to tarnish the integrity of the committee's work.

Therefore, two weeks ago, I wrote to Howard Wilson, the Ethics Counsellor, asking him for an opinion on whether I had a conflict of interest. After sending that letter, I told Senator Carstairs that if Mr. Wilson ruled that I had a conflict, I would immediately resign from the committee.

I received Mr. Wilson's opinion last week. Its final paragraph reads as follows:

> No doubt the Committee's work, when finished, will have an important impact on the public debate about the Canadian health care system. But the report will not be binding on the federal government and, therefore, I do not find that you are in a conflict of interest.

Therefore, honourable senators, I intend to remain chair of the Social Affairs Committee as long as the committee members want me to do so.

Some Hon. Senators: Hear, hear!

Senator Kirby: Also, as soon as my letter to Mr. Wilson and his letter to me are translated, I will seek leave of the Senate to table the letters. I will do so because Mr. Wilson's four-page letter does an outstanding job of describing what does and does not constitute a conflict of interest for a senator. Indeed, it is the best such description I have ever read. I urge my colleagues to read the letter if they are ever in doubt about whether they are in a position of conflict of interest.

In the meantime, while I am waiting for the letters to be translated, if any of my colleagues want a copy of Mr. Wilson's letter, they should simply contact my office.

•(1410)

INTERNATIONAL DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Hon. Ethel Cochrane: Honourable senators, I rise today to speak in recognition of the International Day for the Elimination of Violence Against Women, which was marked on Sunday, November 25. Violence against women takes many forms in our society — from sexual harassment, to date abuse, stalking, rape and even murder.

Surely, we can agree that we have made major strides in advancing women's causes. However, despite our relative accomplishments, the reality is that in Canada two women are killed each week as a result of domestic violence. That is a terrible statistic. The statistics vary across the country, with the highest rate of violence against women being recorded in British Columbia at almost 60 per cent.

Honourable senators, we continue to see violence against women in movies, on television and in all forms of media. Our newspapers detail stories from across the country about such horrible crimes, sometimes even reporting our ambivalence, our hesitance to become involved as these crimes go on around us. This was certainly made clear to us this year in Montreal. A teenage girl, who obviously had been a victim of violence, lay unconscious near a subway stop for hours before an office worker finally went against the boss's orders and called the police.

Statistics reveal that, on the average, female victims of violence suffer 35 incidents before they go to the police. Often they feel trapped in violence because they fear for their lives, the lives of their children and other family members; they have nowhere to go; they worry about economic security for their children; or simply, they fear no one will believe their stories.

Not surprisingly, honourable senators, domestic violence has a tremendous effect on Canadian society. Earlier this year, a study conducted by the University of Western Ontario found that high school students living in homes with a history of violence had significant adjustment and emotional problems. For females living in these environments, the risk of depression and anger was seven times greater than for other girls, and the risk of anxiety problems and post-traumatic stress disorder was nine times greater. The study also found that boys who witnessed violence at home were three times more likely to use physical abuse against their partners.

One common argument in the discussions on violence against women is that men are victims of spousal violence, too. Indeed, on the surface, it appears that the General Social Survey even supports the argument. However, a closer look reveals that women not only experience more severe forms of abuse, but the impact of the abuse is far greater on them.

The Hon. the Speaker: I regret to advise the Honourable Senator Cochrane that her three minutes have expired.

[*Translation*]

OFFICIAL LANGUAGES

Hon. Jean-Robert Gauthier: Honourable senators, the French-language media have given a lot of coverage to the latest report prepared on behalf of the Commissioner of Official Languages, "The Governance of Canada's Official Language Minorities: A Preliminary Study." This study is very critical of government funding of official language minorities.

Linda Cardinal and Marie-Ève Hudon, who are researchers at the University of Ottawa, mention the following:

> ...the data show that the government's new procedures were primarily a way of having the decrease in public funding managed by others...

The Commissioner of Official Languages pointed out that there had been a 50 per cent cut in staff involved in official languages in the federal government. Despite certain newspaper reports to the contrary, cuts were not made to funding. Financial support is at the same level it was eight years ago. Not much has changed, except, to quote the report again:

> ...the communities are being left to their own devices and the government is losing interest in what happens to them.

There was talk of partnership, while at the same time the communities had to deal with budget cuts. There was talk of federal-provincial agreements, while the climate was often rife with tension and ambiguity. I will say, if I may, that we are far from having the ideal climate for the development of official language minority groups.

The budget allocated to official languages support has not been raised in eight years. Language rights are exercised according to their objectives, and the courts are constantly reminding us of this. This requires funding. There must be an investment in official languages; the official language communities must be supported.

Who in cabinet will advocate for the official language minorities with the Minister of Finance, so that he will provide financial encouragement to the official language communities in his budget this coming December?

When will the minister responsible for coordinating official language programs within the government, the Honourable Stéphane Dion, be prepared to introduce a consistent and effective action plan for official language minority communities?

[*English*]

ANTI-TERRORISM BILL

LAXITY OF LEGISLATION

Hon. Gerry St. Germain: Honourable senators, I rise today because I am disappointed with the government's forced closure of the debate on Bill C-36 in the other place, the proposed anti-terrorism legislation. My concern is not with the government limiting debate so that the bill will pass by Christmas, but rather my concern is about the fact that this legislation does not deal strongly enough with terrorists operating within Canada. The government refuses to consider any amendments whatsoever.

> The anti-terrorism bill should be even stronger and police agencies should use it to prosecute all terrorists operating in the country.

This is not my quote, honourable senators, but that of Dave Hayer, whose father was assassinated on November 18, 1998, after he wrote an article in his newspaper, the *Indo-Canadian Times*, against terrorists, including those he believed were responsible for the 1985 Air India bombing, where 329 people were killed, many of whom were Canadians.

I knew Mr. Hayer's father to be a credible and respected man. At an anniversary service for his father, as reported in *The Vancouver Sun*, Mr. Hayer said:

> Terrorism existed over the last 15 years in Canada and the government didn't do anything until after September 11.

Mr. Hayer also said that while there has been a lot of focus on militant Muslims because of the U.S. terrorism attack, other terrorists, including smaller groups, cannot be overlooked.

The ministers of the Crown are not listening. They prefer to call people names and label them as Holocaust deniers, militants, bigots, racists and religious zealots, particularly during election campaigns. The Prime Minister, when I questioned his support of ethnic groups, went so far as to compare me with Mr. Parizeau — a shameful comparison. The government must look at all types of terrorists, no matter what their religion and no matter what their background.

Honourable senators, politicians of all stripes must take the issue seriously, instead of using militants when they need their support to win nomination meetings and during election periods.

Politicians must be held accountable by not attending functions like the Tamil Tigers dinner that Minister Paul Martin and Minister Sheila Copps attended just before last year's general election. Functions for such organizations must not be promoted. The government needs to know that the members of the Sikh community also support an amendment, introduced by Canadian Alliance MP Chuck Cadman, that any assets seized from terrorist groups should be turned over to the victims of terrorism.

Honourable senators, the bottom line is that law-abiding East Indian community in B.C. are adamant that the laws have been too lax. It is time for the truth to come out because it always does eventually come out.

ALISTAIR MCLEOD

TRIBUTE

Hon. Laurier L. LaPierre: Honourable senators, the Ottawa Library Foundation's gala will be held tonight at the Congress Centre. The guest of honour will be Alistair McLeod, whose magnificent book *No Great Mischief* was published in Canada and around the world in 1999.

Mr. McLeod was born in North Battleford, Saskatchewan, in 1936. He was raised among an extended family in Cape Breton, Nova Scotia. He still spends his summers in Inverness County, writing in a clifftop cabin looking west toward Prince Edward Island. In his early years, to finance his education he worked as a logger, a miner and a fisherman. He writes vividly and sympathetically about such work.

•(1420)

In 1999, McLeod's first novel, *No Great Mischief*, which took him 10 years to write, was published to great critical acclaim and was on national bestseller lists for more than a year. It won, as everyone knows, the IMPAC Dublin Literary Award, which is one of the largest literary awards in the world.

I should like to read for honourable senators an excerpt from this book. It takes place at the end of the book, when the narrator takes his brother, Calum, back to Cape Breton to die:

> By the glow of the dashboard lights I can see the thin scar on Calum's lower lip beginning to whiten. This is the man whose tooth was pulled by a horse. This is the man who, in his youthful despair, went looking for a rainbow, while others thought he was just wasting gas.
>
> The car crests a high hill and in the distance, across the white expanse of the ice, I can see the regulated blinking of the now-automated light. It is still miles away. Yet it sends forth its message from the island's highest point. A light of warning or, perhaps, encouragement.
>
> I turn to Calum once again. I reach for his cooling hand which lies on the seat beside me. I touch the Celtic ring. This is the man who carried me on his shoulders when I was three. Carried me across the ice from the island, but could never carry me back again.
>
> Out on the island the neglected freshwater well pours forth its gift of sweetness into the whitened darkness of the night.
>
> Ferry the dead. Fois do t'anam. Peace to his soul.
>
> "All of us are better when we're loved."

[*Translation*]

ROUTINE PROCEEDINGS

TRANSPORTATION APPEAL TRIBUNAL OF CANADA BILL

REPORT OF COMMITTEE

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

Tuesday, November 27, 2001

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

EIGHTH REPORT

Your Committee, to which was referred Bill C-34, An Act to establish the Transportation Appeal Tribunal of Canada and to make consequential amendments to other Acts, has, in obedience to the Order of Reference of Tuesday, November 6, 2001, examined the said Bill and now reports the same without amendment, but with observations which are appended to this report.

