Debates of the Senate

1st SESSION • 37th PARLIAMENT • VOLUME 139 • NUMBER 95

OFFICIAL REPORT
(HANSARD)

Tuesday, March 12, 2002

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

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, March 12, 2002

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

Prayers.

VISITOR IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, I draw your attention to the presence in the gallery of the Honourable Namik Dokle, Speaker of the People's Assembly of the Republic of Albania.

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

THE LATE HONOURABLE FINLAY MACDONALD, O.C.

TRIBUTES

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, at Finlay MacDonald's funeral service last week, the celebrant spoke of the service as a celebration of life, and surely few would disagree that no one could fit that purpose better than our good friend the late Finlay MacDonald.

Our late colleague enjoyed life to the utmost, and anyone fortunate enough to be a friend or an acquaintance, a fellow Conservative or a political rival, could only benefit from being associated with this remarkable individual.

Anecdotes about him are endless, and many he loved to tell himself. Certainly, he never hid his ambition to be in the Senate or spared any effort to court anyone who could further his goal, including the decision-maker himself. In 1979, the list of deserving candidates was embarrassingly long, for the exile in the political wilderness had lasted some 15 years. Finlay's name had proceeded to the point where he received a phone call asking a number of pertinent questions. At that time, in Nova Scotia, one's religious affiliation was not a negligible element in coming to a final choice. When asked what his religion was, Finlay is reputed to have replied, "Which one would you like?"

What was not to be in 1979 came about in 1984. Finlay gave a huge sigh of relief, explaining that he had spent too much time on having the knees of his trousers repaired so often, while Prime Minister Mulroney once confided that the only reason he appointed Finlay was to have him stop grabbing onto his leg.

Whatever the nature of his efforts, we should all be grateful that Finlay persisted as he did, for during his years here he served Parliament in a most exemplary way. He was not the easiest member of caucus or chairman of a special committee, yet all recognized in him a determination to do what he felt was best, even if it meant ignoring the party line no matter how essential his vote. Finlay was one of that rare breed — a long-time active and committed participant in every aspect of his political party's activities, yet one not afraid on occasion to march to his own drummer.

That in doing so he still retained the respect and even the affection of those he annoyed and even angered is an extraordinary tribute to this fine man's character and intellectual honesty. Rarely can such an appreciation be given to anyone, and I am honoured to do so in memory of a most distinguished colleague and good friend.

Hon. B. Alasdair Graham: Honourable senators, I join with the Leader of the Opposition in paying tribute today to the late Senator Finlay MacDonald.

Reference has been made to Finlay's desire to be appointed to this chamber. I recall very well the day he was appointed. The ink was hardly dry when he arrived in my office, measuring the space by the square inch to ensure that whatever digs he was able to occupy would be at least as large, if not larger, than those that I occupied.

The raw humour and formidable penetrating wit of the legendary Robbie Burns has a great following in the part of the world that some of us come from.

> Gie me ae spark o' Nature's fire,
> That's a' the learning I desire;

Those words of his come to mind when I think about the wonderful life and times of our old friend Finlay MacDonald. A spark of nature's fire, yes, that was Finlay: ageless, timeless, a charmer and an entertainer par excellence. Beneath that convivial, fun-loving personality was a deeply committed and informed patriot with an enormous heart for the people of Nova Scotia and, indeed, the people of all of Canada.

A Red Tory, Finlay was always a man of independent mind who believed in what he did, and the devil take whoever tried to dissuade him from his convictions. Not that he was not a team player, he was, most of the time. However, he was one of the few people I have met who could vote against his own government, sail through the onslaught, and still be invited to 24 Sussex and any other high-level government soirée in the nation's capital.

Finlay was always the lovable silver fox. No matter how you disagreed with him, no matter how contentious the issue, he could always make you laugh in spite of yourself.

I speak from long experience. Early in life, we both became broadcasters. Finlay was much more successful than I. We dabbled in politics, budding politicians both, and that, believe it or not, was over 40 years ago. We probably were prime illustrations of Shaw's acerbic reference to erstwhile practitioners of the craft. Shaw once quipped:

> He knows nothing and thinks he knows everything. That points clearly to a political career.

• (1410)

No matter how you look at political life, the March 31, 1958, federal election campaign became a watershed from which neither one of us ever turned back. That was the year of the Diefenbaker sweep. I was the Liberal standard bearer in the great historic constituency then known as Antigonish-Guysborough. Finlay was the fundraiser for the Progressive Conservative party in Nova Scotia.

According to legend, he arrived in Antigonish the day before the election and brought with him a significant amount of aid for the benefit of my opponent. It was just enough to help do me in. I lost by 931 votes. Undoubtedly, as honourable senators opposite would hasten to point out, there were other good, valid and perhaps compelling reasons that I was defeated.

At any rate, the day after the election, I went to Halifax to seek solace and comfort from my friends. Who better to visit than the legendary bonhomie himself. Finlay greeted me with long strides, arms wide open and with a wide, wide, grin. "Well, well," he shouted, "welcome to the youngest political has-been in Canadian history." I should have known better. It was April 1.

Honourable senators, that in a nutshell was Finlay MacDonald. He could crush you; he could mortify you; he could make you laugh like none other.

When Finlay was Chairman of the Standing Senate Committee on Transport and Communications in this place, he and I did a lot of puffing and blowing over the government's intention to privatize the Truro-Sydney rail line. Many in this chamber, including the Honourable Senator Forrestall, would remember those discussions well. We chugged along together on opposite sides of the issue, making our points and sometimes mischievously trying to outmanoeuvre the other, always with what we thought was the public good uppermost in our minds.

When I think of Finlay today, I think of him with the whole panoply of Tory greats in Tory heaven: Prime Minister John A. Macdonald would be much Finlay's match both in terms of personal charm and certainly in the fine dapper and rakish figure he cut. Sir John was a shrewd, wily fox, much as Finlay was. Both were visionary patriots with a huge penchant for optimism.

Canada's first Prime Minister once said: "When fortune empties her chamber pot on your head, smile and say, 'We are going to have a summer shower.'" Well, that was the same way Finlay thought about life. He had the magician's gift of turning chamber pots into the soft and gentle rain of happiness, of bringing joy and laughter into the lives of all he met.

A spark of nature's fire, you were indeed, Finlay. From the pen of the same great Scottish scribe Robbie Burns, the ultimate praise for a life to be celebrated, not mourned:

> If there's another world, he lives in bliss;
> If there is none, he made the best of this.

To Lynn, Finlay Junior, Ian, his very special grandchildren, his brother Dr. Cameron and members of his extended families: Happy memories, rejoice in his love and his many accomplishments. Finlay was indeed a unique treasure who enriched life for many people and this, his beloved Senate chamber.

Hon. Senators: Hear, hear!

Hon. Lowell Murray: Honourable senators, in the 1950s, Finlay offered to hire me; in the 1960s, we worked together on Stanfield's campaigns. One day in 1968, I coached him for a few words in French to start the countdown here on Parliament Hill for the 1968 summer games.

In 1970, the provincial cabinet minister Gerald Doucet and I — party crashers — were the uninvited third and fourth participants in the celebration Finlay and his first wife, Anne, had carefully planned for their twenty-fifth wedding anniversary in Ingonish, Cape Breton.

Later, Finlay and I were joined in Joe Clark's campaigns and then Mulroney's. I rejoiced with his friends in his happy second marriage to Lynn Tremblay. I was among the speakers, which included Don Jamieson, Brian Mulroney, Eddie Goodman and Flora MacDonald, at his sixtieth birthday bash at Toronto's Albany Club in 1983, and helped him celebrate his sixty-fifth at an impromptu party in Senator Doody's office in 1988. I was among the speakers at the party to celebrate Finlay's arrival in the Senate in 1985 and at the dinner to mark his departure in 1998. Fortunately, there is not, so far as I am aware, any trace on the public record of any of these speeches.

On the day of his passing, I arranged to have a Mass said in my parish in the certain hope of improving his immortal prospects and my own. Then I poured a martini in his honour, gin not vodka. A while ago Finlay told me that he and his great friend Dalton Camp had sworn off vodka "because it makes us argumentative." Those two would be argumentative on a cup of warm tea.

For the believer, as he was and I am, all that remains is the ultimate reunion. Needless to say, I am in no hurry to join him. However, his going ahead heightens one's sense of anticipation.

Hon. J. Michael Forrestall: Honourable senators, what does one say about Finlay? Dr. Edmund Morris, a long distinguished member of the other chamber and a close friend of Finlay's, went on at great length the other day at the conclusion of the Mass celebrating his life — indeed, would have gone on and probably still is going on — with stories about this man's love of life, about his sincerity, about why it should be days of enjoyment, of reaching out to other people and of making contributions.

I recall that Senator MacDonald had invited Senator Murray to join him in broadcasting back in the 1950s. Well, he never invited me to join him in broadcasting. Robert Stanfield had invited me to join his crowd the day after the then managing editor of the *Halifax Chronicle-Herald* had fired me for political activity. I had one problem, however; I was married with a young family then, and I needed medical insurance. Who came to my rescue? CJCH and Finlay MacDonald. I was an employee of that firm for perhaps longer than most people had worked there — not Finlay himself but most others — that was how my wife and I had protection. It was not that my wife and I necessarily needed it, but it was the impoverished political coffers of the day. I was the field-man or whatever you called it in those days.

Left out of today's discussions is another distinguished Nova Scotian, R. McD. Black. I would urge those of you who want good stories to find someone who can tell you of the trip that R. McD. Black and Finlay MacDonald made to the United Kingdom for Mr. Black, the editor, publisher and indeed, the owner of the *Amherst Daily News,* to buy a new press for that very old newspaper. Finlay was going, of course, to find partners in television.

• (1420)

The story of their trip to Europe is too long to tell here, but there are probably nine different stories that would lend the insight to fully understand Finlay MacDonald. One has to understand who Rod Black was and what he did during the war. He was with the Pathfinder Squadron. I will tell one story briefly.

When the plane landed — an Air Canada flight, incidentally — in London, the first person off the plane was Finlay MacDonald. Standing at the tarmac was Rod Black's flight crew. They went right up to Finlay, and he said, "You must be Flight Lieutenant Graham, and you are his good wife. He has told me so much about you. You must be the navigator. You are the one that Rod gave his parachute to the day you were shot down for the first time." He went through the whole crew. Rod had gathered his bags and was coming down the ramp. There stood four of the most skeptical looking men you have ever seen in your life. What had Finlay MacDonald told them in Canada about us? Finlay just walked right on and left Rod to wonder for days and days just what stories Finlay had told. Finlay was, perhaps, the greatest practical joker that I have ever met in my life.

Finlay was a good man. At the gathering the other day, Finlay Jr. turned and said, "Do not expect my dad to be high on the list for sainthood and canonization. He was not that, but he was a good man." He brought great joy to all those who knew him, as Lynn brought great joy to him in the final years of his life, a smile to his face, the hope, and the great feeling he had that it is almost irreplaceable.

I join with all those who extend their condolences to Lynn, Finlay Jr., Ian, Mary, the grandchildren, Dr. MacDonald, his brother, and those who knew him so well for 50 years in his active and enjoyable pursuit of politics. He believed that a life in politics was honourable, and nothing in his career here hurt him more than to have had to break his perfect attendance record.

