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Wednesday, March 13, 2002

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, March 13, 2002

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

Prayers.

SENATORS' STATEMENTS

THE RIGHT HONOURABLE HERBERT ESER GRAY, P.C.

TRIBUTE

Hon. B. Alasdair Graham: Honourable senators, all of us have probably, at one time or another, run across examples of famous people who have turned negatives into positives through their self-discipline and personal determination, through their undying perseverance and just plain courage; of famous people who have turned negatives into positives through belief, fortitude and determination. As I reflect upon the remarkable career of the Right Honourable Herb Gray, these are some of the phrases that come to mind: Never say never; the master of the political moment; and, always the noble gentleman with the backbone of steel. Herb Gray is a man who, in the middle of difficult treatments for cancer, gave press releases, never stopped working, came to cabinet meetings, was regularly scrummed, and gave hope and encouragement to everyone around him.

Honourable senators, Herb Gray's four decades in the public service in this country showed that negativity and adversity only exist to be defeated. Like all those in the legions of the great, his life has been filled with undying purpose in the face of overwhelming obstacles and with a sharp mental focus in maintaining a clear picture of what he wanted, then applying his enormous personal energies towards the attainment of his goals.

The life of the Right Honourable Herb Gray has always been a wonderful illustration of the kind of spirit it takes to see every day as a new challenge — and never, never quit. I am talking about 14,397 straight days of service, honourable senators, with each day taken as a gift, as a fresh start, to be approached with optimism and discipline. I am talking about his passion for rock and roll music, his one-of-a-kind deadpan humour, the power of a superb intellect and always with an enormous grasp of complex national issues which I was privileged to witness on many occasions, first hand.

To me, Herb was the ultimate public servant and a friend to every region of this country. Herb Gray's career has always been a reflection of the intellectual foundations on which this country was built, of reform and social justice, of compassion and intellectual commitment to people. With sincerity and personal rectitude, Herb — always a gentleman — has spent a lifetime in the service of the continuing adventure, the continuing development of the ideal, which is Canada.

As Herb moves on to his new career as Chairman of the International Joint Commission, we salute his incredible service to Canada. We wish him good health and every success in his future interesting and very challenging responsibilities.

HERITAGE

MEN WITH BROOMS AND *TAGGED: THE JONATHAN WAMBACK STORY*—CULTURAL ISSUES

Hon. Laurier L. LaPierre: Honourable senators, I always have good news. I have good news today because a movie made by Canadians is a success at the box office. It made over $1 million in its first week and that figure will climb more and more. This movie, *Men with Brooms* is about the sport which, I am told, is called curling, which appears idiotic on the face of it. It is a movie that calms spirits and encourages love with girls and the making of it. By all accounts, it is a marvellous film starring the most magnificent Paul Gross.

I encourage all honourable senators to see this movie. Pay the money and eat the popcorn — enjoy! Above all, tell your friends, people on the streets and in the corridors, how good this movie is. Honourable senators, I encourage you to enjoy this Canadian film. It will change your personalities considerably. Most of our personalities need much changing.

My second piece of good news is about a young man by the name of Jonathan Wamback who was severely wounded by bullies in school. He lost most of his brain, had immense difficulty speaking, and could not walk. On Monday night of this week, CTV — out of the shop of the great Bill Mustos — aired a magnificent movie called *TAGGED: The Jonathan Wamback Story*. It is a magnificent statement to human resilience, courage, determination and love.

Honourable senators, there is a seven-minute scene in this movie of astonishing magnificence by Tyler Hynes who plays the part of Mr. Wamback. The scene depicts the first time Jonathan goes to school after years of being absent. He gets out of his car, he hangs on to the door and he walks from his car to the entrance of the school — a walk that must be 18,000 kilometres long — with the most astonishing courage and beauty and, as I said before, resilience.

This movie is a fine example of a Canadian story. It reflects the value of all the work and effort that the Canadian government, under the Minister of Heritage and the Prime Minister, puts into the making of films and television programs to tell our stories to Canadians. I beg of you, honourable senators, enjoy Canadian television. I hope that one day we will establish a committee for culture and heritage so that, in this holy hall, people will be able to speak about the soul of our country at any time they desire.