Respectfully submitted,

LISE BACON
Chair

(*For text of report, see page of today's* Journals of the Senate, *p. 1013.*)

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

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

[*English*]

FOOD AND DRUGS ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Nicholas W. Taylor, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Tuesday, November 27, 2001

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

EIGHTH REPORT

Your Committee, to which was referred Bill S-18, An Act to Amend the Food and Drugs Act (clean drinking water), has, in obedience to the Order of Reference of Thursday, May 10, 2001, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

NICHOLAS W. TAYLOR
Chair

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

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

EXPORT DEVELOPMENT ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. E. Leo Kolber, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Tuesday, November 27, 2001

The Standing Senate Committee on Banking Trade and Commerce has the honour to present its

ELEVENTH REPORT

Your Committee, to which was referred Bill C-31, An Act to Amend the Export Development Act and to make consequential amendments to others Acts, has, in obedience to the Order of Reference of Tuesday, November 20, 2001, examined the said Bill and now reports the same without amendment, but with observations, which are appended to this report.

Respectfully submitted,

E. LEO KOLBER
Chairman

(*For text of Appendix, see today's* Journals of the Senate, *p. 1015.*)

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

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

[*Translation*]

QUESTION PERIOD

RESPONSE TO ORDER PAPER QUESTION TABLED

COSTS AND DETAILS OF APEC INQUIRY

Hon. Fernand Robichaud (Deputy Leader of the Government) tabled the response to Question No. 17 on the Order Paper, raised by Senator LeBreton.

[*English*]

ORDERS OF THE DAY

NUNAVUT WATERS AND NUNAVUT SURFACE RIGHTS TRIBUNAL BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Adams, seconded by the Honourable Senator Watt, for the second reading of Bill C-33, respecting the water resources of Nunavut and the Nunavut Surface Rights Tribunal and to make consequential amendments to other Acts.

Hon. Janis G. Johnson: Honourable senators, I am pleased to speak to Bill C-33 today. This bill, the Nunavut Waters and Nunavut Surface Rights Tribunal Bill, establishes in full force of law two agencies already operational. It is divided into two parts. Part 1 of the legislation establishes the Nunavut Water Board, which has been operating since 1995. It is responsible for issuing licences to groups or individuals whose activities will affect Nunavut waters.

•(1430)

Part 2 of the bill establishes the Nunavut Surface Rights Tribunal, operational since 1996. The tribunal examines and settles disputes over surface rights on Inuit-owned lands and determines conditions of access to those lands for developers. It establishes compensation for developers' actions that result in harmed wildlife on Inuit land.

The establishment of these agencies is part of the 1993 Nunavut Land Claim Agreement that came into being two to three years later, de facto, after the agreement's deadline for the legislation lapsed. However, they have existed and operated in an atmosphere of uncertainty following the failure of successive Liberal governments to introduce appropriate legislation. It is important that the government is now finally meeting the obligations set out in the land claim agreement.

Honourable senators, for the most part this seems to be a fair and straightforward piece of legislation that meets the requirements set out in 1993. I understand that it follows the format used in the other Canadian territories. Hopefully, these have been fine-tuned over the years since the Northern Inland Waters Act was first implemented in 1972, establishing the first water boards in the Northwest Territories and Yukon.

The passage of Bill C-33 will provide the clarity and solid legal framework for which the Nunavut agencies have waited patiently for over half a decade. It will allow them to make decisions with confidence and enforce them with equal confidence, if necessary. The lack of this certainty has caused some difficulties over the years for jurisdictions were unclear and the validity of the agencies was openly questioned. The certainty that Bill C-33 will bring is critical in Nunavut where it will encourage much-needed economic development prospects. Industry will be more likely to expand into areas where the regulations and conditions for development are clear and well defined.

The bill now before us is an improvement over the previous versions, Bill C-51 and Bill C-62. Both of these were changed following the amendments suggested in committee and in further negotiations with Nunavut Tunngavik Incorporated, the organization that negotiated and will now act as watchdog in the implementation of the land claim agreement.

Honourable senators, I am glad to see that the advice garnered from this additional consultation was at least in part heeded and that legislation now before us is largely consistent with the agreement, and, it would seem, with the needs and desires of the people of Nunavut. I am glad that in providing this stability and backing up Inuit decisions about their resources, this legislation moves Nunavumiut toward greater self-determination. This is very much in the spirit of the 1993 agreement, and I hope is the direction of the future of Canada's Aboriginal peoples. The Nunavut Surface Rights Tribunal will allow Inuit to be compensated fairly for any damages done to their livelihood as a result of development, and this is important.

I am also glad to see that accountability is addressed in this legislation. Both the board and the tribunal will submit to an annual audit to ensure the transparency of their actions. The tribunal will be examined by the Auditor General, who will also examine the water board, if the minister so directs. I strongly support this inclusion of the Auditor General, as our party believes it is critical that public agencies be accountable to the people through their Parliament. This provision also has the added benefit of supporting the stability and certainty that will accompany the entrenchment of these agencies in law.

Certainty will also allow greater power to safeguard Nunavut natural resources. This is the most important aspect of the proposed legislation in my view. I think especially of the water board's important role. Water is the hottest environmental issue of the 21st century. This is especially true in the Arctic where the environmental health is known to be a canary in the mineshaft.

Honourable senators, the irony, of course, is that most Canadians probably do not know that the canary is already showing signs of sickness. We tend to think of the Arctic as a vast and pristine wilderness untouched by industry and natural resource harvesting. We believe that it is an untapped source of natural resources, water in particular, that will sustain us in the years to come when other worldwide resources run out.

The fact is that the delicate balances that hold the Arctic together are shifting. Global warming is changing the North. Inuvialuit in Sachs Harbour in the Northwest Territories noted in a video released late in the year 2000 that vast changes are taking place. Insects and birds never before seen in the far north are appearing on the land. The ice is unstable and unpredictable to a people who normally read it like we read books. Hunters are worried about going out on the ice for fear it will be too soft to support their weight. The permafrost is receding, and no one knows the full consequences of these changes.

Water is particularly vulnerable in the North. One only need ask the Freshwater Institute in my hometown of Winnipeg about the state of the waters flowing into Hudson Bay, the drainage point for much water from the south. From my home province of Manitoba, for example, water crosses the American border through the Red River into Lake Winnipeg, where I live, and flows on to Hudson Bay through the Nelson River. If the state of North Dakota is successful in its current project to drain Devil's Lake into the Red River, and complete the controversial Garrison Diversion Project, waters from as far south as the Mississippi will eventually be found in the Arctic.

There are some serious issues to be examined in this transferral of Arctic waters that is, unfortunately, beyond the control of Nunavut or even, it seems in this case, Canada.

Honourable senators, legislation like this helps us to impose restrictions on the use of water to protect it from untoward pollution. It will mean nothing if we do not move in a prompt and serious way to establish active international cooperation on the preservation of our water resources. We are all linked through our waters. We will all share the same fate. This makes safeguarding what relatively pristine waters still exist under the control of Nunavut even more urgent.

Honourable senators, we know the state of waters in southern Canada and the United States. Our many polluted lakes and rivers are the result of years of misunderstanding, naivety and sometimes outright abuse. This makes it all the more important for the Nunavut Water Board to act in a way that properly cares for the remaining quality of the territory's water resources. I would encourage the board to keep these things uppermost in mind when issuing licences.

Let us hope that mistakes in the south will not be repeated in the North. It is my hope that a water board with a solid legislative mandate, and the legal capacity to back it up, will enable the people of Nunavut to manage appropriately the precious water resources in their territory. It is important that the people who have been stewards of these resources for so long, and who in many cases depend on them for livelihood, continue to watch out for them. Inuit can do this best in ways consistent with their long experience of the northern environment. Naturally, this will have to be balanced with developmental considerations. This is the definition of sustainable development, a concept my party strongly supports.

The situation is particularly difficult in Nunavut where the cost of even the most basic things is extraordinarily high. It is my hope, however, that this balance can be achieved. With its vast tracts of land yet untouched directly by industry, we can only hope that we do it right this time around.

As I stated a moment ago, this bill is fair-minded for the most part. There are points that I believe will need to be examined more closely when the bill is referred to committee. We need to regard the great amount of power wielded by the minister with due caution. The minister has the final say in issuing, renewing and revoking major water licences in Nunavut — the right to overturn decisions made by the board. Ottawa is a long way from Nunavut, and we hope that, if this bill remains as it stands, without any kind of provision for the Inuit to take full and unfettered control of their affairs, the minister approaches these decisions with all due promptness and respect.

I understand that a recent amendment to this bill limits the minister's veto to a maximum of 90 days. I support that amendment. This will encourage the stability the bill aims to create by ensuring that the water board and the concerned parties are not waiting indefinitely, with hands tied, for the minister's approval.

•(1440)

I would like to see a provision included in this bill for a five-year review of the minister's power to approve water board licences. I hope this will be examined in committee. It is important that in this transitional period there be an external body to review major water licensing decisions. I believe that the necessity for this body will disappear with time as the water board gets used to its legal powers. An independent review of the minister's role after a specified period of time could assess this progress.

There is also danger of ministerial abuse in the appointment of members to both the water board and the tribunal, which is, again, the prerogative of the minister. Although half of the board's members will be nominated by Nunavut Tunngavik and another quarter nominated by the territorial minister responsible for natural resources, the federal minister of Indian Affairs is still responsible for nominating another quarter of the candidates, approving nominations and appointing all members.

The minister's power to appoint is more absolute with respect to the tribunal, where the only constraint is that two of the potential 11 members be residents of Nunavut. This seems like a paltry number, considering that the Nunavumiut will be most affected by the long-term consequences of the tribunal's decision. We would do well to examine these powers closely.

It will be important to examine closely some further issues in the committee. Both Nunavut Tunngavik and the government of Nunavut have recently expressed some disappointments with the committee deliberations in the other place. Two concern the wording of the non-derogation clause, one concerns the open-ended nature of the minister's right of approval on major water licences, and one concerns the potential for the government to charge Inuit living on Inuit-owned lands fees for use of waters which cross those lands.