God bless you, Finlay. Keep the home fires burning because we will all be along shortly.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, I too wish to pay tribute to Finlay MacDonald, an esteemed colleague. He was a man who took his work as a senator very seriously. He was involved in a number of committees, Transport and Communications in particular, which he chaired. Senator MacDonald distinguished himself through his committee work and in the business of the Senate. A man of great joie de vivre, he was a most agreeable colleague.

[Senator Forrestall]

The Senate has not been quite the same since he left it, today more than ever.

I extend my most sincere condolences to his wife Lynn and their children.

SENATOR'S STATEMENT

UNIVERSITY OF OTTAWA HEART INSTITUTE TELETHON

Hon. Marcel Prud'homme: Honourable senators, I would like to offer our warmest thanks to one of our Senate colleagues.

[*English*]

Honourable senators may have seen the University of Ottawa Heart Institute telethon on the weekend. It is not too late to contribute. That is the lifeblood of the Honourable Senator Keon, who achieved one of the highest amounts ever raised for an immensely important cause. They raised over $3.4 million in the region. I am sure that all honourable senators will join me in thanking the honourable senator for his devotion to this cause and in congratulating him, the organizers and those who contributed to the success of this event.

QUESTION PERIOD

HEALTH

STATUS OF LEGISLATION TO ADDRESS HUMAN TISSUE AND STEM CELL RESEARCH

Hon. Wilbert J. Keon: Honourable senators, I have a question for the Leader of the Government in the Senate. The minister will recall that last fall I asked a question, drawing attention to the concern surrounding the legislation for reproductive biology. My concern was that this legislation was not moving quickly enough in view of the commission report eight years ago and in view of the fact that scientific progress was moving at an accelerated pace and that rules, regulations and guidelines were being developed in the scientific community before the legislation was introduced. We now find ourselves in a situation where rules and regulations from the scientific community have arisen in the absence of legislation, which is causing real consternation in the community at large and in the eyes of the public.

Is there any possibility that the process for moving this legislation forward through the other place and into the Senate could be accelerated to alleviate some of the pressures confronting scientists in this field at the present time?

• (1430)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, Honourable Senator Keon raises an extremely important issue. We now have the report from the House of Commons Committee on Health, which has outlined certain provisions that it would like to see in any bill which is introduced. It is my understanding that the new Minister of Health will be introducing the bill on reproductive biology quite soon.

Obviously, there are a number of concerns out there, particularly since the CHRC guidelines came out over a week ago. Quite frankly, I believe those were absolutely necessary in order to provide a framework for cell research in Canada at this point, particularly since we have no legislation in place. However, I am informed that proposed legislation will be before us shortly.

NATIONAL DEFENCE

SEARCH AND RESCUE—ACCIDENT INVOLVING LABRADOR HELICOPTER—STATUS OF HELICOPTER FLEET

Hon. J. Michael Forrestall: Honourable senators, I have a couple of brief questions for the Leader of the Government in the Senate.

The minister will know that one of our search and rescue Labrador helicopters, stationed at Greenwood, Nova Scotia, had an unfortunate incident yesterday during preparation for take-off when its rotors went through the frame of the aircraft. I understand from press reports that this may have been the result of the vagary of the wind.

In any event, would the minister tell us what she knows about this incident? In particular, would she address the present status of the helicopter fleet?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the incident that took place in Greenwood, Nova Scotia, fortunately for all concerned, caused no injuries. However, as a result of the incident, a team of flight safety officers is currently in Greenwood investigating the cause of the damage to the Labrador helicopter. Since it is not equipped to fly at this point, the helicopter has been withdrawn from service, and a Sea King will be covering the search and rescue responsibilities of that Labrador aircraft.

Senator Forrestall: Honourable senators, I am thankful that no one was injured and I appreciate the minister's response.

This brings me to the concern that many of us share. As the minister will know, the Sea King is the primary alternate for the Labrador fleet in search and rescue operations. The Sea King fleet and its crews are now stretched to the limit by Operation Apollo. Can the minister tell us what the current status of the "heli-borne"search and rescue operations is on the East Coast, as well as in the rest of Canada? What steps is the government taking to ease the impact of search and rescue duties on the Sea King community, which is already stretched to the limit?

Senator Carstairs: As the honourable senator knows, there has been an intensive use of the Sea Kings in Operation Apollo. A number of our ships are home to the Sea Kings in the war against terror. There is, as the honourable senator has indicated, serious pressure on the whole search and rescue component.

The good news is that, although the normal review processes caused a delay in the delivery of the Cormorant helicopter, four out of the five have now reached Comox, British Columbia. The fifth left Italy today and will be ready for its snow trials in Gander before going on to Comox. The expectation is that the whole fleet will be operational by the spring of 2003.

FOREIGN AFFAIRS

ZIMBABWE—POSITION OF PRIME MINISTER ON GENERAL ELECTION

Hon. Gerry St. Germain: Honourable senators, my question is for the Leader of the Government in the Senate.

I find it confusing — and perhaps the minister can explain — that the Prime Minister took the position he did regarding the suspension of Zimbabwe from the Commonwealth, given the track record of Robert Mugabe and the way he has treated the white people, as well as his own people, in that country.

Senator Furey: The "Whiteys."

Senator St. Germain: Does the minister have an explanation for that?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I believe the Prime Minister took the position he did because Zimbabwe was in the middle of an election campaign, the results of which we will soon receive, as the vote counting begins today.

As I am sure the honourable senator is aware, there have been numerous reports of voting irregularities and vote stoppages. The Prime Minister's position was that we should allow this process to be completed, and if it could be clearly shown that the process was unfair and inequitable to the vast majority of the citizens of Zimbabwe, at that point we should act as a member of the Commonwealth.

DIPLOMATIC APPROACH TO EVENTS IN COUNTRIES OF AFRICA

Hon. Gerry St. Germain: I have a supplementary question, honourable senators. It should be no surprise that there were vote stoppages and an intervention in the electoral process. However, it seems that we have different standards on the world scene. My colleague who sits behind me is a strong supporter of the UN. For some odd reason it seems that when things happen in Africa the world stands back as mass genocide takes place, as it did in Rwanda and Zaire and other places, yet we are prepared to send troops into Serbia on a moment's notice because it possibly serves a president in a dilemma or an economic need. Is there a double or a triple standard here?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the simple answer to the honourable senator's question is no, there is not a double standard. The situation was such that Mr. Mugabe called elections. He indicated that they would be fair and equitable. The Government of Canada indicated that it would send observers in to ensure that the election was fair and equitable, and that we would make a decision following that electoral process.

Senator St. Germain: Honourable senators, the minister still has not answered my question. I understand that the minister is focusing on Zimbabwe. My supplementary was the following: There appear to be different standards for different countries, or different continents. If we are to take a leadership role in delaying something, such as the expulsion of Zimbabwe from the Commonwealth, I believe that we should take a leadership role in this country with regard to equal treatment for all, whether black, white, yellow, pink, beige, or whatever. Does the minister not agree?

Senator Carstairs: Honourable senators, I obviously do agree because I indicated there was not a double standard at play here. Every incident, however, must be judged on its own set of facts, and the facts between two incidents are rarely equal.

NATIONAL SECURITY AND DEFENCE

REPORT OF COMMITTEE ON SURVEY OF MAJOR SECURITY AND DEFENCE ISSUES—PORT SECURITY

Hon. W. David Angus: Honourable senators, last week the Honourable Senator Cochrane and I asked the Honourable Leader of the Government in the Senate about the government's intentions respecting the outstanding report of the Committee on Defence and Security. We were advised that the government needed time to take cognizance of and to consider the report.

It seems clear that the national media, and many others in this country, have had plenty of time to take cognizance of and consider this report. For example, in an editorial in the Montreal *Gazette* this past Saturday, March 9, the editor wrote:

> The alarming findings Senator Kenny and his colleagues turned up now become the business of the federal cabinet. Ports involve various ministers, combining as they do transport, world trade, Customs, drug issues and more. Ministers should move promptly to use the Inquiries Act, because we have seen that the current security situation has loopholes you could — literally — drive a tractor-trailer through.

• (1440)

Honourable senators, my question is again to the Leader of the Government in the Senate: When will the government do justice to this excellent Senate committee report and implement the recommendations set forth therein?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I wish to thank the honourable senator for his question. I do not think it will surprise Senator Angus if I explain to him that I specifically asked, this morning, the Minister of National Defence whether the minister and his department would be carefully studying and analysing this report. He assured me that that is exactly what he would be doing. Clearly, the work of our Senate committee will not go unrewarded in that respect.

In terms of the committee's comments with respect to Canadian ports, the honourable senator knows that basic security functions at the ports fall under the local law enforcement in the communities in which those ports exist. There is now an agreement that the United States and Canada will be working into place on inspections in those ports, whereby both Canadian and American customs agents will be working side by side to ensure that containers are inspected to a greater degree than they have been in the past.

Senator Angus: I wish to thank the minister for that rewarding answer.

I should like to ask a supplementary question following from the editorial I cited from the *Gazette* on Saturday, March 9, 2002:

> Finally and most important, they proposed a full-scale investigation of organized crime in our ports. This would be carried out under the Inquiries Act, which gives investigators subpoena power and other tools needed to get right to the bottom of a situation.

I refer the minister to page 129, Recommendation No. 8 of the report, with reference to national security:

> The committee recommends that a public inquiry under the Inquiries Act into significant ports be established as soon as possible, with a mandate that would include —

Six specific items are then listed.

As I asked last week, my question is again: Will the government convene an inquiry of this nature under the Inquiries Act?

Senator Carstairs: Honourable senators, no decision has been made at this point whether such a public inquiry will be undertaken. However, I shall certainly inform the Government of the desire of Senator Angus for such a public inquiry.

FOREIGN AFFAIRS

UNITED STATES—POSTURE REVIEW ON DEPLOYMENT OF NUCLEAR WEAPONS

Hon. Douglas Roche: Honourable senators, my question is for the Leader of the Government in the Senate.

Reaction around the world to the news reports of the United States' nuclear posture review, which projects the role of nuclear weapons to fight future wars and has led to contingency plans to target seven countries, has been overwhelmingly negative. *The New York Times* today called for President Bush to send the document back to its authors and asked for a new version less menacing to the security of the world.

Will Canada join other nations in raising its voice to protest the U.S. policy which projects the deployment of nuclear weapons into the future instead of abiding by international law and entering into a process of negotiation toward the elimination of nuclear weapons?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Honourable Senator Roche raises an important issue. The Canadian position has been clear for some decades now and remains exactly the same; there has been no change. It is also important that we listen carefully to what the Vice President of the United States said yesterday. Vice President Cheney said that there had been no change in their position either.

UNITED NATIONS—MEETING ON NUCLEAR NONPROLIFERATION TREATY—FULFILLMENT OF COMMITMENTS MADE IN 2000

Hon. Douglas Roche: Honourable senators, I wish to thank the minister for that answer. However, the Canadian people need the reassurance of a formal statement that their government will uphold international law and not succumb to a war mentality that, unfortunately, drives much of the U.S. nuclear posture review.

I would ask the minister if she would convey these thoughts to the Minister of Foreign Affairs and perhaps obtain a delayed answer to this question: Will Canada use the occasion of the non-proliferation treaty meeting, starting April 8, 2002, at the UN, to call on the U.S. and other nuclear weapon states to fulfil their commitment made in the year 2000 to the unequivocal undertaking to eliminate nuclear weapons through demonstrable progress on the 13 steps to which the international community agreed in 2000?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, Canada's firm position on non-proliferation as well as its attendance at the meeting is proof of the position that Canada will take at that particular meeting.