• (1340)

HEALTH

COST OF MEDICATION

Hon. Catherine S. Callbeck: Honourable senators, as I rise today, a woman in my home province is worrying about how she and her family will come up with the money they need to buy the medication required for her to survive.

Wilna Toombs struggles with pulmonary hypertension which, if left untreated, will kill her. However, as with many other serious diseases, there is a treatment. As with many other treatments, it is extremely expensive. The medication that Wilna receives is called Flolane. It costs more than $100,000 a year. While some of this cost is covered by private insurance, Wilna and her husband absorb a great deal of it. Wilna and her husband must use all the money that they have saved, including their RRSPs, before they can receive any assistance from the provincial government. This threatens their present livelihood and, equally important, it threatens their retirement.

I am deeply saddened to learn that Wilna has been failed by our health care system. The reason that I am telling you of Wilna's case, honourable senators, is because I believe that it illustrates a fundamental gap in our health care safety net. Indeed, while our nation's health care system is something that Canadians have always been proud of, it is important to note that, contrary to what most people believe, what we now have is really a hospital and doctor system, not a health care system. What we need is a system with some form of public insurance that will help people, such as Wilna, to deal with the catastrophic cost of drugs.

Recognizing this problem, I am pleased that the Standing Senate Committee on Social Affairs, Science and Technology, of which I am a member, will, as part of its health care study, include a study on how to ensure that situations like Wilna's do not arise in the future. The Senate committee report will include recommendations on how to ensure that Canadians do not suffer undue financial hardship as a result of increasing catastrophic drug costs.

Honourable senators, I feel that this study is a good step toward strengthening one of Canada's most treasured assets, namely, its health care safety net.

[*Translation*]

THE RIGHT HONOURABLE HERBERT ESER GRAY, P.C.

TRIBUTE

Hon. Marie-P. Poulin: Honourable senators, I would like to add my voice to the chorus of praises for the Right Honourable Herb Gray, that great example of a devoted parliamentarian.

This living legend is a man whose impact on our country will be felt for a long time to come. He has even added some class to rock and roll in Canada!

Last year, I had the pleasure of hosting an evening benefit event in Sudbury, at which Herb Gray was the showcase speaker. In other words, honourable senators, a Liberal event. To my great surprise, there were as many Conservatives as Liberals in attendance. At the end of the evening, in thanking people for attending, I do not know how many times I heard: "Senator, we could not miss the opportunity to hear one of Canada's most respected statesmen, even if it meant contributing to your fund to do so!"

I join my colleagues in paying tribute to an extraordinary Canadian and wish him much happiness and all possible good fortune in his new duties with the International Joint Commission. I am told that its Ottawa offices have never seen as many VIP visitors as they have since Herb's appointment. Is this not more proof of the esteem in which so many people hold this distinguished Canadian?

THE LATE JEAN-PAUL RIOPELLE

TRIBUTE

Hon. Lucie Pépin: Honourable senators, yesterday we were greatly saddened to learn of the passing of Jean-Paul Riopelle at the age of 79. Today, I wish to pay tribute to this great artist, an important figure in the annals of modern art, a master of his craft, considered by some to have been one of the greatest painters of the 20th century.

The reputation of this great Canadian went far beyond his native Quebec. His works are exhibited in all the major capitals of the world and hang in some of the great private collections in Canada and elsewhere.

Jean-Paul Riopelle was born in Montreal on October 7, 1923. At the early age of 10, he began taking lessons from Henri Bisson, who taught drawing at Saint-Louis-de-Gonzague school. In 1939, he entered Montreal's École Polytechnique, where he studied for two years. Between 1943 and 1945, in spite of his parents' opposition, Riopelle took classes at Montreal's École des Beaux-Arts, and then got a degree from the École du Meuble.