This last point strikes me as a particularly strange oversight. I understand that the land claim agreement specifically notes that its designated Inuit organization, currently NTI, has "exclusive right to the use of water on, in or flowing through Inuit owned lands." These lands make up about 20 per cent of Nunavut and are held by Inuit in fee simple title. This land was divided from the remaining Crown land by the 1993 agreement. However, Bill C-33, clause 82, seems to leave open the possibility for the government to collect fees for the use of such waters. This, of course, would contradict the land claim agreement, which states implicitly that NTI has exclusive rights over them. A simple amendment to this clause would clear up this glaring and inexplicable error.

I understand that this bill will be referred to the Standing Senate Committee on Energy, the Environment and Natural Resources, and I have no doubt that witnesses from NTI and the territorial government will be addressing these issues. I hope that the honourable senators on the committee will listen carefully to them during its hearings to better understand and address their concerns. I certainly will be following their proceedings with great interest and be involved in the hearings.

Assuming that these concerns will be given due consideration at the committee stage, the Progressive Conservative Party will likely support a speedy passage of this legislation as we believe it will greatly benefit the people of Nunavut, and they have waited for this bill long enough.

Hon. Nicholas W. Taylor: Honourable senators, the honourable senator is not a member of our committee, although she has done an outstanding job in her presentation. I should like to ask her one question.

The Hon. the Speaker: Will the Honourable Senator Johnson take a question?

Senator Johnson: Yes.

Senator Taylor: The question I have is this: In the honourable senator's research, did she arrive at any feeling as to whether or not water could be exported outside the country and sold in bulk by this board?

Senator Johnson: No.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

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

On motion of Senator Adams, bill referred to Standing Senate Committee on Energy, the Environment and Natural Resources.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

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

> That the Standing Senate Committee on Foreign Affairs have power to sit at 5:30 p.m. today, Tuesday, November 27, 2001, in order to hear the Minister of Foreign Affairs even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

YOUTH CRIMINAL JUSTICE BILL

REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Rompkey, P.C., for the adoption of the tenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-7, in respect of criminal justice for young persons and to amend and repeal other Acts, with amendments) presented in the Senate on November 8, 2001.

Hon. Charlie Watt: Honourable senators, I wish to make a comment on the proposed amendment concerning clause 38(2)(*c*) and (*d*), as well as clause 50(1) of Bill C-7. The effects of those two amendments are to ensure and reinforce simply and clearly that judges, in sentencing youthful offenders, give special attention "to the circumstances of Aboriginal young persons."

I am concerned that certain judges will not administer and interpret the new bill, if it becomes law in its present form, in a way that reflects the special sentencing considerations of youthful offenders. Certain judges are literalists and will read no more than Part 4 of Bill C-7 dealing with sentencing. Nowhere in Part 4 of Bill C-7 is there mention of a special consideration being extended to the Aboriginal youthful offender. For this to happen, judges and lawyers will have to make a reference to clause 3(1)(*c*)(iv). This subparagraph provides, among many other things, that the criminal justice system for young offenders respond to the needs of Aboriginal young persons. It would be up to the judge and/or the lawyer to then apply this principle to the sentencing, and he or she might very well fail to do so because of the obscure way in which this principle is applied to sentencing. Indeed, one could argue it has no application since it was not mentioned in the sentencing portion of Bill C-7.

How can I be assured that youthful Aboriginal offenders will be given that extra consideration in sentencing that the bill intends, when no specific and direct mention of Aboriginal youth offenders is made in Part 4 of Bill C-7 dealing with sentencing?

In general, I support Bill C-7 in its attempt to set out a young criminal justice system. It is very much an improvement over the current Young Offenders Act. We very much need a youth criminal justice system in this country that commands respect, takes into account the interests of victims, fosters responsibility through meaningful consequences, effective rehabilitation and reintegration, and that reserves its most serious intervention for the most serious crimes and reduces the over reliance on re-incarceration for non-violent young persons.

•(1450)

We need to be sure that the sentencing of Aboriginal youthful offenders will be given the special consideration Parliament intends, and that these concerns will not be buried in a section of the act that has general application. What better way to do this than to reinforce the application of this principle through repetition in the sentencing proportion, Part 4, of this bill?

Honourable senators, we should do the right thing. If there is to be any reference to Aboriginal people in a law, I think it should be spelled out and not merely dealt with in the preamble, leaving the interpretation to the discretion of a judge. As legislators, we should ensure that matters that refer to Aboriginal people are dealt with in the body of the legislation where they will have some enforceability.

The approach I am suggesting is long overdue. For as long as Aboriginal people have lived in this country, we have never been given full consideration in the drafting of legislation. In this particular instance, depending on the circumstances, this provision might or might not be used. It is for that reason I rise to speak to you today. Honourable senators, I plead with you to give careful consideration to my concerns. I recognize that some people may believe that it is sufficient to refer to Aboriginal people in the interpretive provisions so that they will be given special consideration.

This particular issue is a concern to everyone. I am not entirely sure whether some of my Aboriginal colleagues fully understand what application this particular piece of legislation will have to Aboriginal people. Most likely we will lose the proposed amendment. However, at the end of the day, we can always decide how to deal with that. I wanted to caution honourable senators about the possibility that, under this very important bill, youthful Aboriginal offenders may not be given special sentencing considerations.

It does not matter how you carve it. You can even frame it and hang it on your wall. As I have stated a number of times, if no money is made available to set up additional educational programs and to build additional infrastructure at the grassroots level, nothing will change for the better, and the provisions of this proposed act will be absolutely meaningless.

Nevertheless, honourable senators, I am convinced that, if we are to do something for Aboriginal people, we must do it right. Let us not take a piecemeal approach just to please the politicians. That approach, at times, had led us down a road we might not want to be on.

Again I would plead with you, honourable senators, to take this matter seriously because this is a serious matter. I am not standing here for the pleasure of standing in front of you. We are dealing with young people. We are dealing with young people's minds. I would like to rest assured that the judges and the lawyers will do the right thing. A number of times history has proven that that does not always happen. I am sure that honourable senators will do the right thing.

Hon. Tommy Banks: Would the honourable senator entertain a short question?

Senator Watt: Of course, honourable senators.

Senator Banks: Is the amendment to which the honourable senator refers one which is contained in the committee's report or is it one which the honourable senator intends to move at third reading?

Senator Watt: Honourable senators, it is dealt with in the committee's report. I am asking honourable senators to support my amendment as referenced in the report of the committee.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, in his speech, Senator Watt mentioned that the report could be rejected in this house. Could the vast majority of the senators not put aside partisan considerations and recognize in the report of the Standing Committee on Legal and Constitutional Affairs a determination to correct some of the shortcomings of the bill?

[*English*]

Senator Watt: Honourable senators, I am not sure whether I am able to answer the honourable senator's question clearly and directly.

I believe that this particular matter which was dealt with by the committee is serious. However, as I said, you never know what will happen at the end of the day. I am pleading with my Aboriginal colleagues, more than anything else, to not take this issue lightly but to take it seriously. From the standpoint of improving the bill, we we might all vote for my amendment, but I will still have difficulty understanding what bigger picture is contemplated. When narrowing it down to Aboriginal matters contemplated in the proposed legislation, reference is made to Aboriginal considerations, but that reference is not repeated within the body of the bill. Honourable senators, I am confident that I know what I am talking about, but I am not confident about what will take place here.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I, like all honourable senators in this chamber, have been profoundly impressed with the appeal that we have heard from our colleague Senator Watt who, in very eloquent and upfront terms, has made an appeal that speaks to the needs and the rights of the Aboriginal youth of this country.

Several files that are coming before this honourable house will challenge us as individual members of this chamber to assess whether we are primarily concerned with improving our curriculum vitae or whether we will accept the proposition that, when we come to the Senate, our resumé will be locked in the safe and that we are here to do the right thing.

As senators, one of the things that we are called upon to do is to take into consideration the interests of minorities in Canada. That is the purpose of this place. When you stand for the cause and you articulate the cause and you promote it and protect the rights of the minority, that is not popular. It will, particularly, not be popular in terms of the majority government of the day, of whatever party.

•(1500)

A certain crisis of conscience is descending on us in this chamber, and history will be harsh with this generation of us who have the privilege to serve in this chamber if we do not from time to time respond to the constitutional obligation that the Fathers of Confederation defined for this chamber.

I have sat on the opposite side of the house and, like many honourable senators, from time to time I have held my nose and supported certain propositions. However, there are a few bills and a few resolutions that are brought forward for which, quite frankly, we have to do better than hold our noses. I have the greatest respect for the extra difficulty that is placed before honourable senators on the government side in a second chamber because I sat on that side of the house. On the other hand, there were a few measures about which we felt it was more important to follow our conscience as senators than it was to toe the governing party's line.

If we cannot respond as defenders of the minority, as defenders of the children — in particular, First Nations children — when we hear an appeal from a representative of the First Nations people of Canada who is most articulate in speaking for his people and especially for the youth of his community, then perhaps the time has come to abolish this place. I believe this is that serious.

We have a committee that has done excellent work under the able leadership of Senator Milne. The committee members heard from an extraordinary number of witnesses. Hopefully, I will never rise in my place — and someone should shoot me down if I try — to criticize my colleagues when they put that much effort into a thorough examination of a piece of legislation.

Without offence to any of the other committees, we are fortunate in this house to have the Standing Senate Committee on Legal and Constitutional Affairs. It is one of our most assiduous committees in terms of the workload on legislation. The members of that committee heard some 60 witnesses. In reading the transcripts of those committee meetings, I learned that there was a tremendous appeal from a wide cross-section of Canadians asking the Senate, as the chamber of second reflection, to fill in and respond to some serious lacunae.

Honourable senators, issues were raised in the context of measuring what we are doing in Canada against our international obligations, which we undertook when we ratified the United Nations Convention on the Rights of the Child. That initiative was led by former Prime Minister Brian Mulroney and happily carried on a priority level by the government of the day with leadership from distinguished senators, such as Senator Pearson.