I shall also inform the minister of the desire of Senator Roche for a formal statement to that effect.

[*Translation*]

ISRAEL—RECALL OF AMBASSADOR

Hon. Marcel Prud'homme: Honourable senators, the slaughter that is going on before our very eyes in the Middle East, with these unbridled attacks by the state against individuals, leads me to wonder whether the government intends to recall to Canada its ambassador to Israel for consultations, and to initiate actions either within the United Nations or with our friends and allies.

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, on behalf of the government, there is no plan to recall its ambassador to Israel. As the honourable senator will know, consultations take place between ambassadors and officials at Foreign Affairs on a regular basis. They take place through other means of communication, not necessarily physically in one-on-one encounters.

NATIONAL SECURITY AND DEFENCE

REPORT OF COMMITTEE ON SURVEY OF MAJOR SECURITY AND DEFENCE ISSUES—PORT SECURITY

Hon. Ethel Cochrane: Honourable senators, my question is for the Leader of the Government in the Senate. Testimony by police and customs officers before the Standing Senate Committee on National Security and Defence confirms that Canada has no effective system to scrutinize foreign vessels landing outside major ports. Yesterday, an article appeared in *The Guardian*, in Prince Edward Island, in regard to security of small Canadian commercial ports and harbours. According to the article, Senator Kenny said:

> — in many small ports, authorities rely on harbour masters or volunteer harbour watch groups to inform customs and other authorities about the arrivals of foreign ships.
>
> In some ports, vessels arriving from foreign destinations are expected to contact customs themselves once they reach dockside.

The story also quotes Senator Kenny as saying, and I am sure we can all appreciate the truth in the statement:

> Honour systems work with honourable people but they are useless when dealing with terrorists —

My question is for the Leader of the Government in the Senate: What is the government's solution to the security risks posed by foreign vessels at our smaller ports? What steps have been taken to reduce the risks?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for her question. The honourable senator referred to small ports. One would clearly have to know what is meant by a "small port." If we consider only ports such as Halifax and Vancouver as big ports, are we talking about very small ports or midsize ports? There are different standards and different abilities to take ships into those ports.

As to whether we are putting into place additional security in those small ports against potential terrorist attacks, I cannot give the honourable senator that answer. However, I shall try to obtain any information that is available.

Senator Cochrane: Honourable senators, I refer to ports other than the larger ports such as Halifax, Montreal and Vancouver.

As the honourable senator and I both know, if foreign vessels come into any ports other than the major ports, they will not report to Customs or anyone else that they are coming; they will just come. They could come overnight, and heaven only knows what they will drop off. These are the ports to which I refer today.

Senator Carstairs: Honourable senators, with the greatest respect, some of those vessels cannot go into our smaller ports because the smaller ports do not have the capacity to receive them.

• (1450)

In terms of whether they will not report, the honour system obviously must be in place to some degree. I do not refute Senator Kenny's statement that when dealing with terrorists there is probably not a great deal of honour. On the other hand, we have had no incidents of terrorists trying to use small ports as a mode of entry into the country.

Senator Cochrane has asked specifically whether there will be any stepping up of surveillance of small ports, and I will try to get an answer.

Hon. Nicholas W. Taylor: Honourable senators, as a sport sailor, I have had occasion to enter many ports in the United States where I have had to report in by dialing a 1-800 number and stating who I am. Likewise, probably thousands of sailors from the U.S. check into West Coast and East Coast ports in that same manner.

The issue is as much a tourist problem as it is one of security. When the honourable minister is talking to the government about terrorism, would she advise that small tourist boats far exceed the number of big boats that enter this country? The same is true for the number of Canadian boats entering American ports.

Senator Carstairs: Honourable senators, I thank Senator Taylor for his question. He has alluded to the number of small ports that exist in Canada. In addition to the East Coast and the West Coast, we have our northern coast. The United States has a huge number of small ports as well.

I am not sure whether it is possible to implement a defined system of security at every port in our two countries. However, I will be glad to share with the minister the additional information that Senator Taylor has put on the record.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the delayed answers to two questions. The first one was raised in the Senate on February 19, 2002, by Senator Comeau, regarding the Federal Court ruling granting veterans status to a citizen on Prince Edward Island, and the second one was raised in the Senate on February 7, 2002, by Senator Robertson, regarding the European Free Trade Agreement.

VETERANS AFFAIRS

FEDERAL COURT RULING GRANTING VETERANS STATUS TO CITIZEN OF PRINCE EDWARD ISLAND

(Response to question raised by Hon. Gerald J. Comeau on February 19, 2002)

After consultation between the Attorney General of Canada and the Department of Veterans Affairs, a decision has been made not to appeal the Federal Court decision on this matter.

The issue has been referred back to the Veterans Review and Appeal Board, an independent tribunal separate from Veterans Affairs Canada, for their reconsideration on the basis of the Federal Court decision.

INTERNATIONAL TRADE

SHIPBUILDING INDUSTRY—EFFECT OF EUROPEAN FREE TRADE AGREEMENT

(Response to question raised by Hon. Brenda M. Robertson on February 7, 2002)

It is important to note that Norway has already removed its direct 9 per cent subsidy for new build ships as of December 31, 2000. In order to benefit from the subsidy, ships contracted before the cutoff date had to be delivered to the original purchaser within three years. These subsidized ships will be out of Norwegian production by December 31, 2003. It is also worth noting that the subsidy is contract related and if the ship is not built, the subsidy is lost. The subsidy is also forfeited if any of the parties pull out of the contract.

There are no other direct or indirect government subsidies that are directed at the Norwegian shipbuilding sector. There are, however, other support mechanisms such as the Norwegian Regional and Industrial Development Fund and the Norwegian Research Council but these are not specific to shipyards and are available to all Norwegian industries. However, it is important to note that Canada offers similar support through the Export Development Canada (EDC) and the new Structured Financing Facility (SFF) that is available under the new Policy Framework on Shipbuilding and Industrial Marine Industries announced last June.

In the unlikely event that Norway elects, at some point in the future, to reintroduce a subsidy, and Canada is in the process of reducing the existing tariff on ships and industrial marine products, under the terms of the proposed Agreement, Canada would be allowed to reimpose the original most-favoured-nation rate of duty.

The Government of Canada has provided additional support to the Canadian shipbuilding industry, through the establishment of the aforementioned Policy Framework on Shipbuilding and Industrial Marine Industries. An industry-labour team offered recommendations to the Government on policies to revitalize the sector. This project provided another opportunity for the Government to further understand the issues facing the industry. The Government discussed the recommendations at length and subsequently introduced the new shipbuilding and industrial marine policy to address the competitiveness problems of the marine construction industry as well as creating the new funding program to help finance new work for Canadian shipyards.

In its response to the specific industry-labour recommendation that this sector be carved out of future free trade agreements, however, it was made clear that Canada would not consider this step.

Canada's economic prosperity relies very heavily on trade: Canada's trade represents 48 percent of our gross domestic product and creates one out of every three new jobs. Indeed, of all G-7 countries, Canada is by far the most reliant on trade for its prosperity — three times more reliant than the United States and four times more reliant than Japan. It is, therefore, very much in Canada's interest to promote trade liberalization and a rules-based trading system.

That being said, the Government nevertheless recognizes that the challenges faced by all industries are not the same. It was for this reason that the Policy Framework on Shipbuilding and Industrial Marine Industries was established. It is also why negotiators are developing special provisions for the shipbuilding and industrial marine sector in any eventual FTA with EFTA, and in similar agreements with Singapore.

In particular, the FTA would provide for a long transition period for the removal of the tariff, perhaps as long as ten years. It would also be our intention to allow the maximum period for the new Shipbuilding Policy to have effect, by ensuring a long pre-transition period during which the tariff would remain fully in effect. This approach would go a long way to ensure that all Norwegian ship construction which has benefited from direct subsidy is fully completed and the playing field is levelled.

Negotiators are also considering other approaches that might be undertaken within the structure of the agreement to mitigate the impact of open competition and to assist the transition of the Canadian industry to a more competitive position.

Before launching negotiations with EFTA in 1998, extensive consultations with Canadians were undertaken — both with industry and stakeholder organizations and with representatives of the shipbuilding and industrial marine industry. The Government has worked closely with these same groups throughout the process and will continue to do so. Many discussions have already taken place since the Policy Framework was announced in June, 2001.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker *pro tempore***:** Honourable senators, before moving to the Orders of the Day, I would like to introduce to you two pages from the 2001-02 page exchange program with the House of Commons.

[*English*]

On my right is Anne-Marie Christofferson-Deb of Montreal, Quebec. She is pursuing her studies in the Faculty of Social Sciences at the University of Ottawa. Her major is political science.

On my left is Laura Gill, who is studying in the Faculty of Administration at the University of Ottawa. Laura is from Edmonton, Alberta.

Welcome to the Senate.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, we would like to proceed first with Item No. 1, is third reading of Bill S-34, and then move on to Item No. 5, second reading of Bill S-40, before reverting to the Orders of the Day as proposed in the Order Paper.

[*English*]

ROYAL ASSENT BILL

THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill S-34, respecting royal assent to bills passed by the Houses of Parliament.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, having more than a passing interest in this bill, I am naturally pleased that it has finally reached this stage. However, that being said, I am somewhat distressed that it has taken so long to reach the stage it is at today. As Senator Carstairs explained on Thursday, the idea started some 20 years ago and the implementation began through a bill over 10 years ago. I am distressed because it is as though through this bill we are making a substantial change in our proceedings when, in effect, it is nothing more than adding to a ceremony that will be unchanged. We are merely providing an alternative.

I am astounded by the number of witnesses and the number of colleagues who resisted so strenuously this very modest addition to an existing ceremony which, by itself, with all due respect to the constitutional obligation, is meaningless.

Royal assent, in effect, although perhaps not in law, is meaningless. It is simply the recognition by the Crown, through a symbolic nodding in this chamber, that legislation passed democratically by both Houses can now become law and be proclaimed. What Governor General or representative will ever dare refuse a nod? If ever that happened, he or she would not last long in the position.

Here we were for over 10 years discussing not a change to the existing ceremony but a mild alternative to it. It has taken 12 years to get to where we now are through legislation. I am a little concerned about how this bill will be treated in the House of Commons when it gets there.

I am stating my mixed views on this bill because this does not augur well for substantial reform to Parliament. If we bog down on something so trivial — in fact, if not in law — as an addition to the existing royal assent ceremony, what will we do when it comes to Senate reform, greater participation by parliamentarians in the process of the purse, talking about limitations on terms of office and substantial issues such as bringing the members of the House of Commons closer to the activities of the House and closer to being active participants?

Over the last 20 to 25 years, the responsibilities of members of the House of Commons have been eroded, partly by their own doing, partly by their negligence and partly by their assent. It has reached the point that we now read practically every day that Parliament has become irrelevant. When the government imposes closure on a bill, the opposition quite rightly says that this power, which should be used only as an exception rather than a rule, is now an everyday occurrence. The opposition wonders about the point of being in Parliament if the executive can override the need for debate on such important matters as budget implementation bills and other important proposed legislation.