At the École du Meuble, under the guidance of his teacher, Paul-Émile Borduas, he joined the group of painters called the automatists. That is when Riopelle found his way. Surrealism allowed him to make full use of his creative energy.

From then on, his career took off. In 1946, while showing his works with the automatists, he travelled to Paris and Germany, and he also took part, along with Barbeau, Mousseau, Leduc, Gauvreau and Ferron, in the international surrealist exhibition, in New York.

In 1948, after signing the *Refus global* manifest, the "cornerstone of Quebec's passage to modernity," he settled in Paris, where he made his mark and built an international reputation.

Riopelle's success is largely due to his conception of art, which left no one indifferent. He used to say: "In my opinion, a painting is never the reproduction of an image. It always begins with a vague feeling...the desire to paint...but no graphic idea. The picture begins where it wants...but after that, everything comes together. That is the essential point..."

Riopelle did not just paint. He excelled at various genres. Jean-Paul Riopelle made lithographic prints and also several drawings, including his famous geese. He also did sculptures.

Riopelle's talent was formally recognized a number of times. He received an honourable mention at the Sao Paulo Biennial, in 1955, the Guggenheim international award, in 1958, the Grand Prix de la Ville de Paris, in 1988, and many other awards.

On behalf of all Canadians, I wish to pay tribute to this genius for his contribution in promoting our country's culture.

[*English*]

ROUTINE PROCEEDINGS

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Peter A. Stollery, Chair of the Standing Senate Committee on Foreign Affairs, presented the following report:

Wednesday, March 13, 2002

The Standing Senate Committee on Foreign Affairs has the honour to present its

ELEVENTH REPORT

Your Committee, to which was referred Bill C-35, An Act to amend the Foreign Missions and International Organizations Act, has examined the said Bill in obedience to its Order of Reference dated Friday, December 14, 2001, and now reports the same without amendment.

Respectfully submitted,

PETER STOLLERY
Chair

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

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

[*Translation*]

CANADA-FRANCE INTER-PARLIAMENTARY ASSOCIATION

REPORT OF CANADIAN DELEGATION TO THIRTY-FIRST ANNUAL MEETING TABLED

Hon. Lise Bacon: Honourable senators, I have the honour of tabling the report of the thirty-first annual meeting of the Canadian Delegation of the Canada-France Inter-Parliamentary Association, which was held in Toronto, New Brunswick, Nova Scotia and Prince Edward Island, from September 3 to 7, 2001.

•(1350)

[*English*]

CANADIAN NATO PARLIAMENTARY ASSOCIATION

DEFENCE AND SECURITY COMMITTEE MEETINGS FROM JANUARY 27 TO FEBRUARY 2, 2002— REPORT OF CANADIAN DELEGATION TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to table the eleventh report of the Canadian NATO Parliamentary Association, which represented Canada at the meeting of the Defence and Security Committee of the NATO Parliamentary Assembly held in Washington, D.C. and Tampa from January 27 to February 2, 2002.

QUESTION PERIOD

NATIONAL DEFENCE

WAR IN AFGHANISTAN—ORDER IN COUNCIL EXTENDING VETERANS BENEFITS TO TROOPS— REQUEST FOR WRITTEN POLICY

Hon. J. Michael Forrestall: Honourable senators, my question is for the Leader of the Government in the Senate. As the minister knows, Canadian troops have moved into the front lines in Afghanistan. Can the minister tell us if the government has issued an Order in Council extending special benefits or veterans' benefits to these men and women participating in Operation Apollo and/or the war on terrorism? If so, would she table a copy of that Order in Council in this chamber?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for the question. As the honourable senator has indicated this afternoon, the forces from our country that are serving in Afghanistan are serving in areas of combat, and what may be quite intense combat.

My understanding is that it is no longer necessary for such an Order in Council to be issued. When our forces are serving in conditions such as they are in Operation Apollo, such an order is automatic. I understand that came about as a result of a change in policy.

Senator Forrestall: Honourable senators, my apologies to the chamber. I was not aware of the change in policy. Frankly, I cannot remember when the last piece of major defence legislation was before us.