I understand that there is a margin of interpretation, as with anything, as to whether a particular way of responding to the programmatic rights outlined in the UN Convention on the Rights of the Child is more effective. That is a judgment call. There are many ways to skin the proverbial feline creature. There are equally many ways in which to meet the obligation that is provided for in the United Nations Convention on the Rights of the Child. When we are able to assess undertakings that deviate from the standard that is contained in the international Convention on the Rights of the Child, that is when the amber light goes off. In committee meetings, as I understood the proceedings, several amber lights have been flashing.

Therefore, honourable senators, we must look at these amendments. I have heard the argument made by colleagues who have done the detailed work for the chamber in committee that they are a minimal requirement to make this bill acceptable. It is not a maximum requirement, but rather a *de minimis* proposition. We can separate out some of the amendments, and when we focus on the amendment that has been addressed by the Honourable Senator Watt, there is an area where we can be surgical. I would lend my support enthusiastically to the proposition advanced by Senator Watt, particularly in terms of the rights of children in our First Nations communities.

On motion of Senator Nolin, debate adjourned.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, before going to other business, I wish to introduce visiting pages from the House of Commons.

Teresa Dubois of Rossland, British Columbia, is studying in the Faculty of Social Sciences at the University of Ottawa and is majoring in political science. Welcome.

Divya Raman is enrolled in the Faculty of Arts at the University of Ottawa. Divya is from North York, Ontario. Welcome.

Benjamin Sanders is from Winnipeg, Manitoba, and is enrolled in the Faculty of Social Sciences at the University of Ottawa, majoring in political science.

Welcome to the Senate of Canada.

STUDY ON ROLE OF GOVERNMENT IN FINANCING DEFERRED MAINTENANCE COSTS IN POST-SECONDARY INSTITUTIONS

REPORT OF NATIONAL FINANCE COMMITTEE—
DEBATE CONTINUED

On the Order:

> Resuming debate on consideration of the ninth report of the Standing Senate Committee on National Finance (study on the role of the government in the financing of deferred maintenance costs in Canada's post-secondary institutions), tabled in the Senate on October 30, 2001.—(*Honourable Senator Banks*).

Hon. Tommy Banks: Honourable senators, everyone in this chamber is familiar with the idea of an alarm bell that keeps going off, probably in the neighbour's apartment, and we cannot get at it to shut it off. We know how that can be of great annoyance. That is somewhat where we are with respect to our university plant facilities.

In its 1997 report, the Special Senate Committee on Post-Secondary Education brought to the attention of the Senate, and to Parliament, the urgent nature of the deterioration of the whole physical plant structure of our university buildings. I believe it is they who dubbed it "deferred maintenance." Deferred maintenance is bureaucratic shorthand for "The roof is leaking and we cannot fix it properly because we have to spend too much money on the other stuff; therefore, we will tar it up for a while and hope it somehow holds together for another year or two."

The alarm bell is still going off from 1997, and the Government of Canada has not yet done anything about the situation, nor perhaps has it been able to, in terms of planning and in terms of priorities. The alarm bell has been rung again by the report of the committee to which the attention of honourable senators is now commended.

Honourable senators, the report points out that nothing of real substance has been done with respect to that physical plant. We are proud that the Government of Canada is spending hundreds of millions of dollars on research, but the facilities in which that research is being done and, it is hoped, will be done are literally falling apart.

The committee began its examination of the question prior to September 11. There is little doubt that had those events not intervened, the nature of the report and the urgency placed upon us to do something about this situation would have been greater than has been the case. Despite the fact that it is by definition a slightly lower priority now, things are continuing to get worse with our physical plants.

•(1510)

I commend the report to the attention of honourable senators. All of the recommendations have value and merit and someday we should consider them all. When things permit, we must ensure that we do not get into the mug's game of saying that we will rob one program or urgent necessity to take care of another. The longer we let things like this go, the more expensive they will become. These matters are already so expensive that governments at all levels will have to become involved. The social union framework permits the Government of Canada to become involved in these matters.

Some advantage might be achieved within our post-secondary institutions by examining the question of capital gains exemptions. Governments do not like to hear about tax reductions, because that is the same as giving away money. However, in the United States, universities have the advantage of capital gains exemptions that gain them huge endowments, operating and capital funds. As senators, we must continue to consider this issue. Sooner or later, we will do this. As the commercial says, "You can pay me now, or you can pay me later." The later we do it, the more it will cost.

I am happy to commend this report and its contents to honourable senators for their consideration.

On motion of Senator Callbeck, debate adjourned.

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 Chalifoux*)

Hon. Thelma J. Chalifoux: Honourable senators, I am pleased to join with several of you in drawing attention to some of the problems of legal aid across Canada. I wish to particularly highlight the enormous challenges that Aboriginals in Northern Canada face when seeking legal aid.

Canada has a rich diversity of Aboriginal cultures. In Southern Canada, Aboriginals were traditionally agriculturalists. In the North, they were hunters and gatherers who led a migratory lifestyle. After a brief analysis, one can see that the Aboriginal fact in Canada is one of profound diversity. Such diversity challenges the capacity of government programs to serve all Canadians.

The concept of legal aid is a great expression of our generosity and compassion for fellow Canadians. Legal aid enhances our citizenship and strengthens our social and political union from coast to coast to coast. However, it is a program that is difficult to apply and administer evenly and equitably across our nation.

In her excellent presentation of this subject, Senator Callbeck has given an overview of the current legal aid funding relationships between the federal and provincial governments and has shown us how the program continues to be fighting for tax dollars. The problems with current funding situations are well known. Therefore, it is not necessary for me to repeat what Senator Callbeck has already said about that subject. I will add, however, how much I agree with Senator Callbeck's view that more federal dollars for legal aid are urgently needed. I doubt if many Canadians would find fault with the position she has taken and the arguments that she has presented.

Aside from the discussions about money, the legal aid program has unfortunately several flaws. When it comes to the challenges of providing fair treatment for Aboriginal Canadians in our system of justice, those Canadians who administer the program in the northern regions of our provinces and in the Far North are faced with more than the problems of poverty and minimal education that are usually discussed. They are also faced with administering a program in a vast territory with difficult and limited access to communication.

In our Canadian North, one is always faced with the reality of diminished justice. Too often the search for balanced judicial decision-making in our nation has a geographical twist to it. If it is your destiny to be a Canadian living and working in remote areas of our nation, it may also be your fate to receive a quality of justice that fails to meet the reasonable standards that one expects in Southern Canada. This is likely even more true if you are an Aboriginal Canadian.

Let me give honourable senators one of many examples of our geographical challenges. Moosonee, in Northern Ontario, is an isolated community. The population of Moosonee and nearby Moose Factory is 85 per cent Aboriginal. When we add other communities in the area, namely, Attawapiskat, Fort Albany, Peawanuck and Kashechewan, the population is 100 per cent Aboriginal.

In Moosonee, there is a legal aid clinic. Sittings of family, criminal and young offenders courts are held once a month. There are, however, no sittings of the Ontario Court General Division or the Small Claims Court. Legal aid lawyers arrive only the day before the sittings of the court to interview a client who is to appear in court the following day. In remote areas, there are no permanent legal aid lawyers to service the best-intentioned legal aid programs. The recent report of the Ontario Legal Aid Review states that lawyers are not allowed sufficient time for their clients to adequately prepare cases in order to protect the client's interests. Another issue is that legal aid lawyers are restricted by legal aid tariffs. The reasonable question to ask is: What kind of representation do Aboriginal Canadians receive from tariff-restricted legal aid advice?

Let me show honourable senators how this often works. Accused persons with reasonably paid lawyers have more options.

•(1520)

A reasonably paid lawyer would have time to determine a plausible defence, which would lead to a "not guilty" plea. Should the reasonably paid lawyer advise that a "guilty" plea is appropriate, the lawyer may then engage in plea bargaining.

The vast majority of Aboriginal Canadians in the North do not have the advantages of these nuances and options. Most Aboriginal Canadians who appear before the courts have no notion of the concept of plea bargaining. Typically, the legal aid lawyer interviews a client for the first time a few hours prior to going into court. There is no opportunity for a thorough and nuanced defence to be developed. Justice is clearly not being served in such cases.

A recent dispute in New Brunswick this year illustrates the problem of the availability of legal aid for Aboriginals. A group of Aboriginal fishermen was charged with having illegal lobster traps. The fishermen responded that their treaty rights were being challenged. They sought legal aid. It was calculated that to mount such a defence, a defence concerning treaty rights in the New Brunswick courts, would cost about $50,000. That is not an unusual amount of money in cases of this nature. The $50,000 required is fully one quarter of the annual legal aid budget in New Brunswick.

When people are denied legal aid, honourable senators, the entire system breaks down. If we are to have fair trials and even-handed justice for all in Canada, we must have an adequately funded legal aid safety net.

These problems are reinforced by a third issue, which I characterize as the realities of the spoken word. The average Aboriginal Canadian in the Far North at best speaks rudimentary English or French. The English and French spoken by the legal culture are virtually beyond the comprehension of the average Aboriginal Canadian in the North.

Furthermore, in addition to both French and English being official languages everywhere in Canada, in the new territory of Nunavut, there are six other official languages — Chipewyan, Cree, Dogrib, Gwich'in, Inuktitut and Slavey. In Northern Ontario, where Aboriginal languages do not have official status, the first language of virtually all natives is either Ojibwa or Cree. It is not English or French. Aboriginals are, therefore, at a serious disadvantage when appearing before the courts.

The report of the Ontario Legal Aid Review states that:

> ...most Aboriginal people who appear in court cannot tell anyone after court is over what exactly happened, or what impact the decision will have on them. This is often true even in instances where a court interpreter was present during the proceedings.