It is not only the opposition that is complaining about irrelevance. There is the same complaint on the government side, as there has been in other government caucuses. The only change is that the situation is getting continually worse. As much as we talk about parliamentary reform, I am becoming afraid that if the way we have stalled this bill and its predecessors is an indication of the way Parliament sees its future, we will be stuck for far too long with the status quo and the word "irrelevancy" will be the word that will categorize future Parliaments.

On motion of Senator Joyal, for Senator Grafstein, debate adjourned.

• (1500)

PAYMENT CLEARING AND SETTLEMENT ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Furey, seconded by the Honourable Senator Fraser, for the second reading of Bill S-40, to amend the Payment Clearing and Settlement Act.

Hon. W. David Angus: Honourable senators, it is my pleasure today to enter into the second reading debate of Bill S-40. The bill is very technical by nature, and I understand it is non-controversial. I have been unable to identify any opposition whatsoever to the proposed legislation. On the contrary, I am aware that it is important to both the integrity and efficiency of Canada's financial system and would be warmly welcomed by all relevant stakeholders.

The amendments in Bill S-40 are designed to provide clearing houses for Canadian securities and structured products, such as derivatives and options, with the legal protection they need in the event one of the trading parties becomes insolvent or bankrupt.

By definition, clearing houses must be able to clear transactions in a timely manner, but under existing law in Canada, they cannot clear transactions when either the buyer or the seller becomes insolvent. This is a problem that the deals in question would abort. Bill S-40 would obviate this problem.

Clearing houses require their members to post collateral and to "net" their payment and delivery obligations with the clearing house in question. Current Canadian bankruptcy and insolvency laws do not protect collateral on deposit with the clearing houses as is done with other countries.

Honourable senators, I understand that this is of great concern to the four exchanges in Canada that trade in securities and structured products such as derivatives and options — the Toronto Stock Exchange, the Bourse de Montréal, the Canadian Venture Exchange in Calgary, and the Winnipeg Commodity Exchange, as well as the three clearing houses that clear those trades, namely, the Canadian Derivatives Clearing Corporation, the Canadian Depository for Securities and the WCE Clearing Corporation.

The amendments in Bill S-40 will expand the scope of Canada's Payment Clearing and Settlement Act by providing protection for the netting agreements of our securities and derivatives clearing houses. It will also provide protection for the collateral posted by the parties.

Strong and competitive Canadian financial markets are key to the overall growth and prosperity of our nation. The amendments in this bill will enhance our competitive position by enabling clearing houses to lower their costs in bringing our legislation into line with that of the U.S. and our other G7 trading partners. I am informed that currently some trades that could and should occur in Canada, particularly in derivatives, are being handled in the United States because of the risk issues on the Canadian exchanges and the lack of protection in our bankruptcy and insolvency legislation. In particular, the Bourse de Montréal, Canada's major derivatives exchange, is at a marked disadvantage compared to exchanges such as the Chicago Board of Exchange.

[*Translation*]

Honourable senators, the various Canadian laws that currently govern bankruptcy and insolvency, namely, the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act and the Winding-up and Restructuring Act, do not offer the same protection to Canadian clearing houses as do the laws of the other G7 countries.

The amendments to Bill S-40 will ensure that the Canadian market enjoys the same protection that is provided in the other G7 countries.

In November 2001, the Bank for International Settlements and the International Organization of Securities Commissions made recommendations on security-clearing systems.

The amendments to Bill S-40 are consistent with these recommendations.

[*English*]

Honourable senators, it therefore appears that the effect of Bill S-40 will be to allow our financial markets and institutions to grow their business in Canada and reclaim certain specialized financial business that has moved to foreign markets. It may also attract new investors from the United States and other foreign countries.

The globalization of financial markets in recent years has permitted investors to move their investments rapidly, in effect in the wink of an eye, away from riskier markets to others where the legislative framework is friendlier and less risky. As Senator Furey pointed out in his speech last week, the securities and derivatives industry is very significant for our Canadian economy. Should Canada fail to adapt its financial legislation to international norms, there is a clear danger that a significant number of Canadian businesses will move to foreign markets. Our highly skilled and specialized financial workforce should be encouraged to remain in Canada.

Honourable senators, Bill S-40 appears to deserve swift passage through the parliamentary process. I trust this will be verified by the honourable senators of the Standing Senate Committee on Banking, Trade and Commerce when they study the bill and hear government and industry witnesses next week.

However, honourable senators, I should like to add one further comment. Whilst, for the reasons I have mentioned, I support the amendments proposed in Bill S-40, there are a number of other significant measures that this government should be taking to assist capital markets in Canada to become more competitive and to curtail the worrisome brain drain of our well-educated, young financial experts to places like New York, London, Tokyo and elsewhere. For example, I believe the government needs to further reduce taxes on capital gains, continuing the encouraging start made just over a year ago. This government needs to do all it can to establish an environment whereby the Canadian financial industry can realize upon its true potential.

Honourable senators, the amendments in Bill S-40 are a positive step in the right direction.

Hon. Nicholas W. Taylor: Honourable senators, may I ask a question of Senator Angus?

Senator Angus: Yes.

Senator Taylor: Noting the honourable senator's familiarity with financial markets and the financial sector in general, I wonder if he could offer an opinion as to whether this bill moves closer to that area that we all like to see, the area of better coordination of securities commissions amongst the provinces. As honourable senators know, there are 10 or 11 different securities commissions giving different messages to the investor. Will this bill help in that direction? Does that move us in the right direction, is it neutral, or does it move us backward?

Senator Angus: Honourable senators, I can see that the good Californian air has had a salutary effect on Honourable Senator Taylor's thinking processes.

Indeed, when I was being briefed the other day, trying to find out what this bill means, by the current President of the Bourse de Montréal, I asked that question. I asked whether this was not a provincial matter. I said that we are wrestling with this issue of uniformity amongst our securities regulators in Canada. He agreed. Of course, several years ago we had a restructuring of our capital exchanges in Canada. This was by agreement. This was through goodwill among different jurisdictions in the country, and it was more of a crossing over of constitutional barriers. Vancouver and Calgary became the CDNX type of exchange for small cap stocks, the Toronto Stock Exchange for bigger capital markets, and the Montreal exchange for derivative products and other structured instruments.

That came about through long and enlightened negotiations between the parties. As honourable senators know from my question earlier, I did read the weekend newspapers. I read that both B.C. and Quebec Securities Commission chiefs said no in response to a speech by Ms Stymiest three weeks ago, suggesting a national securities commission.

To return to the question of whether this bill is part of a movement toward harmonization, I would say it is, for the following reason. I understand that the parties directly affected — namely, exchanges such as the Bourse de Montréal — had to come forward as provincial bodies to bring this situation to the attention of Governor Dodge of the Bank of Canada and to the federal Minister of Finance, saying that although this matter is provincial, it is federal in terms of insolvency and bankruptcy where we need to amend a federal act. There was reasonable dialogue amongst reasonable individuals, and they have come to this regional piece of legislation. My answer is yes. I thank the honourable senator for asking the question.

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

Motion agreed to and bill read second time.

• (1510)

[*Translation*]

REFERRED TO COMMITTEE

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

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

CRIMINAL LAW AMENDMENT BILL, 2001

THIRD READING—MOTION IN AMENDMENT—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Pearson, seconded by the Honourable Senator Poy, for the third reading of Bill C-15A, to amend the Criminal Code and to amend other Acts, as amended;
>
> And on the motion in amendment of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Moore, that the bill be not now read a third time, but that it be amended in clause 71, on page 37, by replacing line 28, with the following:
>
> > "writing to any member in good standing of the bar of a province, retired judge or any other individual who, in the opinion of the Minister, has similar background or experience the powers of the."

Hon. Pierre Claude Nolin: Honourable senators, I thank Senator Cools, who authorized me to speak today, because she had asked for debate to be adjourned in her name. In order to be sure that you can all usefully follow the debate raised by Senator Joyal, allow me to say that it concerns an amendment to the Criminal Code provided for in Bill C-15A, and more specifically the amendments having to do with the review process for applications for review made to the Minister of Justice concerning miscarriages of justice.

It is important to understand that since 1982, Canada has evolved within a constitutional democratic system. The advent and enshrinement of our Canadian Charter of Rights and Freedoms in the Constitution led to the evolution of our Parliament from the Parliamentary democratic system we had until 1982 to a constitutional democracy. I have no intention, on this, the twentieth anniversary of our Charter, of re-opening the debate that took place at the time of its adoption. Our Charter of Rights and Freedoms contains the list of certain fundamental rights. The process that Senator Joyal is inviting us to take part in is one that respects these fundamental rights, in particular, the right to freedom and security, which is protected under section 7 of the Charter.

Miscarriages of justice shake the confidence that is required of Canadians in the effectiveness and impartiality of our system of justice. All of our system's strength lies in this confidence in one of the pillars of our democratic society.

Last year, Chief Justice McLachlin, in a case that was no doubt dear to Senator Joyal, *The United States v. Burns and Rafay,* mentioned, and I quote:

> The recent and continuing disclosures of wrongful convictions for murder in Canada, the United States and the United Kingdom provide tragic testimony to the fallibility of the legal system, despite its elaborate safeguards for the protection of the innocent.

Bill C-15A calls on us to amend section 690 of the Criminal Code, as it is vague and imprecise. This section outlines the use of the power of mercy by the Minister of Justice, allowing the minister to uphold a decision to release a detainee for reasons which are consistent with the minister's decision and which need not be explained, since the power is absolute.

Many other jurisdictions have changed or regulated the exercise of this type of power, more specifically, the United Kingdom. Significant changes were made to the process to eliminate this power and entrust the assessment of applications and decisions to ensure that detainees' rights are respected to an organization which is independent of the executive branch. These detainees will claim to have been judged unfairly.

The British process provides for an independent eleven-member commission, one third of whom must have practiced law for at least 10 years. They are appointed by the head of state. Commissioners have powers of investigation similar to those conferred upon the Minister of Justice under our Bill C-15A. Theirs is the final decision to refer a request to an appeal court for review or non-review of a conviction, and not to a minister of the Crown. This is an important point because, last October, the report of the Royal Commission of Inquiry into the conviction of Thomas Sophonow, written by former Supreme Court Justice Cory, recommended that the federal government look seriously into the creation of an independent commission like the one in the U.K. You can see, then, that this is not the only such instance in Canada, just the latest.

Some of the witnesses before the committee explained to us, with some bitterness, how the exercise of our legal system could, unfortunately, lead to such errors.

The former Minister of Justice made a choice that was confirmed by the new one. We invited the new Minister of Justice, and he provided us with a written response relating to maintaining the prerogative to which I have just referred. That choice extends as well to allowing full latitude to the Minister of Justice to define by regulation the mechanisms for the review process. While this is an improvement over the present process, I deem it insufficient and I will explain why. Still, it is a marked improvement over the present process.

It must be acknowledged that the process as proposed by the Minister of Justice borrows a number of its characteristics from the operation of the British commission, such as the application process, the definition of powers of investigation, the criteria guiding the minister's examination of the application, the regulations defining the application examination procedure. These are all to be found in the procedures for the British commission.

I am of the opinion that the process offered to us is neither independent nor impartial and is contrary to the fundamental rights recognized by the Charter of Rights and Freedoms, and more specifically its section 7.