What I am interested in is where we would find the policy outline. Canadians should know, since we no longer need to declare war to extend the benefits, where we might find the precise wording of that policy.

Senator Carstairs: Honourable senators, as the honourable senator will understand, I shall need to provide the precise wording and table same in a delayed answer to him.

I understand Senator Murray had asked a similar question, and I made inquiries at that time. On the basis of that, I believe I provided the information to Senator Murray and tabled that answer. However, I shall try to locate same and ensure that the information is available to Senator Forrestall.

SOLICITOR GENERAL

RCMP—TREATMENT OF CONSTABLE MICHAEL FERGUSON—PAYMENT OF LEGAL FEES

Hon. Gerry St. Germain: Honourable senators, my question is directed to the Leader of the Government in the Senate and concerns RCMP Constable Mike Ferguson. Constable Ferguson was involved in an unfortunate incident in the province of Alberta and appeared before the Provincial Court of Alberta. I am not inquiring into the court matter; rather, I am concerned about how the member is being treated by the Department of Justice and the Treasury Board in Ottawa. The issue is the non-payment of Constable Ferguson's outstanding and continuing legal fees incurred to mount his defence, which I understand is the obligation of the federal government. The government agreed to cover these defence costs, but the non-payment to the original defence team has resulted in their withdrawal from the case. When will the Treasury Board pay these people for the services they rendered to the government?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the Honourable Senator St. Germain for this question and for alerting me to this matter. As the honourable senator is aware, I do not have that detailed information at my fingertips. This is clearly an important matter for someone who is before the courts. I shall try to provide a reply as soon as possible.

Senator St. Germain: Honourable senators, having been a member of the police forces in Canada as well as a member of the police union, I know that this is a trying situation for this young family. I understand that the honourable minister does not have the response at her fingertips. However, I would urge that she pursue this matter as quickly as possible.

Senator Carstairs: Honourable senators, the reality is that legal costs in this country, when confronted by most Canadians, are a challenge to pay. When legal counsel drops out due to non-payment of fees, that creates an added hardship. I shall verify the facts in this situation and respond to the honourable senator very quickly.

ORDERS OF THE DAY

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. Jerahmiel S. Grafstein: Honourable senators, I wish to move a motion in amendment. I intend to move same and then adjourn the item in my name to speak to the matter briefly tomorrow in order to allow the opposition an opportunity to peruse my motion, knowing the interest that the Leader of the Opposition has in this particular bill.

MOTION IN AMENDMENT

Hon. Jerahmiel S. Grafstein: Therefore, honourable senators, I move, seconded by Senator Ferretti Barth:

> That Bill S-34 be amended in clause 3 by adding the following after subsection 2:
>
> 3(3). The signification of royal assent by written declaration may be witnessed by more than one member from each House of Parliament.

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

Senator Grafstein: Honourable senators, I should like to adjourn the debate on this amendment so that I may speak to the matter tomorrow. This will allow the opposition an opportunity to peruse the amendment. I hope that honourable senators will find that the motion is consistent with the bill and the report of the committee.

On motion of Senator Grafstein, debate adjourned.

• (1400)

[*Translation*]

CRIMINAL LAW AMENDMENT BILL, 2001

THIRD READING—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.

Hon. Gérald-A. Beaudoin: Honourable senators, I wish to say a few words at third reading of Bill C-15A. This bill deals with a number of topics, including sexual exploitation of children and the disabled, modernization of criminal procedure, home invasions and the very important topic of review of miscarriages of justice.

This bill gave rise to many debates in the Senate and the Standing Senate Committee on Legal and Constitutional Affairs. Once again, this committee did an excellent job; a report recommending a few amendments to the bill was tabled and concurred in.

In addition, an amendment put forward by Senator Joyal was agreed to. This amendment is a clear improvement to Bill C-15A in that it spells out to whom the Minister of Justice may delegate his powers when an application for review is made and an inquiry is launched for the purpose of determining whether there has been a miscarriage of justice.