A fourth issue is revealed in another study — the discovery that young Aboriginal Canadians, in particular, sometimes plead guilty when faced with charges just in order to get it over with. As a result, they probably face a future of unemployment because they receive a criminal record, and they probably make themselves targets of the police, which leads to more severe treatment by the courts in any future difficulties with the justice system.

Honourable senators, in all of this discussion, I want to emphasize that I am not demeaning in any way the level of competence of lawyers who provide legal aid. I am merely stressing that the application of legal aid in the North, at present, does not give opportunities for negotiated justice. Simply stated, the poor do not get the kind of attention that a level playing field would provide. More specifically, the Aboriginal community has not been able, generally speaking, to benefit from legal arguments based on the Charter of Rights and Freedoms to the same extent as other Canadians, simply because the resources in the legal aid system in the North are not available to enhance the preparation of individual cases.

A further area of contention is the level of eligibility for legal assistance. There are substantive disparities across our nation in the income category requirements for legal aid applicants. At present, eligibility levels are a patchwork across Canada. Surely, it is appropriate in our federal state to establish and enforce national standards of eligibility. As they say in road language, someone is asleep at the switch here.

We urgently need to address this issue. All Canadians should enjoy the same benefits under nationally funded programs.

I say to you, honourable senators, that our nationally supported and partially funded legal aid program should have all the aspects of portability, just like medicare and the Canada Pension Plan.

There is also the fact that many persons currently appear before the courts without the benefit of representation. I regret that there are no statistics available on this question. Anecdotal evidence, however, suggests that there are many, far too many, Canadians who do not benefit from legal representation and that the Aboriginal community is disproportionately represented in this group. Perhaps as much as 40 per cent of the total number of Aboriginals involved in the legal system are without representation.

Honourable senators, it is very clear that those who are not represented in court are less likely to be acquitted or given conditional discharges. All too frequently, Aboriginal Canadians find that the adversarial nature of the judicial system, pitting the Crown against the defence, creates a situation where the police and the Crown are plentiful in number on one side, articulating the case for the prosecution, and on the other side, the defendant is alone and silent. The recent Report of the Aboriginal Justice Inquiry of Manitoba found that the main reason that 60 per cent of Aboriginal women plead guilty is the absence of legal representation. The report cited evidence that Aboriginal women, in particular, are often told to simply plead guilty in the absence of legal representation.

No doubt, the overarching concern about legal aid in Northern Canada is the lack of an adequate communications strategy among the Aboriginal communities on the part of those providing legal aid services. The availability, the benefits and indeed the necessity of legal representation in Canadian courts must be communicated to Aboriginal Canadians in a manner that is understandable to everyone.

Honourable senators, fairness and justice for all Canadians is an enormous subject. During my time left in this upper chamber, I will continue to speak about these important questions.

In summary, honourable senators, I should like to make the following recommendations.

First, future agreements to provide national funding for legal aid programs should include a commitment from the provinces and the territories to seek national standards for the delivery of legal aid to Canadians.

Second, priority should be given to the recruitment and training of personnel for legal aid clinics who speak Aboriginal languages.

Third, the legal aid program needs a comprehensive communications strategy that leads to a substantial reduction in the number of Canadians that go to court without legal representation.

Fourth, in general, there must be more flexibility in the approach to legal representation to account for the wide diversity of those who seek legal aid and the great variety of their needs. This would include more flexibility regarding legal aid tariffs.

Fifth, there should be a shift from the adversarial approach to the mediation and negotiation approach in all of our judicial processes.

Hon. A. Raynell Andreychuk: Would the Honourable Senator Chalifoux take a question?

Senator Chalifoux: Yes.

Senator Andreychuk: The matters raised by the honourable senator in a very detailed manner are extremely important. Witnesses who came to committee on Bill C-7, including the Minister of Justice from Saskatchewan, graphically said that our criminal system does not fit the Aboriginal community.

I hear the honourable senator saying that legal aid could be improved. However, would it be more appropriate that we look at an entirely different system of justice that incorporates the values and the concepts of the Aboriginal people?

I note that "restitutional" forms of justice and sentencing circles take into account not guilt or innocence in an adversarial setting, but how a community comes to grips with an incident. The accused and the victim both play a role in the process.

Does the honourable senator think that it would be valuable that we come together, particularly in the Senate, to say that it is time to really look at Aboriginal justice seriously in this country?

•(1530)

Senator Chalifoux: I thank the honourable senator for the question. There are two issues to look at. The first one concerns racism in the judicial system. It is prevalent in Saskatchewan, where another case is coming to light, and to which I will speak in the coming week.

The second issue concerns the legal aid system and what happened in respect of one of the recommendations whereby Aboriginal lawyers, who speak Aboriginal languages, would work within the system to help our people. We have two systems, one for the northern Aboriginal and and one for the urban Aboriginal. In the urban Aboriginal system, many Aboriginals are third and fourth generation, so they truly understand the urban situation and the non-aboriginal situation.

However, we have regions where there is little knowledge of the whole system, and that is what we must examine. It saddens me when I see people, young and old alike, going into the courts and not understanding anything of the process. I can cite one instance: One of the fellows went into the court and the judge said to him, "Well, have you ever been up before me?" The fellow replied, " I do not know judge, what time do you get up in the morning?"

Hon. Senators: Hear, hear!

Senator Chalifoux: That was the interpretation. I was there, in the court, and I heard that exchange. It is a good example of the misunderstandings and the lack of interpretation that we really have to look at in the regions, where English and French are not the first languages of the people. We must look at that issue so those kinds of situations do not continue to occur.

Honourable senators, we must examine the legal aid system in Canada.

The Hon. the Speaker: Honourable senators, I advise Senator Chalifoux that her time has expired.

On motion of Senator Milne, debate adjourned.

AGRICULTURE ISSUES

INQUIRY

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Tunney calling the attention of the Senate to Canadian agricultural issues, specifically grain, dairy and hemp.—(*Honourable Senator Milne*).

Hon. Lorna Milne: Honourable senators, I will give you my annual update on the Industrial Hemp Industry in Canada and an overview of some of the problems that the industry faces. There is no question that this new agri-business has great potential in Canada, as long as it can keep up with the demand for hemp products that is growing by leaps and bounds. As an aside, I invite all of you to attend "The Night of One Thousand Dinners," where you will be able to sample hemp ice-cream and other hemp treats in my office.

Honourable senators must surely be aware, from my many speeches on this topic, that the deregulation of hemp production in Canada spawned numerous pilot projects, as entrepreneurs attempted to determine whether hemp could be grown and processed profitably in Canada and whether the products produced would be competitive in a variety of markets. I can say with confidence that the results are in, and the vast array of products being produced from Canadian hemp are truly remarkable. Everything from T-shirts to horse bedding, to car parts, to food products can be profitably produced by Canadian companies. The future is bright for the industry.

There is one crucial issue, though, for the hemp industry that deserves the attention of ths Senate — the matter of bridge financing for growing companies. As I noted earlier, the pilot projects completed by the leaders in the industry have all indicated that hemp production in Canada will be profitable. These profits will come once production begins on a large scale. However, it appears that the banks, venture capitalists, and government institutions are not prepared to offer the hemp industry the capital it needs to expand production.

Honourable senators, I will take a couple of minutes to describe the truly unique and difficult situation currently facing hemp producers. The typical Canadian hemp producer has now spent three or four years researching the crop, growing hemp in different fields, designing machinery that will harvest, process and package the hemp for the market. Hemp growers have had fantastic success in finding customers for all kinds of products.

I have heard many reports to the effect that corporations from around North America — from big three car makers to small health food chains — find that Canadian hemp and hempseed oil products are of the highest quality, and they are anxious to buy. Every time I visit, or hear from, one of Canada's hemp producers, I hear of new products with great success stories.

Unlike any other new business or industry, hemp growers start out small. In order to keep costs under control during the research phase, Canadian hemp producers, quite properly, have kept their pilot projects and research initiatives to a modest and manageable size. In fact, in most cases, that was the only option, because the research and development was funded by individual families or groups of families who invested the better part of their assets, with some assistance from government programs, I must say.

Now, however, with several years of research and proven products behind them, these companies are ready to grow at an exponential rate beginning with the 2002 growing season. Honourable senators, I am certain this will come as no surprise to you, in order to grow, the hemp industry needs an infusion of capital. Simply put, these small operations need access to money so they can build processing plants, buy expensive machinery, and transport large quantities of their products.

These companies are often family run, and they do not have access to the millions of dollars needed to build the required infrastructure. Some senators may be thinking that if they need money, they should go to the bank, or find an investor, or search for a government program. Well, that was my initial reaction, too, but I will deal with each of these institutions in turn, and I will explain to you why they have not yet come on board.

First, we can look at the banks, which will lend money to customers with a long-established track record of financial success. All companies in the hemp industry are start-ups, so no one can access that funding. That is strike one against the hemp farmer.

If banks will lend to start-ups, they tend to look at industry trends. They may have dealt with a certain kind of business before, and can therefore work out something based on comparative analysis. When hemp producers and processors go to a bank, there are no models and there is no institutional memory, so to speak. That is because it has been illegal to grow hemp in Canada for the past 60 years, and now this place has made it legal. It is not the same as walking into the bank and requesting a loan because you have been offered a McDonald's franchise, and that is strike two.

Honourable senators, banks will take risks where the return is potentially high. Banks look for 40 per cent profit margins within three years for any new innovation. The models that I have seen for hemp production put margins at a healthy 20 per cent, but not at the 40 per cent that the banks want to see That is strike three against the farmer, and the hemp industry is out.

Venture capitalists traditionally play the role in the economy of providing banking for new economic activity. For them, the risk of losing is outweighed by the opportunity to get in at the ground level of a new industry. Here is a news flash: Venture capitalists do not think about agriculture. They are more interested in the high-tech industry. While the environmental angle has sparked some interest, the dollars just will not flow because the potential reward is not high enough.