• (1520)

The amendments proposed in Bill C-15A do not guarantee the independence and impartiality that must be found in the process to review cases of miscarriage of justice. These two elements, independence and impartiality, are there to ensure the respect of the principles of fundamental justice. Section 7 of our Charter reads as follows:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice.

There is no doubt that a person who is incarcerated and who claims to be wrongly incarcerated is included in or covered by the wording of section 7. The Federal Court ruled that the decision of the Minister of Justice under section 690 was of a quasi-judicial nature.

Indeed, in 1992, in the *Henry v. Canada (1992)* case, the Federal Court ruled that the decisions made by the Minister of Justice under section 690 are subject to judicial monitoring to ensure their compatibility with the Canadian Charter of Rights and Freedoms.

In 1996, in the *Thatcher v. Canada (1996)* case, the Federal Court wrote:

> An adverse decision by the Minister in exercising his discretion under section 690 can result in the continuation of a lengthy, if not lifetime, incarceration of a convicted person. This deprivation of liberty engages the applicant's rights under Charter, section 7 and requires that the Minister act fairly in exercising his discretion.

I would like to stress the reference made by Federal Court Justice Rothstein, when he uses the word "lifetime" For those who are not familiar with the parole process, a person who is incarcerated can only have access to the parole process if he admits that he is at fault. A person who is convinced of his innocence will never admit that he is at fault, because that fault does not exist. Some of you may remember Roméo Fillion, who was accused and found guilty of murder, here in Ottawa, more than 27 years ago. Recently, a little over a year ago, some evidence that was missing at the time suddenly surfaced and showed that Mr. Fillion was not in Ottawa when the crime was committed, but in Kingston, which is a two-hour drive from Ottawa. This evidence surfaced by chance. Mr. Fillion never admitted that he was at fault, and was therefore not eligible for parole. You see why the Federal Court used the term "lifetime," which means possibly until the person dies. A person cannot rot in a Canadian prison because he is convinced of his innocence.

The Federal Court stated on two occasions that it is a quasi-judicial decision. The minister's decision is subject to the review of the courts. The most recent one, *Thatcher v. Canada*, specifies that this review must be conducted in light of the rights of detainees as set out in section 7 of the Charter and requires that the minister act fairly in exercising his discretionary power. There is no question that section 7 varies based on the specific circumstances of each case. I mentioned the case of Mr. Fillion, I am sure that you are all aware of it. Senator Joyal listed several cases in his speech, each story as unbelievable as the next, but each story unfortunately has a common thread running through it whereby the detainees — to be politically correct — are not treated in the same way as the majority in the environment where these miscarriages of justice took place.

Thus, there is a requirement to respect the principles of independence and impartiality. I respectfully submit that Bill C-15A does not respect these requirements. Let us not forget that the Minister of Justice is also the Attorney General of Canada. In other words, when charges are laid, they are usually laid by the Attorneys General of the provinces — that is the reality of our federal system — on behalf of the Attorney General of Canada. The minister remains responsible for studying the applications for review of miscarriages of justice under the current system. According to Bill C-15A, the detainee, like Mr. Fillion, must appeal, and ask the Minister of Justice to review his file.

The Hon. the Speaker *pro tempore***:** Honourable senators, Senator Nolin's time is up.

Senator Nolin: Honourable senators, I seek leave to continue for five minutes.

The Hon. the Speaker *pro tempore***:** Is it your pleasure, honourable senators, to grant Senator Nolin leave to continue?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I will certainly give the senator the time to finish his remarks.

Hon. Senators: Agreed.

Senator Nolin: Already, you can see glimmers of the absence of impartiality in this, or at least the public perception that the process does not enjoy the independence and impartiality to which the courts refer. I have a special problem with this. Senator Joyal has dealt with this in his motion in amendment regarding the power of delegation.

Under Bill C-15A, the minister now inherits an unqualified power of delegation, in that he is being given the powers of an investigator under the Inquiries Act. The minister may, but is not required to — that is another problem — turn around and decide to delegate an inquiry to another person, whose qualifications are not defined, hence Senator Joyal's amendment. This delegation is total. The minister may delegate this power without restriction. This appears to me to be contrary to the rules. I support Senator Joyal's amendment. I feel that, at the very least, we must ask for limits on the minister's delegation.

I read with interest the comments made by the honourable senators who questioned Senator Joyal. I have no problem broadening the definition proposed by Senator Joyal. It is important that the delegation Parliament is authorizing the Minister of Justice to make be limited, defined. The minister, who is given delegation under the act, must delegate further in a very specific way. Why?

René Dussault, at the time professor of law at Université Laval, said, in this regard:

> ...if the power delegated is not purely administrative in nature or ministerial, if it is more judicial or quasi-judicial, i.e., likely to be detrimental to the rights of the parties, or if it is of a discretionary nature which is clear evidence of the trust placed by the legislator in the ability and judgment of the agent, then the principle of *delegatus non potest delegare* receives, in the absence of express provisions in the act a much more rigorous application.

At the very least, we must place limits on the delegation we are authorizing the Minister of Justice to make. It is for this reason that I support Senator Joyal's amendment.

• (1530)

The debate is not over. We will certainly hear other recommendations from commissioners who will say that the Canadian system is definitely not independent enough.

I would have liked to have seen the duration of these appointments specified. Are commissioners appointed for a sufficient period of time to give them a degree of independence from the person who appoints them? Will they have authority over the administrative unit within the Department of Justice? Will they have management authority, as the courts have over their officials?

The courts, when examining the independence of the bench, have sometimes raised the issue of the removability or irremovability of these commissioners or investigators, and their conditions of work.

The courts have affirmed that Parliament had to provide a proper framework for judges' independence. If Parliament avoids doing so, it goes against these rulings and against the principles of the Charter of Rights and Freedoms, which requires our legal system to be free, impartial and independent, and it destroys the perception that the public must have of an impartial and independent justice system.

The former minister made a choice that was maintained by the new Minister of Justice. The government made its bed on a specific process. I hope that this is just the beginning of a desired and desirable reform of the process for the review of miscarriages of justice. Senator Joyal is asking us to amend a bill that begins this reform. His proposed amendment is necessary, and I urge honourable senators to support it.

[Senator Nolin]

[*English*]

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

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

Motion in amendment agreed to, on division.

The Hon. the Speaker *pro tempore***:** We will now resume debate on the motion for the third reading of Bill C-15A as amended.

[*Translation*]

Senator Nolin: Honourable senators, I rise to speak today at third reading stage of Bill C-15A, to amend the Criminal Code and to amend other Acts.

I would like to comment on the two amendments made to the bill by the Standing Committee on Legal and Constitutional Affairs, and agreed to at report stage.

I must begin by thanking the former Minister of Justice, the Honourable Anne McLellan, Honourable Senator Pearson, and the other members of the Legal and Constitutional Affairs Committee for having accepted the amendments I proposed to the new offence set out in Bill C-15A, which makes it a criminal offence to knowingly access child pornography.

These amendments will guarantee the constitutionality of this new offence, while bringing its application in line with the principles set out by the Supreme Court in *R. v. Sharpe*, 2001. I would remind honourable senators that the amendment as proposed by the committee calls for the application of two lines of defence as set out in subsections 6 and 7 of section 163.1 of the Criminal Code to this new offence.

That said, the purpose of my speech is to clarify the reasons for which I proposed an amendment concerning the protection of Internet providers, one which I would remind honourable senators was agreed to at report stage.

Honourable senators, paragraph 1 of clause 5 of Bill C-15A brings up to date the provisions of the Criminal Code that relate to the distribution of child pornography in order to include those who use the Internet to commit this offence. The amendments proposed by the former Minister of Justice will ensure that in future anyone who transmits or makes available this type of material with a view to transmitting, making available, selling or exporting it, will be guilty of a criminal offence.

During consideration of the bill in committee, representatives of the Canadian Association of Internet Providers and of the Canadian Cable Television Association told us that Internet service providers could be found guilty of an offence for having unknowingly transmitted child pornography or making it available.

The current wording of this offence might have serious consequences on the activities of these businesses, as well as their reputation, because it contains no provision for criminal intent — *mens rea* — and thus leaves open the possibility that no recourse to this intention will be necessary for guilt to be established. The amendment agreed to is intended to eliminate this unclear point.

Since I proposed this amendment, three objections have been raised by some of our colleagues to contest its legitimacy and usefulness. I would like to take a moment to refute each of these arguments.

The first of these objections stipulates that the amendment is pointless, since clause 5(1) is a *mens rea* offence. I am not in agreement, because a careful reading of the nebulous wording of this provision demonstrates beyond a shadow of a doubt that any offence proposed by the legislator is not one of transmitting child pornography for the purpose of transmitting it, but rather simply transmitting this type of material. If this interpretation is correct, it could have negative consequences on the presumption of innocence guaranteed to Internet service providers, a presumption that is entrenched in subsection 11(*d*) of the Canadian Charter of Rights and Freedoms.

The lack of clarity in clause 5(1) with regard to *mens rea* is exacerbated by the presence of the verb "transmettre" in French. *Le Petit Robert* dictionary, defines the verb "transmettre" as follows:

> To transfer words or text from one person to another. To transfer or send from one place to another with a purpose in mind.

In the case of an individual who is transmitting child pornography via the Internet, it might be easy to prove that an act prohibited by the Criminal Code was committed, the *actus reus*, and that it was accompanied by criminal intent, the *mens rea*. However, what of the Internet service provider?

If we take into consideration this definition of the verb "transmettre," the latter could easily be found guilty of transmitting child pornography. In this type of case, the *actus reus* can be demonstrated with alarming ease. However, the existence of any criminal intent could be quite difficult to prove.

Just like phone, postal or courier services, businesses specializing in providing Internet telecommunications equipment are solely responsible for the equipment they provide, but not for how it is used by subscribers.

• (1540)

In this connection, the Supreme Court of Canada handed down a ruling in 1892 regarding the responsibility of a supplier of telephone services with respect to the content transmitted over its system. In *Electric Dispatch Company and Bell Telephone Company*, the court interpreted the notion of "transmission" as encompassing the person sending the message and the person receiving it, but not the intermediary providing the technical wherewithal for the communication.

Honourable senators, this reasoning can be applied to Internet service providers. They are merely intermediaries between two or more persons if all they do is provide the means for storing or transmitting digital data for a third party. In practice, such an undertaking does not possess the human and technical resources necessary to oversee the huge volume of information transmitted over its network or briefly stored in its servers.

In such a context, one cannot hold a provider responsible for transmitting child pornography unless it was aware of its existence or had criminal intent to allow such an action. The amendment I put forward is designed to correct this situation. It makes it possible to distinguish the container from the content. Even though the former Minister of Justice and Senator Pearson both stated very clearly that the provisions of clause 5 of Bill C-15A are not aimed at Internet service providers, my amendment further clarifies the legislator's intention by sending a clear message to the courts that the sender of this type of material is not the provider, but the user.

Honourable senators, I would to draw to your attention the fact that at this time there are other federal statutes that contain provisions similar to those adopted at the report stage. I refer here to section 13 of the Canadian Human Rights Act and section 2.4 of the Copyright Act. Even if these legislative texts apply to a context that differs greatly from the criminal law context, let us not forget that, along with hundreds of thousands of Canadians, the courts are barely beginning to demystify the complexity of the Internet. For example, it would not occur to a judge to accuse a delivery service or telephone company in a trial of transmitting child pornography, yet in the case of the Internet that same judge could seriously question the fact that a company operating in this field unwittingly housed child pornography on its servers.