There is no doubt in my mind that someone presiding over such an inquiry must have legal training: a retired judge, a member of a provincial bar, or anyone with similar experience meets this criterion.

Such an addition helps ensure greater impartiality in the process. But for this impartiality to be more complete, more certain, we must go one step further and create a commission similar to the United Kingdom's Criminal Cases Review Commission.

Miscarriage of justice is a topic of great interest to me. I will not deny that I find the British system excellent. It respects the principle of judicial independence. It also respects our judicial system.

[*English*]

The *Sussex* case of 1924 sets forth the principle of our judicial system: "...justice should not only be done, but should...be seen to be done."

Canada is a great democracy because our judicial system is strong and independent, because in each province the bar is independent and, at the national level, the Canadian bar is also independent.

Members of each bar appear before our committees, and in particular before the Standing Senate Committee on Legal and Constitutional Affairs. The British Act of Settlement of 1701 is part of our Constitution. We inherited those values by virtue of the preamble of the Constitution.

[*Translation*]

All this work in committee was done conscientiously and free of any partisanship. In my view, the Senate played its role and improved the legislation. Bill C-15A, as amended, has my approval.

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

[*English*]

YUKON BILL

THIRD READING—DEBATE ADJOURNED

Hon. Ione Christensen moved the third reading of Bill C-39, to replace the Yukon Act in order to modernize it and to implement certain provisions of the Yukon Northern Affairs Program Devolution Transfer Agreement, and to repeal and make amendments to other Acts.

She said: Honourable senators, we are now at third reading of Bill C-39, to amend the Yukon Act. This is a bill to devolve land, mineral and water management to the Government of the Yukon and to recognize, in law, the practice of self-government that has been in place for two decades.

I wish to thank those senators who participated in the review of this legislation and also those who worked in committee and appeared as witnesses: the minister and his officials, officials from the Government of the Yukon, Tribal Chief Hammond Dick and his negotiators from the Kaska Nation, Chief Andy Carvill and his negotiators from the Carcross/Tagish First Nation, and the White River and Kwanlin Dun First Nations, for their written submissions.

There are, however, many others over the years who have contributed to the evolution of this bill. There are the ministers of DIAND, starting with the Prime Minister back in the 1960s; members of Parliament, both Mr. and Mrs. George Black, Erik Nielsen, Audrey McLaughlin, Louise Hardy, and today Larry Bagnell. There are the commissioners: F.H. Collins, James Smith, Gordon Cameron, Arthur Person, Doug Bill, Ken McKinnon, Judy Gingell and Jack Cable. There are also the government leaders: Chris Pearson, Tony Penikett, Piers McDonald, John Ostashek and, today, Pat Duncan. Then there are all the Yukon First Nations leaders, starting with Grand Chief Elijah Smith through to today's Grand Chief Ed Schultz, in their long struggle to settle Aboriginal claims so that we could all work together as Yukoners to develop a strong, united Yukon.

Contributions to the Yukon Act stem from people of every political stripe and ethnic background. I have named only a few. There are many others who have worked in their own way over the years so that this could happen.

During our review in committee and in correspondence received, several questions were raised, which should be addressed here for the record. The following are the responses I received from the Minister of DIAND.

The first response related to concerns that were raised by the Yukon francophone community with regard to the protection of language rights. It reads:

The relevant provisions contained in the Devolution Transfer Agreement (DTA) and the *Yukon Act* reflect the importance both governments attach to ensuring that services in both official languages continue to be made available to Yukoners. Provisions pertaining to the continuity of services in both official languages, after devolution, are set out in chapter 2 of the DTA. Federal and Yukon government negotiators met on several occasions with representatives of the Yukon francophone community. The provisions contained in the DTA are a result of the views expressed during those consultations.

Specifically, after devolution, the DTA provisions ensure that the Yukon Government will provide communications and services to the public in respect of land and resource management programs in both English and French in a manner similar to the services now provided by the Department of Indian Affairs and Northern Development under the *Official Languages Act*. The DTA sets out criteria for the provision of services to the public in both official languages in the future as population and/or demand for services change. These criteria are based on those set out in the federal Official Languages (Communications with and Services to the Public) Regulations.