There has been some interest by venture capitalists, but the interest is not from Canadians. These deals will lead to a foreign-owned domestic hemp production industry, and no one that I know relishes that thought.

Honourable senators, the solution to this problem is for the government to become involved to provide short-term equity financing to the industry. I am not suggesting that government bear all of the risk, but if it can make a meaningful contribution, other players such as banks and venture capitalists will come on board to kick-start the industry. Unfortunately, the government has yet to come to the table.

•(1540)

Hundreds, perhaps thousands, of hours have been spent by hemp producers and processors, bureaucrats, former senator Eugene Whelan, Senator Tunney, myself, and others, trying to find the government department or program that would make this work.

Officials with the Departments of Agriculture, Industry, International Trade and even Health, along with the Business Development Bank of Canada, have all been asked to provide assistance. Dozens of applications have been made by the industry for funding of one sort or another, and all applications have been turned down. There always seems to be a reason why the hemp industry does not qualify for government programs.

I am not too much into modern music, but to quote Alanis Morissette, it is like having 10,000 spoons when all you need is a knife.

Honourable senators, I would appeal to both the private and public sectors to do what they can to ensure the long-term viability of the industrial hemp industry. I think that banks are missing out on a remarkable opportunity to play a role in the development of an exciting industry. I hope that they will eventually realize that the vast, long-term potential of industrial hemp will outweigh any short-term risks they may take.

Furthermore, the government must realize that the Canadian public has an enormous stake in ensuring that this industry succeeds. The industry will provide a much-needed additional crop for our farmers, a crop that is both low maintenance and profitable. We learned this summer, in some of the arid regions of Ontario where there were drought conditions, that hemp can grow even under such conditions, and it can grow to be six feet high.

There is also the potential for thousands of manufacturing and processing jobs as the market develops.

Honourable senators, as I am sure you can see, the past year has brought the industrial hemp industry to a crossroads. The planning, research, pilot projects, business plans and market development are all now complete. Many companies across the country are ready to make the leap into full production. This industry needs our support. I hope that all of you will join in my call for someone to hand Canada's hemp industry a knife and a fork.

The Hon. the Speaker: As no other honourable senator wishes to participate in the debate, this inquiry is considered debated.

ISSUES IN RURAL CANADA

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Andreychuk calling the attention of the Senate to issues surrounding rural Canada.—(*Honourable Senator Andreychuk*).

Hon. Terry Stratton: Honourable senators, I rise to support the inquiry by my colleague the Honourable Senator Andreychuk, calling the attention of the Senate to issues surrounding rural Canada.

As you are well aware, Canada is undergoing rapid change caused by a wide range of factors. These factors include the changing nature of the economy, the globalization of markets, the rise in prominence of international institutions of governance, the rapid growth of major cities, and the impact of new technologies on both businesses and individuals. These and other factors are profoundly affecting rural citizens and their communities.

Depopulation, the decline of certain resource industries, the persistent, ongoing crisis in agriculture, and the continuing shift of demographic, economic and political weight from rural to urban Canada have raised serious questions about the long-term viability of many rural communities. They have also contributed to a sense of insecurity among rural Canadians. We are faced with difficult questions: How important is it to Canadians to sustain rural communities? How can we be sure that rural interests and issues are properly positioned on the national policy agenda?

At the same time, new opportunities for rural Canada are emerging, especially as new technologies make it possible to overcome geographic barriers to commerce and communication and as rural entrepreneurs attempt to move from a focus on raw commodity production to value-added enterprises.

Indeed, according to government statistics, rural Canada's economy has gradually become more diversified and more like of that of urban centres. It is a fact that there are fewer jobs in natural resource industries traditionally associated with rural Canada, such as forestry, fishing and trapping, mining and energy. However, there are now more rural jobs in manufacturing, trade, finance, communication, business, personal services, tourism, transportation and storage. As well, like urban Canada, economic growth in rural Canada is being attributed more and more to telecommunications and information technology.

Yet these developments cannot hide the fact that the picture of rural Canada as it is today is not what it was 20 to 25 years ago. Especially in terms of economic opportunity, rural Canada and rural Canadian communities have much less to offer than they did as recently as the 1970s and early 1980s.

Consider the current context. Rural families have lower average incomes than do urban families. As a result, they pay relatively less tax and receive relatively more government transfers. Rural families get more transfers because unemployment rates are higher and because more pensioners live in rural areas. Federal transfers account for 16 per cent of rural residents' total income, compared to 9 per cent of urban residents' total income.

Statistics also suggest that rural Canadians have a lower level of social well-being than their urban counterparts.

Furthermore, although rural regions of Canada have 31.4 per cent of the country's population, they have only 29 per cent of Canada's employed workforce. In fact, within each age and gender group, rural Canadians are less likely to have a job than are urban Canadians.

If one wanted to go back a bit further than 25 years ago to see how much Canada has changed, consider how things were a century ago when rural Canada formed the backbone of an economy that harvested the riches of the earth.

Small towns, marked by grain elevators, broke up the rolling wheat fields of the Prairies; thriving fishing villages dotted Maritime shores; and mill towns sprang up to house miners and loggers in B.C., Ontario, Quebec and elsewhere. More than two-thirds of Canadians lived outside big cities and towns at the end of the 19th century. Currently, in the year 2001, while the total rural population keeps growing, it accounts for just one in five Canadians.

Although primary industries are still important, the centres of gravity in the Canadian economy have shifted to big cities with thriving high-tech and service sectors, such as Toronto, Vancouver and Calgary.

Increasingly automated, resource production and agriculture do not need as many strong backs. The jobs that one tied families to small-town Canada are drying up.

As a result, and also because of other factors, young people in rural Canada have left their rural areas to go to the big city in search of education and opportunities that are not available in their home places. Subsequently, small towns shrivel.

To appreciate where we are today and how that situation has come to be, we must understand where we have come from as a country with respect to rural Canada. For instance, from Confederation on, government policies aimed at strengthening east-west links played a big role in determining immigration and settlement patterns. These policies, by and large, benefited rural Canada. However, in the changed economy of current times, governments have far less power to influence how societies develop.

Does this mean that some small towns are destined to die? Does this mean that rural Canada will become increasingly marginalized in terms of Canada's public policy agenda? I hope not.

However, I do think it is important to get a better handle on what it is that makes successful rural economies and communities tick, in the year 2001, to see what we should be focusing on when it comes to discussing the plight of that region. For instance, consider the cases of Steinbach, Manitoba, and of Humboldt, Saskatchewan. Although faced with declining income and economic activity from agri-business, they have successfully morphed into centres for small manufacturing companies.

•(1550)

Elliot Lake in Northern Ontario is also an example worth pondering. It was once the uranium capital of the world but, unfortunately, it has been devastated by the closing of the uranium mines. The closures and mass layoffs were first announced in 1990 and continued until June 1996.

Elliot Lake, with a population of 14,500, saw the loss of more than 3,000 jobs. Although the transition has been difficult, and Elliot Lake has not really recovered to its level of economic health from before the closures, this town currently has new business activity in telecoms, light industry, waste management and environmental services, tourism and retirement living services.

Merritt, British Columbia, with a population of 8,200, is also a town that has seemed to be particularly resilient against the trends of rural depopulation. Thanks to a highway built through the Cascade Mountains in the mid-1980s and to some forward-thinking local leadership, Merritt seems destined to dodge the fate of many Canadian small towns.

I raise these instances of rural communities that have made transitions in changing times for a reason. Simply put, when the federal government considers its policies that affect rural Canada, it would be useful if it focused its analytical perspectives and resources on discovering why some communities thrive in the face of change and crisis and why others do not. Why is it that some rural communities build on a sense of local boosterism and entrepreneurial spirit to successfully challenge the trends of rural depopulation, and others fail to do so?

I feel that by taking this approach of focusing on the circumstances that the communities themselves have faced, we as legislators, and government itself, would be engaging in a more proactive, as opposed to reactive, discussion on the issues facing Canada's rural communities. Rather than focus on these issues from a remote perspective of what this government program or that government program has done, or is designed to do, our analytical lens should be reoriented to view things from the perspective of the rural communities and areas themselves.

In this regard, organizations such as the Canadian Association of Single Industry Towns have come up with some interesting findings and research. In 1991, this association published a study of eight Canadian small towns that were in crisis and that appeared to resist a reactive approach by designing and implementing a long-term strategic approach to sustainable economic development.

In examining these eight small towns, the association summarized 10 factors that were critical to the achievements of these towns. I would now like to summarize these factors, because they represent some important food for thought with respect to the inquiry that Senator Andreychuk is proposing.

First, the development efforts in these communities were sustained over many years, often 10, 15, 25 or 30 years. Second, the association found that there was either a crisis or a major concern that motivated the local leaders to act in these communities. Third, each community began the process of renewal by investing its own money in the initiatives that it undertook.

Fourth, the study found that a regional approach involving neighbouring communities was beneficial. Fifth, in all of the communities studied there was one dynamic leader, usually the mayor, driving the process. Sixth, local leaders realized that if anything was to happen, they would have to do it themselves. They were able to mobilize the community to support them.

Seventh, the association found that a development organization of some sort was created in each of these communities. Eighth, both short-term and long-term plans were implemented. Ninth, the association found that government incentives were not the motivating factor driving the efforts of these communities. Generally, these communities had a plan in place before looking for government assistance. Tenth, and last, the development of small local businesses was the key factor. The communities in the study were forced to rebuild investor confidence and entrepreneurial spirit to accomplish sustainable economic development.

I cite these factors because, if we are to engage in a serious discussion about the plight of rural communities and areas, we must be more sensitized to what it takes from the perspective of rural Canadian communities to adapt to change. By focusing on some examples where there has been a degree of success in implementing sustainable economic transition strategies, perhaps the federal government can properly optimize the role that there is for it to play.