Why should Internet providers be deprived of the *mens rea*, which is required for offences requiring more traditional means of communication? In this context, I strongly believe that my amendment will clarify interpretation of clause 5(1) of Bill C-15A.

This brings me to some comments on the second objection, that a supplier can be exonerated of all criminal responsibility even if he knowingly harbours child pornography on his server or is directly involved in a network distributing this type of material. My response to this objection is merely that, should one or the other of these two situations occur, the company would no longer be acting as a mere intermediary in the transmission — as is stated in the amendment — so the protection it confers would not apply. I therefore maintain that the wording of the amendment is very clear on this.

Now, moving to the third and final objection, that the amendment will have negative effects on the criminal intent referred to in other infractions of the Criminal Code, I personally believe that this is a pointless argument, in that a number of other provisions in Canadian criminal law contain means of defence similar to those given in the introduction to my speech, which stipulate *mens rea* is required in order to avoid innocent people being unjustly found guilty.

Honourable senators, for all these reasons, the amendment will protect Internet services providers and promote the principle of the presumption of innocence without, however, compromising the implementation of the provisions designed to curb the distribution of child pornography over the Internet.

The committee gave very serious consideration to the other provisions of Bill C-15A. Among other things, these provisions increase the maximum penalty for criminal harassment, something Senator Oliver suggested during a previous Parliament. So, the bill increases this penalty. In my opinion, it is not so much the length of the penalty, but the wording of the offence that poses a problem. We will certainly have to re-examine that wording.

Bill C-15 proposed a series of amendments to the criminal procedure, particularly as regards preliminary investigations. In committee, we discussed the pros and the cons of these amendments and we came to the conclusion that this is an acceptable change and that we should follow in the footsteps of other jurisdictions regarding this important procedure in our criminal law system, namely, the preliminary investigation.

Honourable senators, Bill C-15A is a valid measure. It is the result of the splitting of two major components in the original Bill C-15, which was introduced in the other place during the current session of this Parliament. We are discussing fundamental issues regarding respect of the rights of detainees.

Earlier, I referred to the amendments to the process for reviewing miscarriages of justice under section 690 and the following sections of the Criminal Code. Reference was also made to new offences involving child pornography. Today, amendments to the criminal procedure have been mentioned almost only in passing. Yet, the witnesses who appeared before our committee abundantly questioned the appropriateness of these amendments to the criminal investigation procedure.

The Senate and Parliament inherited Bill C-15A and Bill C-15B. The latter will soon be before us. We will then be in a position to understand why the government, in its great wisdom, decided to split Bill C-15 into two important parts.

Honourable senators, I recommend that this bill, as amended, be passed.

On motion of Senator Stratton, for Senator Beaudoin, debate adjourned.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, Senators Beaudoin and Gauthier, who were to speak to Bills C-30 and C-27 respectively, are now sitting in the Joint Committee on Official Languages. A message in this regard has been sent to them.

The reason I am taking the time to explain this situation to honourable senators and to all those listening is so that people will understand that there are complications and that we must govern ourselves accordingly in order to move forward the business of the chamber while also allowing senators to accomplish their work in committees.

The work done by committees is recognized by all members of the public and by all honourable senators present today.

• (1550)

Normally, committees do not sit at the same time as the Senate, but joint committees, which are made up of senators as well as members of the other chamber, are exempt from this requirement.

I hope, Madam Speaker, before you call me to order, that the message was sent to Senator Gauthier. I am told that this was done by our very honourable whip and that Senator Gauthier is now heading for the chamber to speak to Bill C-27.

I know that all honourable senators here are waiting impatiently for Senator Gauthier to open the debate on this bill, which deals with the long-term management of nuclear fuel waste. Naturally, once Senator Gauthier has opened debate at second reading, opposition and other senators will be able to speak.

NUCLEAR FUEL WASTE BILL

SECOND READING—DEBATE ADJOURNED

Hon. Jean-Robert Gauthier moved the second reading of Bill C-27, respecting the long-term management of nuclear fuel waste.

He said: Honourable senators, it brings me great pleasure to introduce Bill C-27 at second reading today, a bill that is timely and that is considered very important for all Canadians, because it has to do with the long-term management of nuclear fuel waste.

Canada is fortunate to be able to rely on a broad range of energy sources. One of these is nuclear energy, which has allowed Canadians, and particularly the residents of Ontario, to produce clean and reliable electricity since the 1970s.

Regardless of the role that nuclear energy will play in the coming years, this source of energy clearly has its advantages, but it also produces waste that we have the responsibility to manage properly.

Waste is currently stored safely on site at reactors, until a long-term management strategy is implemented. Bill C-27 establishes this strategy; it is the result of 25 years of research, environmental assessments and broad consultations among various stakeholders, including waste owners, the provinces in particular, the general public and aboriginal groups.

[*English*]

Honourable senators, how has the public reacted to Bill C-27? This new piece of legislation builds on the 1998 Government of Canada response to the Nuclear Fuel Waste and Disposal Environmental Assessment Panel. The chairman of that committee was Mr. Blair Seaborn.

The Seaborn panel carried out a decade-long public review of nuclear fuel waste disposal, including Canada-wide public consultations. Its recommendations were largely adopted by the government. Subsequently, there has been general support for new legislation but concerns were raised in the other place on a few aspects of this bill.

Principally, the government could not adopt the Seaborn recommendation to create a Crown corporation for carrying out the long-term management of waste. Indeed, the single most frequently raised concern was that the waste management organization, or WMO, to be created by waste owners, is not entirely independent from the nuclear industry.

A basic principle of the bill is that the waste owners are primarily responsible for carrying out and financing waste management activities under federal oversight. The government's role is clearly one of general oversight, of control over the business affairs of the industry. This approach provides for an effective way forward and allows for a clear separation between those who carry out operations and those who regulate them, thereby increasing efficiencies and avoiding conflicts of interest.

More and more, Canadians want to participate directly in the important decisions affecting their lives and those of their children. Key among the requirements of the bill are those ensuring the effective participation of the public in decision-making processes. The reasons for the requirements are to ensure transparency in planning for and implementation of long-term waste management activities. Further, they are to allow for easy and prompt access to information and effective public consultations.

[*Translation*]

Honourable senators, one may well ask: how did the companies and provinces affected by this measure react to Bill C-27?

The owners of the waste are glad of the regulatory certainty provided by Bill C-27, as it clearly sets out the framework within which they must fulfil their obligations without imposition of an undue financial burden. Small businesses indicated that the management body ought to be in a position to provide them with services at a reasonable price.

Throughout the drafting process of the bill, the government consulted the provinces affected, that is Ontario, Quebec and New Brunswick. Many meetings were held and almost all their concerns were dealt with. It took as conciliatory an approach as possible, without compromising the objectives of the policy as far as federal monitoring is concerned.

The provinces acknowledge federal jurisdiction over this, and all subscribe to the principles that underlie Bill C-27.

The standing committee of the other place addressed the matter of the efficacy of the organizational frameworks and the transparency of the process. It adopted four motions, one aimed at including aboriginal traditional knowledge in the expertise of the board.

Honourable senators, one more question: What will happen when Bill C-27 comes into effect, if Parliament agrees to enact it?

• (1600)

The major owners of waste, again, the provinces, to the tune of 98 per cent or 99 per cent, would kick off the trust fund, while the waste management organization would begin preparing its study. Its report would be submitted within three years after the bill is passed. The study would include a comparison of the risks and benefits of each option. The waste management organization would examine those options explicitly outlined in Bill C-27, but would not be limited to those options and could propose others.

A number of stakeholders doubted whether three years would be enough time for the waste management organization to carry out its study. In light of research that has already been done in Canada and elsewhere, and considering that the Seaborn panel had recommended a two-year period and that public utilities have already undertaken work to that end, a three-year period seems to me to be adequate.

[*English*]

Honourable senators, let me conclude my remarks on Bill C-27. This new piece of legislation will allow the government to move effectively towards the implementation of a solution for the long-term management of nuclear fuel waste.

Some stakeholders have asked: Why move now, what is the hurry? The waste is already stored safely. First, existing storage facilities may be, as some of the experts say, safe, but they are not designed for a permanent solution. Second, there is international consensus that technology already exists to manage nuclear fuel waste properly over the long-term. Third, the nuclear industry is ready to meet all of its long-term waste management responsibilities, including funding and corresponding activities, thereby increasing confidence that taxpayers will not shoulder these responsibilities. Fourth, local communities near existing reactor sites want to know what will be the fate of the nuclear fuel waste currently located within their boundaries.

Considering the long lead time before a solution can be implemented, and there are no longer any good excuses for further delay, embarking now on a legislative process is the only responsible route for pursuing a thoughtful course of action. This legislation, which is the culmination of many years of work, was not established in a contextual vacuum. Policy developments were guided by extensive consultations with all stakeholders, experience already gained in our countries, modern regulatory practices, social justice concepts, and, of course, by the invaluable work of the Seaborn panel.

[*Translation*]

The challenge for the government was to develop a policy that would be fair to stakeholders and that would effectively reconcile all the elements, in the public interest. I firmly believe that we can say mission accomplished with Bill C-27. With a sound administrative framework, Canada will be in a position to implement a long-term nuclear waste management strategy, which has been technologically impeccable to this day, but which also fully integrates the social and ethical values of Canadians.

You may wonder what Senator Gauthier is doing in the nuclear area. I will surprise you. I have some knowledge of this area. In the past, I visited nuclear facilities in Argentina, when we sold them a CANDU reactor. I travelled there with Mr. Seaborn, who conducted this 10-year study. He is a competent man who wrote a report that deserves to be read. In this house, we have the honour and privilege of having one of the participants in that public consultation, Senator Lois Wilson, who is one of those who signed this report entitled:

[*English*]

"A nuclear waste management and disposal concept." I think this is worth our time and our efforts.

On motion of Senator Keon, debate adjourned.

[*Translation*]

COURTS ADMINISTRATION SERVICE BILL

SECOND READING

Leave having been given to revert to Item No. 4 on the Orders of the Day:

On the Order:

> Resuming debate on the motion of the Honourable Senator Bryden, seconded by the Honourable Senator Pearson, for the second reading of Bill C-30, An Act to establish a body that provides administrative services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court and the Tax Court of Canada, to amend the Federal Court Act, the Tax Court of Canada Act and the Judges Act, and to make related and consequential amendments to other Acts.

Hon. Gérald-A. Beaudoin: Honourable senators, Bill C-30, the Courts Administration Service Act, has three main goals: to establish a single administrative structure for the Federal Court, the Court Martial Appeal Court and the Tax Court; to split the Federal Court of Canada into two divisions: the Federal Court of Appeal and the Federal Court; and to change the status of the Tax Court of Canada to that of a superior court.

This is a technical bill which also amends 44 other federal statutes with the purpose of changing their wording to reflect changes brought about by the new legal structure resulting from Bill C-30.

The Federal Court was known until 1970 as the Court of Exchequer. Created in 1875 by the federal Parliament, the Court of Exchequer was not completely separate from the Supreme Court until 1887. In 1970, the Court of Exchequer became known as the Federal Court of Canada.

The Federal Court is a specialized court. Its jurisdiction extends *inter alia* to cases or claims made by, or against, Her Majesty the Queen in Right of Canada, to cases of expropriation for federal purposes, et cetera. In certain cases, it has jurisdiction concurrent with certain provincial courts.