•(1410)

After the transfer, territorial legislation in relation to public lands, mineral resources, forest resources or water resources will require that notices or advertisements for information to the public be printed in English and French in at least one publication in general circulation within each region where the matter applies. Both English and French are to be given equal prominence in the notice or advertisements. Signs at territorial offices offering services with respect to public lands, mineral resources, forest resource or water resources will be in both English and French, each language being given equal prominence.

There will be a complaint mechanism available to the public through the Yukon Government's Bureau of French Language Services. The DTA provides that language rights will be incorporated into territorial legislation. Therefore, the public will have the option of obtaining remedies through the courts.

Questions were raised regarding the Rupert's Land and Northwestern Territory Order of 1870 having precedence over section 35 of the Constitution. The response reads:

The precise scope and effect of the *Rupert's Land and Northwestern Territory Order*, the 1870 order, are the subject matter of outstanding litigation. It is far from being certain that the 1870 order provides rights and obligations over and above those already protected by section 35 of the *Constitution Act*, 1982.

A general non-derogation clause in respect of the constitutional obligations owed to the Aboriginal people was included in the DTA at the request of the Yukon First Nations. The purpose of this clause in the agreement is to ensure that, were First Nations to sign the agreement, they would not inadvertently be waiving any of their constitutionally protected rights.

A similar non-derogation clause is not required in the proposed Yukon Act since, unlike the DTA, there is no possibility that legislation enacted by Parliament could be interpreted as operating as a waiver on the part of First Nations. The new *Yukon Act* cannot diminish the protection given by the Constitution to the rights of the Aboriginal people, including any protection that may be provided by the 1870 order. After the coming into force of the new Yukon Act, the Yukon Government will remain subject to all of the relevant provisions of the Constitution.

Concerns were raised about the March 31, 2002, cut-off date for negotiating land claims in the Yukon. It was felt that at least six more months would be needed to complete the process. The subject was raised by our two witnesses and also in letters from the White River and the Kwanlin Dun First Nations. It would be safe to say that all six Yukon First Nations who have not signed a final agreement would share this concern.

The response reads:

In March of 2000, Cabinet extended the negotiating mandate for Yukon First Nations. Shortly thereafter, the Minister of Indian Affairs and Northern Development met with the Carcross/Tagish First Nation, the Kaska First Nation and other Yukon First Nations to set out the broad financial parameters of the mandate and to emphasize that negotiations would be discontinued on March 31, 2002, if agreement could not be reached on the basis of that mandate. The minister met with all Yukon First Nations on two subsequent occasions to repeat that message.

The current negotiating mandate timeline applies in respect of Yukon First Nations. Canada's negotiator reports that excellent progress has been made towards achieving subsequent agreements with the Yukon-based Liard First Nation and the Ross River First Nation by March 31, 2002, and that conclusions of negotiations of those claims is achievable by that date. The Kaska Nation, comprising these two Yukon-based first nations and one British Columbia-based organization, the Kaska Dene Council, has chosen to work towards the simultaneous conclusion of the agreements for all three entities.

Further negotiation work is required in relation to the British Columbia-based Kaska Dene Council transboundary claim in the Yukon. Since the timeline set out in the mandate does not apply to this negotiation, the parties will be able to continue this work after March 31, 2002. The Kaska Nation's position that the Yukon-based Liard and Ross River negotiations cannot be concluded by March 31, 2002, is based on its decision to attempt to conclude all of its claims jointly and is not reflective of the lack of substantive agreements at the Yukon-based First Nations' negotiating table.