Increasingly, because of the trends driving rural depopulation, rural Canadians are being asked to do more with less in terms of economic and social resources. That does not mean that they should be content to have less. We have a role and a responsibility to examine and consider ways for rural Canadians to achieve the same economic success and prosperity that has become available to many of their counterparts in urban Canada. If, in the process, we learn more about rural Canada, and decision makers and governments are able to do the same, then we would be doing something that is very useful.

On motion of Senator Andreychuk, debate adjourned.

QUESTION OF PRIVILEGE

Hon. Anne C. Cools: Honourable senators, I rise, as I had indicated earlier in my notice, on a question of privilege. Honourable senators should have the notice in their hands, so I think they are informed. Since the question revolves largely around words stated by Senator Mobina Jaffer here in the Senate on November 22, 2001, I want to make it crystal clear that I intend to be very sensitive to the fact that Senator Jaffer is very new in this place and not conversant with or knowledgeable of parliamentary process and parliamentary procedure. It is my intention to show due deference to that fact. Before I even begin to raise my question of privilege, I want to be clear that my intention in raising this question is not to impugn Senator Jaffer in any form or fashion but rather to facilitate a correction of the record, which I think could solve the problem and settle the issue.

Having said that, perhaps I could begin by stating what happened. Last Thursday, November 22, under Senators' Statements, Senator Mobina Jaffer rose to make a statement. I believe her intention was to inform the Senate of a terrible murder that had taken place in Vancouver. Perhaps, honourable senators, I could begin there so that we are crystal clear that my remarks today in no way underestimate the enormity of such a tragedy.

•(1600)

One of the reasons why I think Senator Jaffer's words in the Senate were ill-considered and ill-spoken is that murder is unspeakable. I know of no senator who would support murder or who would want to be associated in any form or fashion with even appearing to condone a murder. Perhaps I should begin by putting on the record a passage from the famous 17th century author John Donne in his masterpiece of literature that we all know so well and from which the famous words "for whom the bell tolls" and "no man is an island" have been taken.

I believe Mr. Donne called it a meditation. He wrote:

> No man is an island, entire of itself; every man is a piece of the continent, a part of the main.

He continued:

> ...any man's death diminishes me, because I am involved in mankind, and therefore never send to know for whom the bell tolls; it tolls for thee.

I think we can truly say, honourable senators, that those words speak for most of us here. I think I can truly say that those words speak for most Canadians because it becomes very important for us to admit again and again that we all share a common and collective humanity, and that any man's death diminishes us all.

Having said that, it is pretty clear that the terrible murder of a homosexual man, whose name was Mr. Aaron Webster, in an area of Vancouver's Stanley Park frequented by homosexual men, is a tragedy which causes us all pause.

My concern here is that in her remarks, Senator Jaffer attempted to tie such a murder to a Senate debate on my Bill S-9, being an act to remove certain doubts regarding the meaning of marriage. I would say that her attempt to connect those events is irrational, unreasonable and unjustifiable.

I would add that those statements, which seemingly associate the Senate and senators with any form of hatred or violent crime, in particular murder, are repugnant. I would also add that I sincerely believe that such sensationalism is unworthy and that there is no connection between that murder and the law of marriage.

Honourable senators, to further clarify the point, perhaps we can look to our rules, specifically rule 22(4). That rule spells out pretty clearly the criteria for Senators' Statements. In part, the rule states:

> ...Senators' Statements should relate to matters which are of public consequence and for which the rules and practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate. In making such statements, a Senator shall not anticipate consideration of any Order of the Day and shall be bound by the usual rules governing the propriety of debate. Matters raised during this period shall not be subject to debate.

I think that rule is pretty clear. In other words, the statements made under Senators' Statements should not anticipate matters that are on the Orders of the Day, such as my Bill S-9, and should be governed by propriety. Matters raised during that period shall not be subject to debate. Many of the points that Senator Jaffer made are definitely subject to debate and, in particular, very subject and relevant to the question of debate on Bill S-9.

To bring that forward a little more clearly, perhaps we should look to the record of last Thursday to see what was actually said that is undesirable and repugnant.

The first thing that one sees as recorded at page 1757 of the *Debates of the Senate* of last Thursday is the heading concerning Senator Jaffer's statement. The heading is, "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage." That heading is extremely offensive and very demeaning to senators and to the Senate. Perhaps I should repeat the heading. It is not the text or the substance of what Senator Jaffer said. It is the heading which I believe is applied in the process of printing the debates. The heading is, "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage."

The mere appearance and mention of that bill in this dubious way proves the point and need for rule 22(4). I think rule 22(4) was intended, especially, to avoid this sort of thing.

I will read briefly a few of Senator Jaffer's statements. I say again that I am sensitive and aware that she is very new to this place and is not conversant with the process or the mechanisms here. In part, she stated:

> Honourable senators, I was dumbfounded yesterday when this chamber debated a bill to deny marriage to homosexuals.

First, that is not the case at all. The bill is declaratory of the law as it currently stands, the very same law that the Minister of Justice and the Government of Canada are upholding.

Her next statement which I wish to read is as follows:

> When honourable senators rise in this house to speak in favour of Bill S-9, I remind them that they are giving comfort to those who hate.

I will repeat that. She said:

> When honourable senators rise in this house to speak in favour of Bill S-9, I remind them that they are giving comfort to those who hate.

The senator has drawn an association between Bill S-9 and hatred. Not only that, she has said that any senator who rises to speak or has risen to speak has given comfort to hate.

Those are the statements that I consider quite repugnant. There is no evidence put forward for any of this, but this assertion, this connection, this linkage, this tie, is being made.

She continued:

> They are also teaching that intolerance of homosexuals is both proper and righteous.

That, again, is extremely objectionable and repugnant. I am grossly shocked and repulsed by it. As a matter of fact, these kinds of statements jolt sensibilities in very profound ways.

She continues with another statement, the meaning of which I did not understand. She said:

> Honourable senators, to use religion to justify intolerance is cowardly. It is an attempt to use faith to mask hatred.

I did not really understand if she was talking about Senator Banks or me. I was not too sure, as it made no sense.

I will move to the next statement wherein she quoted the words of Reverend Martin Niemoller in 1945 Nazi Germany. It is a very famous quotation which reads as follows:

> First they came for the communists, and I didn't speak up — because I wasn't a communist. Then they came for the Jews, and I didn't speak up, because I wasn't a Jew.

The quotation is a very famous one. It continues with this statement which is especially obnoxious. To compare a bill or any senators in this chamber to that state of Nazism or that state of fascism is, quite frankly, ridiculous. Finally, at the end of her statement, she said:

> Honourable senators, we have an obligation and a duty as members of the Senate of Canada to bring honour to this institution. Honour is brought by demonstrations of tolerance.

•(1610)

There is something very wrong with Senator Jaffer even mildly suggesting that a debate on Bill S-9 brings dishonour to an institution, particularly this institution. I hope that I have, for the sake of the record, laid out some of the offending statements. I sincerely believe that those statements are problematic. However, I should be asking the Senate to take no action because it seems to me that the matter is quite easily resolved.

Those particular statements contained in her Senator's Statement last Thursday gave birth to a small plethora of newspaper articles. I have in my hands three such articles, and I propose to read the headlines from them. Senators, of course, can look this up if they want.

The first one is from the *Ottawa Citizen* of November 23, the next day. The headline is: "Bill to 'define' gay marriages intolerant, senator says." The first line of the article reads as follows:

> B.C. Liberal Mobina Jaffer denounced Senate colleagues yesterday for encouraging the kind of intolerance she believes led to the slaying of a gay man in Vancouver on Saturday.

Honourable senators, the reason I raised this matter is because in our wildest imaginations and in our worst moments of rhetoric, we should never, ever attempt to associate anything a senator says here with anything as terrible as that kind of tragedy and that kind of murder.

The second line of that particular article continued:

> Ms. Jaffer said she was dumbfounded by a speech by Liberal Senator Tommy Banks of Alberta, who spoke Wednesday in support of a bill aimed at finding a term other than "marriage" to describe a homosexual union.

First of all, the bill does not do anything like that, but that is beside the point. The fact of the matter is that she was dumbfounded that Liberal Senator Tommy Banks spoke in favour of Bill S-9.

The second newspaper article is the from *The Vancouver Sun*, and the headline is similar, though not the same: "Jaffer blasts senator for remarks on gays." This particular article is definitely pointed, again, at Senator Tommy Banks, because I can assure honourable senators that nothing in Bill C-9 says anything whatsoever about gay people for that matter. That article led off saying the same thing:

> B.C. Liberal Mobina Jaffer denounced Senate colleagues Thursday for encouraging the kind of intolerance she believes led to the murder of a gay man in Vancouver...

The final article is from *The Edmonton Journal*, again of the same date, November 23. The headline is even more poignant, probably because it is the hometown of Senator Banks: "Alta. senator criticized for stand on gay bill: Banks' comments support intolerance, Senate colleague says."

In the interest of keeping the record straight, I should also mention for the record that it would seem that many people in Senator Banks' hometown came to his defence. It appears that on November 26 and November 24, respectively, the *Edmonton Journal* published an editorial and a letter in support of Senator Banks.

Perhaps I can put on the record first the editorial from *The Edmonton Journal* of November 26, 2001. The headline is "Rhetoric unfair on marriage bill." The first line of the article supports Senator Banks, saying:

> Alberta Senator Tommy Banks has made a noble speech in respect of homosexual relationships — and then received shockingly unfair criticism from British Columbia Senator Mobina Jaffer.

The article goes on to present a robust upholding of Senator Banks.

Then *The Edmonton Journal* of November 24, 2001, published a letter from someone called Harlan Green, and the headline was "Banks has reputation for tolerance, fairness." The letter said the following:

> As if Sen. Tommy Banks hasn't had enough personal tragedy in his life lately, it is unfathomable that his Senate colleague, B.C. Liberal Mobina Jaffer, should criticize him so unjustly.