This court has jurisdiction in other areas where the Parliament of Canada has exclusive jurisdiction, such as copyright, patents, trademarks and industrial design.

Its jurisdiction extends to all of Canada. Although its headquarters is located in Ottawa, it is an itinerant court; the judges travel to all regions of Canada to hear cases. Finally, let us remember that this court also sits as an admiralty court.

As Senator Bryden said last Thursday, Bill C-30 does not affect the principle of judicial independence. On the contrary, the bill reinforces it.

• (1610)

To a certain extent, judicial independence in Canada is ensured by the provisions of constitutional statutes. It is also ensured by the constitutional conventions and a long tradition, by the decisions of the Supreme Court of Canada, by documents which form part of our constitutional law through the preamble to the Constitution Act, 1867, such as the Act of Settlement of 1701. The Canadian Charter of Rights and Freedoms contains certain principles which help to guarantee the independence of the courts.

Section 99 of the Constitution Act, 1867, enshrines the independence of the judges of the superior courts. This section is fundamental in law. Superior court judges shall hold office during good behaviour, but may be relieved of their office on serious grounds by the Governor General on address of the two federal chambers.

Since the Act of Settlement of 1701, address of both chambers has been required to remove judges of the highest courts in England. If the supremacy of Parliament was established by the British Revolution of 1688 and the Bill of Rights of 1689, it was the Act of Settlement which enshrines the independence of judges.

As Lord Denning pointed out in 1951, the judicial branch in England has been separated from the other two for at least 250 years, and this ensures the application of the rule of law.

Superior court justices retire when they reach the age of 75. Since 1982, paragraph 11(*d*) of the Canadian Charter of Rights and Freedoms must be added to section 99. However, this paragraph has a limited scope in that it only applies to criminal matters.

Since the Supreme Court did not exist in 1867, the independence of that court is protected by an ordinary act, while that of superior court justices is expressly enshrined in the written Constitution, even though in the *Addy* case, the Trial Division of the Federal Court concluded that Supreme Court and Federal Court justices are superior court justices within the meaning of section 99(2) of the Constitution Act, 1867.

It is in the *Valente* case that the criteria determining the scope of judicial independence were first established. Judicial independence is characterized by: first, security of tenure; second, financial security; and third, complete independence of administration of matters relating to the judicial function (institutional independence). These criteria are examined from the point of view of the "reasonable person." It is the third element that is of particular interest to us in relation to Bill C-30.

In *Tobiass,* 1997, the Supreme Court addressed the individual aspect of institutional independence, stating:

> The essence of judicial independence is freedom from outside interference.

I would remind you, honourable senators, that respect of this principle is based on one objective criterion, the reasonable and informed observer.

In creating a Courts Administration Service, Bill C-30 enhances judiciary independence, by clearly confirming the role of chief justices and justices in the administration of these courts.

I would also point out that there is a legislative protection as far as the representation of Quebec is concerned. Four of the judges of the Federal Court of Appeal and six of the judges of the Federal Court must be persons who have been judges of the Court of Appeal or the Superior Court of the Province of Quebec, or members of the bar of that province. As for the Tax Court of Canada, the Chief Judge or the Associate Chief Judge must come from Quebec.

Honourable senators, Bill C-30 puts in place a courts administration service under the supervision of a chief administrator, appointed by the Governor in Council after consultation with the chief justices for a renewable five year term.

Senator Bryden has explained the scope of this bill very well. It is not controversial. I am therefore in favour of Bill C-30.

[*English*]

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator Bryden, seconded by the Honourable Senator Pearson, that this bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

ENDING CYCLE OF VIOLENCE IN MIDDLE EAST

INQUIRY

On the Order:

> Resuming debate on the inquiry of the Honourable Senator De Bané, P.C., calling the attention of the Senate to his recommendation for ending the atrocious cycle of violence raging now in the Middle East.—(*Honourable Senator Taylor*).

Hon. Nicholas W. Taylor: Honourable senators, I rise to say a few words on the situation in Middle East, although I will not be as eloquent as Honourable Senator Prud'homme. The coflict between the Palestinians and the Israelis is in the news every night. Although I do not have a solution to the problem, I do have some experience in the area, and I should like to share my thoughts with members of this house.

• (1620)

This problem reminds me of Winston Churchill's words when speaking on Russia during the Cold War. He said, "It is a riddle wrapped in a mystery inside an enigma." That comment would apply to the problem that we have now in the West Bank.

My experience comes from both business and Parliament. In my business experience, I worked in the Middle East for 20 years between 1965 and 1985. I had offices in Cairo, Tel Aviv and Tehran. Most of my work was in Cairo and Tel Aviv. We had to take a plane from Cairo to Rome, then fly to Tel Aviv because Egypt and Israel had severed diplomatic relations. After the Egyptians made a few moves, they decided to resume direct communications. Living in that part of the world was one of the more interesting experiences of my life. Once again there were flights between Cairo and Tel Aviv. At the airport in Cairo, planes operated by American Airlines, Transworld, Scandinavian Airlines and others were painted in pretty colours, but the plane scheduled to fly between Cairo and Tel Aviv was painted in a drab colour and had no markings of any sort. They did not want the flight from Cairo to Tel Aviv to attract attention. Yet, it was the only plane that had no markings.

Be that as it may, I found working with the Semitic people, both those of the Jewish faith and those of the Moslem faith, to be most interesting. They are very warm and friendly people.

One has to understand the history of the area. The area is smaller than the area between here and Montreal. In that small area are people of the Jewish religion, the Moslem religion, Christians and even people of the Baha'i religion. The man who started the Baha'i religion is buried just outside of Haifa. Perhaps the desert landscape leaves time for people to contemplate religion. Buddhists and a few others are, somehow, missing from the list. However, those religions I mentioned influence the basic thought processes of most of the Western world. I am referring to the Judaic Christian heritage cross-pollinated with a certain amount of Moslem.

In addition to that experience of 20 years of travelling in that part of the world, I was hired by the Israeli government to help them to get around the embargo. I negotiated a deal with Mexico at the time.

Since I became a senator, although I still have some business in the Middle East, very little compared to what it was in the past, I have been involved in the Interparliamentary Union. Two years ago I was asked to be the Canadian representative at the meeting of that body in Jordan. Canada was represented with another six countries, which included Iran, Israel and Iraq. Being Canadian, I ended up as chairman of the committee on the Palestinian refugee problem. I have worked in the Interparliamentary Union on that issue for the last few years.

Just last September, I again attended a meeting of the Interparliamentary Union, this time in Burkina Faso. September 11 was the third day of our committee meeting. That, of course, put an end to the meeting. The Israeli contingent was withdrawn by their government, and Iranians withdrew too because there was quite a concern as to what this bombing might mean.

Honourable senators, I say all that as a background. Perhaps, as is true in many instances: The more you associate with a problem, the less you know. Certainly, I do not know the whole answer to the problem, but I do think that there are some areas that people should note and consider.

Terrorism is not unique to that part of the world. Whether it is in Egypt, Iran or Turkey, terrorism is quite often practised by those out of power with very little sense of being able to get out of their situation in any shape or form. In fact, the Jewish state was largely created due to terrorism.

I had one friend who was killed. He was in the British army in 1948. A parcel bomb was sent to his house from the underground Jewish movement. At that time they were trying to get the British to let go of the controls so that they could establish a country. Another man with whom I was acquainted had his hand blown off with a letter bomb.

It is not unusual that terrorism is used for a political end, but it is certainly not acceptable. It is wrong, but it is a way to an end.

Honourable senators, there are a number of issues that you must address when looking at the Palestinian problem. First, vengeance must be thrown out. The idea of getting even because something was done to you 2,000 or 500 years ago must be thrown out. Perhaps we are the last people who should be lecturing anybody on that. Although we reject the concept of vengeance, we do use apologies. There is always someone introducing a bill in either this house or the other place saying that we have to apologize for something done in the past. Apology is just a modern, fancy way of rehashing the past. I have always been very much against it in Canada because I have always felt that one of the unspoken rules of Canadian citizenship is that you leave your battles behind when you immigrate to this country and you should not legislate to encourage people to apologize. You must forget about the past and decide how you will behave in the future. What is the future?

From my experience with the Interparliamentary Union, once as chair and once as vice-chair of the committee on the Palestinian liberation problem, I know that some problems will always come through, although Iranians and Israelis were sitting at the same table.

I do not want to insult your intelligence, honourable senators, but perhaps we should clear up a few definitions. A Jewish person could be an Arab, although there are few, or he could be an agnostic. Although they talk about being the only democracy in the Middle East, some people might question that because it is hard to get the concurrence of the rabbinical council to become a citizen if you are not of the Jewish faith. That is one of the few democracies where definition of faith dictates whether you are allowed to have citizenship, but it does happen.

An Arab and a Moslem are two different things. Iranians are not Arabs. They are quite insulted if you try to tell them that they are. There is an Arab-Moslem problem. We recognize that we are talking about same-race people, Semitic. Even the languages are similar. The two different religions may be farther apart than the Northern Irish and southern Irish who have been practising terrorism on each other for some years. Nevertheless, we understand the difference.

Honourable senators, there are a few basic points you must recognize. One is that it must be recognized that Israel has the right to stay there and to be a country. Another point is that the recent move towards peace by Saudi Arabia is a step in the right direction. Egypt and Jordan have recognized Israel. It would help if we could get the other countries around the area to accept that Israel has a right to be there and have no thought of pushing them out.

Israel also has a right to protection. The “green line” runs down the middle of Israel. Israel is only, at the most, 100 miles wide, and quite often 65 miles wide. You can understand why the Israelis would not want an independent Palestinian state with its own army overlooking Tel Aviv. If you ever get a chance to visit the old country, you will see how closely the two settlements are interwoven.

• (1630)

The second thing that must be considered is a free and independent Palestinian state, but one that is not so independent that it can have its own army. It must be independent enough that it can have its own police force. As well, there must be a sovereignty component — my francophone friends would understand — within that set-up. At the rate that immigration is occurring and given the native birth rate, the Israelis recognize that they will soon be outnumbered in the area. They have pretty well plucked the world dry of people of Jewish faith who want to come back and settle there. There are some, but there are not enough to hold the same percentage that they enjoy today.

The thinking people over there have a concept of an independent Israel. The Israelis themselves have extremists within their own ranks. As a matter of fact, most Israelis come from North America and move out to the settlements of the West Bank. They are as dedicated to driving the Arabs out of the West Bank as many Arab extremists are dedicated to driving the Jews into the ocean.

As an aside, I think that the Israelis have a problem. Many people in this country say that we should have a right to proportional representation. For the 100-member Jewish Knesset, "proportional representation" would mean that a person would only need about 1 per cent of the population to vote for him or her. Consequently, you can have an extremist sitting in your legislative chamber, much more than you do here. That is hard for us to understand. In Canada, a real nut case has a hard time becoming elected. In Israel, however, it is not an uncommon occurrence. By that, I mean there may be five or 10 of them sitting in their chamber, which is enough to have influence in a tight house and it leads to certain problems.