Negotiations with the Carcross/Tagish First Nation (CFTN) have been underway since 1995. In June of 1999, the CFTN confirmed that negotiations were very near completion. Nine months later, the First Nation suspended its negotiations with Canada and Yukon. The CFTN returned to the negotiating table in July 2001, after a year and a half hiatus. Since negotiations have resumed, numerous efforts have been made to facilitate the resolution of outstanding matters. Recent negotiating sessions indicate that it would be possible to reach substantive agreements and to conclude negotiations within the established time frame of March 31, 2002 if the Carcross/Tagish First Nation accepted the basic terms of the Umbrella Final Agreement.

In recognition of the fact that the parties involved in the negotiations referred to above will need to make minor legal and technical adjustments and develop implementation plans and ratify agreements, a one-year period has been allocated for this work following March 31, 2002. This work, therefore, is scheduled to be completed before the planned effective date of devolution, which is April 1, 2003.

It is important to understand that, as anticipated in the Devolution Protocol Accord of 1998 signed by the federal government, the Yukon Government, the Council for Yukon First Nations, the Kwanlin Dun First Nation, the Liard First Nation, the Kaska Tribal Council (representing the Ross River Dene Council and the Kaska Dene council), negotiations of land claims and self-government agreements and of the transfer of land and resource management responsibilities to the Yukon Government are separate processes.

However, the devolution process has been designed to protect the progress that has been made at the claims negotiations and to safeguard the interests of the First Nations whose claims are still under negotiation. For instance, under the DTA, agreed-upon land selections at the land claim negotiations will be interim protected by the federal government prior to the effective date of devolution. After devolution, the Yukon Government is committed to continue these protections for at least a 5 year period.

Moreover, specific measures in the DTA will provide direct benefits for First Nations. For example, the DTA includes Yukon Government-First Nation Agreements which include establishing cooperative working arrangements with First Nation parties to the DTA in respect of developing Yukon's successor resource management legislation, and the Yukon government will consult with the First Nations on any amendments to the *Yukon Act* that may be contemplated in the future by the federal government.

Yukon First Nations will receive a share of the Yukon government's net fiscal benefits from resource revenues after devolution under the arrangements set out in the Umbrella Final Agreement. In addition, after devolution, First Nations will benefit from the continued forest fire suppression beyond the 5 year time period provided for in the land claim agreements and from remediation of hazardous orcontaminated sites on the First Nation settlement lands.

The DTA includes provisions for First Nations to become parties at any time prior to March 31, 2003. There is no requirement that First Nations have a completed land claims agreement to sign the DTA. The federal government would encourage all First Nations that were parties to the devolution negotiations to sign the DTA to fully share in all the benefits provided by the DTA. The DTA and Bill C-39 should not have any detrimental effect on the negotiation of land claim and self-government agreements. This will remain a different and separate process. Taken together, the DTA and Bill C-39 will put decision making on issues vital to the future of the Yukon where it belongs — with Yukoners. It is important, therefore, that progress continue to be made on implementing devolution, which will provide benefits to all Yukoners, Aboriginal and non-Aboriginal alike.

•(1420)

The Carcross/Tagish First Nation has expressed concern over the lack of security in the take-back clause of Bill C-39. They said:

> These terms do not appear to contemplate a circumstance in which a court finds that a Yukon First Nation, without a final agreement, may have Aboriginal title to all or a portion of its traditional territory based on *Delgamuukw* or the subsequent common law tests. Any interim wrongful use of CTFN lands would be compensable, and frankly the indemnification clauses in favour of the Canada under section 64(1) do not give us any comforting reassurance that Yukoners can pay for such an award.

This would be where third party interests were involved. The response was as follows:

> Balancing economic and other development benefits for Yukoners with the need to continue to find ways to complete land claims and self-government agreements, is a challenge the federal government and the Yukon Government already face now in carrying out land and resource management responsibilities. It is a challenge that the Yukon Government will face to a greater extent post-devolution until all remaining land claims are settled.
>
> In negotiating the DTA and developing Bill C-39, the parties to the devolution process — the federal government, the Yukon Government and First Nations — sought creative ways to better address this challenge. As a result of these negotiations, the DTA sets out a number of provisions to ensure that potential risks are minimized.