The weight of press opinion, at least in Edmonton, seems to be with Senator Banks.

What I propose to do, honourable senators, is to say that I am satisfied that Senator Jaffer intended nothing malevolent. I am satisfied that she intended nothing cruel, and I am satisfied that her statements may be a misspeak.

I have observed that Senator Jaffer is not here.

His Honour's role in a question of privilege such as this is to make a ruling as to whether there is a prima facie case to allow a motion to be made. To be crystal clear, I ask His Honour to make no judgment on Senator Jaffer herself in respect of breach of privilege because I think we should be kind to new senators. However, I would ask him to adjudicate a very narrow point. That narrow point is on the heading that appears in the *Debates of the Senate*, which I shall read again, if necessary. The heading of the debate is as follows: "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage."

I propose to ask His Honour to rule that there is a prima facie case in respect of that heading. The motion that I would propose to move right now would be for an amendment to the record to change that heading to more accurately reflect what I believe Senator Jaffer set out to do in the first place, which was to call the attention of the Senate to a very horrible and brutal slaying.

Having said that, I can put the motion forth so that we can discuss it. I am not moving it formally, just referring to it for the sake of debate so that members of the Senate can be crystal clear as to what it is I am requesting. I would be asking His Honour to find that this particular heading is undesirable and offensive to us. The proposed motion is as follows:

> That the *Debates of the Senate* of November 22, 2001, be amended and corrected at page 1757 in the heading under Senators' Statements, "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage," by replacing it with a more accurate heading, being "Informing the Senate of the Tragic Murder of a Homosexual Man in Vancouver's Stanley Park," and also that other related and corollary Senate records, including the debates of the Senate Internet version, be also amended and corrected in this manner.

•(1620)

As His Honour and honourable senators can see very quickly, what is being asked for is really quite small and quite insignificant. I have said here that I think we should treat the situation with Senator Jaffer as a misspeak and allow me to move a motion that has the effect, if debated and carried, of amending the heading to be consonant with rule 22(4), which is that nothing should be debated there that anticipates an Order of the Day.

I hope that I have been clear, honourable senators. If I have not been clear, I would be happy to answer questions. I do believe that there is no one in this chamber who would support intolerance or violence of any kind.

The Hon. the Speaker: Do any other senators wish to participate in the debate on Senator Cools' question of privilege?

Hon. Laurier L. LaPierre: I have a question because of ignorance. Is the heading entitled "Influence on Hate Crimes of Bill to Remove Certain Doubts Regarding the Meaning of Marriage" Senator Jaffer's exact words or an editorial heading?

Senator Cools: It is an editorial heading. That is why I feel I can take the liberty to bring forth my suggestion as a remedy. I would never propose to change a senator's words. These are not her words. It should be very clear that the heading of which I speak is not Senator Jaffer's words. They are the words that would have been applied in the process of editing and preparing the *Debates of the Senate* and in preparing the record. It is very straightforward. It is my view that the heading is inappropriate, and that is why we should change it.

Senator LaPierre is raising this issue in consideration of other questions that we have talked about, and I think it would be very inappropriate to change the record or delete the record or even propose anything so Draconian. The record stays. It is intact. Her words stay there. I just want to see that the heading cleaned up to reflect the reality.

Honourable senators, rule 44(1), which governs this prima facie case I am putting before the Senate, says clearly:

> When a *prima facie* case of privilege has been established, the Senator who raised the matter may move a motion calling upon the Senate either to take action on the matter or to refer the matter to the Standing Committee on Privileges Standing Rules and Orders for investigation and report.

I do not want to move a motion to refer anything to a committee at all. The motion that I want to move is quite straightforward, because I believe that the action that I am proposing in this motion is essentially just to clean the record so that the record can be more reflective of the dignity and the decorum of the Senate. I hope that I have made it clear. That is what I am proposing.

On a couple of minor points, because I do not want to transform this —

The Hon. the Speaker: Before the Honourable Senator Cools carries on, I wish to draw to the attention of honourable senators, paraphrasing from *House of Commons Procedure and Practice* by Marleau and Monpetit, that when a member is recognized on a question of privilege, he or she is expected to be brief and concise in explaining the event that has given rise to the question of privilege. There may be other senators wishing to speak, and I should like to hear them. I would remind all honourable senators that that is the rule that I suggest we should observe in this chamber.

Senator Cools: Yes. What I was saying, in the interests of providing greater clarity, still in response to Senator LaPierre, is that the heading is quite offensive to the Senate and should definitely be corrected or amended. I am asking His Honour to rule that the heading is undesirable and not in harmony with the dignity of the Senate, and then I want to put a motion to correct that.

I do not want us to move into a debate here on Bill S-9 because that is the strategic mistake that it would seem that Senator Jaffer made. However, for those who do not know what Bill S-9 is, Bill S-9 is simply a proposal that is declaratory of the law as it is, that goes to the clarity of the law as we have passed it here in the Senate.

The Hon. the Speaker: Honourable senators, I think Senator Cools is quite right that the matter of what Bill S-9 is or is not should be left to that order on our Order Paper, as she has so capably said, and that is where we should debate that matter. This is an opportunity for senators to give the Chair assistance in determining whether a prima facie case of breach of privilege has been made. I would ask that honourable senators confine their remarks to that question, remembering the admonition of the text that we be brief and concise in making the explanation for our positions.

Senator Cools: Brevity comes naturally to me. I was only responding to those aspects of what Senator Jaffer said in respect of her remarks. I am not proposing a debate on Bill S-9 because if she had wanted to speak on Bill S-9, that is exactly what she should have done. She should have risen to speak on Bill S-9.

In terms of putting before senators the situation as it was and to clarify for senators what was actually said, in the text of what Senator Jaffer said, it becomes crystal clear that she is not informed either of what Bill S-9 is or of previous actions that this Senate chamber has taken on related issues. Twice in the past year, this Senate has passed bills, being the Modernization of Benefits and Obligations Act, Bill C-23, and also in April last, the Federal Law-Civil Law Harmonization Act, No. 1, which in federal statute says that marriage is between a man and a woman. That is all I was saying. Her comments did not seem to comprehend or to take cognizance of that.

In any event, the real issue is that I should like that heading cleaned up. Since I am not the author of those remarks, I cannot rise on the floor of the chamber and ask for a correction. That is why I have to do it by way of a question of privilege. If I had given those remarks, then I could easily just rise and say, "I want a correction," or something to that effect.

Having said that, honourable senators, I suggest that the matter is really quite simple, and that His Honour could rule now so that I can move a motion right now to have the record cleaned up. It seems to me that the longer the record stays that way, the worse the situation becomes.

•(1630)

The Hon. the Speaker: Do any other honourable senators wish to comment on this matter of breach of privilege as raised by Senator Cools?

If not, I will advise the chamber that, in the absence of Senator Jaffer and her opportunity to respond, I do not believe I can deal with this matter now. I have received advice that Senator Jaffer is expected later this week and, accordingly, if the honourable senator wishes, I will hear her remarks on Senator Cools' comments at that time.

Senator Cools: Honourable senators, I am quite sympathetic to that. Perhaps we could better have proceeded by my asking for your agreement to bring this matter forward tomorrow, but this is one of those situations where senators are pinched by the rules in that the rule specifies that a senator must raise the matter at the earliest opportunity. Therefore, if I were to raise the matter tomorrow, I would run into difficulty. I would have been happy to wait until tomorrow.

As well, I am not too sure what rules His Honour is relying on to take the adjournment.

The Hon. the Speaker: I am not taking the adjournment, honourable senators. I am relying on our rule 18(3), which states:

> When the Speaker has been asked to decide any question of privilege or point of order he or she shall determine when sufficient argument has been adduced to decide the matter, whereupon the Speaker shall so indicate to the Senate, and continue with the item of business which had been interrupted or proceed to the next item of business, as the case may be.

The Honourable Senator Cools has asked for her question of privilege to be decided in the absence of the honourable senator whose comments give rise to the question of privilege. I have said, and I repeat, I believe it is proper and in order for me to say to honourable senators that I will have heard adequate remarks when I have given Honourable Senator Jaffer an opportunity to be heard on the question of privilege.

Hon. Senators: Hear, hear!

[*Translation*]

ROLE OF CULTURE IN CANADA

INQUIRY—DEBATE ADJOURNED

Hon. Jean-Robert Gauthier rose pursuant to notice of Wednesday, September 19, 2001:

> That he will call the attention of the Senate to the important role of culture in Canada and the image that we project abroad.

He said: Honourable senators, the purpose of this inquiry is to propose a debate on the important role of culture in Canada and the image that we project abroad. This issue has always been a big passion of mine. It brings back a few memories dating to 1994, when a House and Senate standing joint committee examined Canada's foreign policy and decided to include a chapter on culture. Never before had the issue of culture been included in such a report.

Today, I do not want to take the Senate's time to discuss this issue, which is of great interest to me. I simply want to begin the debate by saying that I asked the Library of Parliament to provide me with the charts that it has updated. In 1994, the Library helped us determine the impact of culture on exports and imports, and its general effects on Canadians. Since 1994, cultural exports — films, music and other cultural tools — have increased by 10 per cent every year, just for material needs.

In initiating this debate, I would invite senators interested in this issue to ask the Library for a copy of the document that it prepared and which is entitled "Promouvoir le rayonnement de la culture et du savoir canadiens à l'étranger." The author is Alain Guimont, Political and Social Affairs Division.

Honourable senators, I received that 15-page document yesterday. I would like to examine it more closely and talk about it at another time.

On motion of Senator Gauthier, debate adjourned.

The Senate adjourned until Wednesday, November 28, 2001, at 1:30 p.m.

CONTENTS

Tuesday, November 27, 2001

Available from Public Works and Government Services Canada —Publishing Ottawa, Canada K1A 0S9