Honourable senators must recognize that the Jews have a right to be there. Furthermore, we cannot solve their problems. I do not know of any solution, even close to one. I think a partial solution is in place already with the Golan Heights being patrolled by both Canadian and United Nations troops and by Syria on the other side. I do not think anyone in his right mind wands to put Syria back into the Golan Heights. If you have ever been to the Golan Heights, it is like having someone on the top of the Peace Tower constantly surveying the street across the road. It would be enough to give you the heebie-jeebies, even if they were friends sitting up there overlooking the area. There is no doubt that the Golan Heights must stay. That problem is solved now with the UN intervention, perhaps in perpetuity. Who knows? Perhaps the Syrians will come around, but they do not have to guarantee Israeli integrity, as long as most of the other countries do.

We must recognize the Palestinian state, allowing them to arm as far as the police are concerned. There is also the issue of the withdrawal from the settlements. You may not be able to withdraw from all the settlements, but you should be able to do some sort of land swap with the PLO.

The Hon. the Speaker *pro tempore***:** Honourable Senator Taylor, I am sorry to interrupt, but your allocated time has expired.

Senator Taylor: May I have leave for five or three minutes more?

Senator Stratton: Try for two!

The Hon. the Speaker *pro tempore***:** Is leave granted for three more minutes?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** Please proceed.

Senator Taylor: In committee, I found the idea of Jerusalem being the capital for the Palestinians not that unusual. Throughout the centuries, different Christian groups would occupy Palestine at different times, and the Jews and the Arabs had little to say about it after the Crusades. They would argue about splitting Jerusalem. The Orthodox, Catholic and, later, Protestant religions all wanted to call Jerusalem home for their religion. It is not unusual that the Palestinians would want to call it their capital. There are areas in the world and precedents in the past where a city has been the capital of more than one nation or group. Many of the new settlements that have come into the West Bank have been placed there in an effort to surround East Jerusalem, which is where most of the Palestinians live. That is a problem. However, giving them more land and leaving a few of the settlements there while withdrawing from some of the other settlements could be an acceptable compromise. We must look at that.

The last area of concern is compensation. The Israelis have not made any attempt to compensate the Arabs who have been moved out of their area. This is where Canadians and the UN can do something instead of just moving our lips and saying, "We wish we could. It would be nice not to have fighting." Perhaps we could put up a lot of the funds not only to compensate the Palestinians but also to aid them to rebuild their country, either with roads or with hospitals and schools, bit by bit. That aid would be tied to them keeping the peace. That is to say, the Western world would continue to spend money to build up the West Bank as long as the Palestinians did not try to start terrorism or try to do something on the other side. Likewise, we would be asking the Israelis to keep their tanks at home. With the decent police force that the Palestinians would have, they could arrest anyone who was breaking the law by crossing the fence and going over into the Israeli area.

Honourable senators, this conflict will not stop overnight There is nothing to be gained. One cannot stop terrorism. Terrorism ruins Israel's tourism industry and people's sense of peace. At the same time, the PLO is not advancing educationally and is not building a society of its own. There is no future in terrorism.

I will have to drop my last idea, namely, that of an apology. I do not think it works.

The Hon. the Speaker *pro tempore***:** If no other honourable senator wishes to speak, this inquiry is considered debated.

• (1640)

REDISTRIBUTION OF SEATS IN HOUSE OF COMMONS

INFLUENCE OF 2001 CENSUS—INQUIRY—DEBATE ADJOURNED

Hon. Lowell Murray rose pursuant to notice of March 7, 2002:

> That he will call the attention of the Senate to certain issues related to the redistribution of seats in the House of Commons subsequent to the decennial census of the year 2001.

He said: Honourable senators, today begins the process of redistributing seats in the House of Commons based on the decennial census of the year 2001. The operative statute is the Electoral Boundaries Readjustment Act. Today, the Chief Statistician of Canada presents the census return for the year 2001 to the Chief Electoral Officer. Tomorrow, the Chief Electoral Officer will apply the representation formula; determine the number of seats in the House of Commons per province; establish the quotient per seat for each province, which is done by dividing the number of seats assigned to that province into the population of the province; and publish this in the *Canada Gazette*.

I am happy to see the rapt attention of two of the most experienced electoral campaigners in this place — our colleagues Senator Moore from Nova Scotia and Senator Fitzpatrick from British Columbia, who, I am sure, have come into the chamber only to hear what I might have to say on this vital subject. I recognize, of course, quite a number of others, including Senator Bryden of New Brunswick, with whom I have debated on this general subject in the past.

The redistribution commissions in each province are to be appointed by law within 60 days. However, I am informed, and perhaps my friends from Nova Scotia and British Columbia can confirm this, that the members of these commissions have already been recruited. Their names are to be announced today or tomorrow and, in fact, only an Order in Council is required to make it official. As we know, that should take no more than one or two days.

There is a document that honourable senators, I believe, received some time ago called "Federal Representation 2004" that has a calendar of events with the dates by which the various steps are supposed to be achieved. I will telescope that considerably by telling honourable senators that the commissions have one year from this month to prepare their proposals, hold public hearings on those proposals and complete their reports. At that stage, the involvement of our friends in the other place begins.

The Speaker of the House of Commons will receive the reports through the Chief Electoral Officer; the Commons will strike a committee of its members to consider them; MPs will file their objections; and the objections will be reported, through the Chief Electoral Officer, to each of the provincial commissions. Thirty days later, the final maps are to be proclaimed. That would take us, supposedly, to the end of June 2003. Then one full year intervenes. The bottom line in this calendar of events is that any election called after June 2004 will be on the new boundaries.

Honourable senators, needless to say, the calendar of events can be upset. The act provides for the possibility of extensions of time at several steps in the process. First, any provincial commission can ask for up to six months of additional time to complete its work, although none has asked for such an extension in the past.

[Senator Murray]

Second — and this will, as they say, "bear watching" — the House of Commons process may be extended by request of the committee for up to 30 days.

I should note at this point, however, that it is also possible to save time in the process. In this respect, I would say that we are off to quite a good start. The government and the Chief Electoral Officer, to their credit, are ready now, as I suggested, to appoint the commissions, a process for which a period of 60 days is actually provided.

A more serious threat to the process occurs when, inevitably, pressure arises from caucus in the other place, especially the government caucus, to find a way to postpone the redrawing of the boundaries. We all know that MPs of all parties take a very proprietary attitude to "their" constituencies. Generally, MPs do not like the disruption that occurs when they lose and/or gain one or more blocks of constituents from a neighbouring riding. Of course, it has happened that whole ridings have been wiped out in a redistribution. Famously, in British Columbia, a redistribution back in the 1970s or 1980s wiped out the constituency of MP Ian Waddell, a member of the NDP. He took his case to court — at least to the British Columbia Court of Appeal — on a question of principle, of course.

It was pressure from Liberal backbenchers after the 1991 census that led to the introduction of Bill C-18 and its passage through the House of Commons in the spring of 1994. This bill would have wiped out the whole process after preliminary maps had been published by the commissions. The bill did not pass the Senate.

The commissions went ahead, held public hearings and produced considerably revised maps for consideration by the House of Commons. At that point, 90 days from the time that the whole process would have been completed, the government introduced Bill C-69, which would have scrapped the process on the pretense of making changes in the election law. The process would have had to start all over again. Bill C-69 did not pass the Senate.

Honourable senators, we must be on the alert to delays that would cause this timetable to be overtaken by events and that would have the effect of fighting the next election, let us say in 2004, essentially on the boundaries established as a result of the 1991 census.

The best guess is that obviously there will be additional seats in the House of Commons as a result of the 2001 census. I do not believe that there will be as many additional seats as we had expected — that is to say, 10 or 11 additional seats — because the population increase, which was announced today by Statistics Canada, does not appear to have been as great as had been expected just a few years ago. However, we will know tomorrow when the Chief Electoral Officer files his representation formula in the *Canada Gazette*. Again, the winners will be Ontario, British Columbia and Alberta. There will be no losers, and I will come to that in a minute or two.

• (1650)

If the redistribution process is not completed on schedule, British Columbia, Alberta and Ontario will be deprived of the additional representation to which they are entitled and, after an election, we will have a Parliament sitting probably until the year 2008, the composition of which will be based on a census conducted 17 years in the past. This is something we do not want to permit, if we can prevent it.

I will flag two issues for honourable senators before I sit down. I have spoken of the first issue before. The law permits the provincial commissions, in drawing boundaries, to allow, in any given riding, a 25 per cent variance from the provincial quotient, and even this variance can be exceeded in exceptional circumstances. I acknowledge immediately that the 25 per cent variance has been upheld, albeit in a provincial case, by the Supreme Court of Canada. I still say that it is too high and ought to be brought down to at least 15 per cent, as suggested by the Lortie Commission in 1991.

When a provincial commission starts out by allowing a variance at or near the 20 or 25 per cent level, that situation is aggravated over a period of five or 10 years because of population changes. Obviously, we cannot change this by law to take effect during the current process. However, I would urge the provincial commissions in seven provinces to look carefully at what the commissions did last time in Manitoba, Saskatchewan and Alberta. In those provinces, they drew the boundaries very tightly and very close, in the case of each riding, to the provincial quotient. It can be done. I looked at the historical experience in some of those provinces, notably Manitoba, where past commissions started out with quite a wide variance.

In the redistribution based on the 1991 census, I found that Manitoba, Saskatchewan and Alberta drew their boundaries very tightly and very close to the provincial quotient; whereas, to various degrees, British Columbia, Newfoundland, Quebec and Ontario indulged the variants quite widely.

This, of course, disadvantages voters in urban and faster growing areas. If, for example, they had been governed by a 15 per cent variance last time, I think the overall result would have been more respectful of the principle of relative equality of voting power. I said, "relative equality of voting power," because we all know that we have never had pure "rep by pop" in this country. As various learned justices of the courts have pointed out, we have recognized various historical, social and cultural factors in drawing the boundaries.

In 1867, the so-called "Senate floor" was established, by virtue of which no province can have fewer members in the House of Commons than it has members in this chamber. That Senate floor now protects two provinces — Prince Edward Island and New Brunswick — which have higher representation than they would otherwise have in the House of Commons.

A new wrinkle was added by our friends in the other place in 1985 when they added the provision to the law that no province could end up, as a result of that redistribution, with fewer seats than it had after the redistribution of the 1970s. In other words, all provinces were effectively grandfathered at the level of representation they enjoyed in 1985.

I cite as my authority for that Professor John Courtney of the University of Saskatchewan who has written an excellent book on the subject, entitled *Commissioned Ridings*, published by McGill-Queen's, which came out last year.

As a result of this grandfathering wrinkle, together with the Senate floor, seven provinces have a total of 20 seats more than they would otherwise be entitled to have. If there are questions about that, I could find the provinces and the extent to which they are overrepresented.

This, too, needs to be changed. The Lortie Commission suggested that we do away with that provision and that we ease the pain somewhat by providing that, in subsequent redistributions, no province could lose more than one seat with every decennial census. That might be one way of approaching the problem. Leaving it as it is will exacerbate this inequality of representation as among the provinces.

As of now, in only three provinces is the representation based on population, those being British Columbia, Alberta and Ontario. The others are all protected in various ways, either by the Senate floor or the 1985 grandfather clause.

I just wanted to flag those issues, honourable senators, as they begin this important process of redistributing seats in the other place.

On motion of Senator Stratton, debate adjourned.

The Senate adjourned until Wednesday, March 13, 2001 at 1:30 p.m.

CONTENTS

Tuesday, March 12, 2002