Under the DTA, all lands selected under land claims negotiations in the Yukon will be interim protected by the federal government before devolution. These protections will be continued after devolution by the Yukon Government for at least five years. The Yukon Government has also committed to interim protection up to 120 per cent of the land quantum that might remain to be negotiated on April 1, 2003. As a result, no new interests will be created on the lands identified to form part of future settlements.

In addition, under the DTA, the Yukon Government has committed, pursuant to a communications protocol, to consult with First Nations, particularly those First Nations that have yet to conclude their land claims, on its lands and resource management policies and procedures as a further measure to safeguard First Nations' rights and interests, and to obtain the input of First Nations.

The DTA and Bill C-39 also provide for the federal government to take the administration and control of lands back from the Yukon Government or issue prohibition orders for the purpose of settling any remaining claims or otherwise for the welfare of Indians and Inuit.

Overall, therefore, through the DTA and Bill C-39, mechanisms have been designed to protect the interests of First Nations without settled claims and to put in place decision-making processes to minimize the risk of any infringement by the Yukon Government of the rights of First Nations in relation to lands and resources.

Lastly, I must point out that both First Nations who appeared before us requested we delay the passage of Bill C-39 for six months. It is not a long period but, by doing so, it would let them complete their negotiations and ratify their land claim agreements. As stated earlier, the minister has set a final date of March 31, 2002, for all agreements to be finalized. The witnesses felt that the date could not be met, but that six more months would in fact suffice. They felt delaying passage of Bill C-39 for six months would put more urgency on all parties to extend the deadline and to find solutions. However, there are other considerations.

Eight of the 14 Yukon First Nations have signed their agreements and they stand to have much-needed financial gains as soon as the DTA is implemented. Also, there is much to do over the next 12 months in preparation for the transfers from the federal government to the territorial government, not the least of which has to do with the fact that federal employees must receive offers of employment from the Yukon Government. Delaying this bill would maintain uncertainty for those employees and their families since no offers can be made until this bill is passed.

The other consideration is one that we in this place can appreciate perhaps more than others. Six months is a very long time for any bill to sit in either chamber, especially this year with the appointment of many new ministers and the Queen celebrating her fiftieth anniversary. In six months from now we could see a new session of Parliament. The last thing we want is to have this bill die on the Order Paper after so many years of hard work.

The DTA is scheduled to come into effect in 12 months. A six-month delay would not change that date, but it would create great uncertainty. Passing Bill C-39 now will give 12 months, not six, for the completion of outstanding claims and still allow for all of the administrative transfer work to proceed; certainly a win-win situation for everyone.

In summary, honourable senators, I want to reiterate what I believe are the most critical aspects of this progressive legislation.

First, Bill C-39 enables us to implement the devolution transfer agreement. This is the primary purpose of the bill. I have already dealt extensively with the built-in protections for Yukon First Nations, their land claim process and land protection. Once Bill C-39 receives the approval of this chamber, the negotiated DTA will have the enabling legislation to become law, but not earlier than April 1, 2003. As the Umbrella Final Agreement provided the tools for the Yukon First Nations to become autonomous and marked a major step in the political evolution of the Yukon, so now the Devolution Transfer Agreement and these amendments to the Yukon Act mark yet another step in allowing Yukoners to be more responsible in the stewardship of thier territory.

Second, the Yukon Act recognizes the political realities in the Yukon and the dramatic changes that have taken place since the days of 1979, when devolution took its first step.

Honourable senators, the third benefit in Bill C-39 is its modernization of terminology, consistent with current practices. As I stated in my opening remarks at second reading, much of this bill is dedicated to amending the words "Yukon Territory" to "Yukon" in the act itself and in all other federal legislation.

The fourth issue to keep in focus is the fact that it will result in consequential amendments to well over 100 pieces of affected federal legislation. Of particular note, four federal acts — the Quartz Mining Act, the Placer Mining Act, the Yukon Waters Act and the Yukon Surface Rights Board Act — will be repealed. In addition, the Territorial Lands Act will be made inapplicable to the Yukon. The legislation will also validate laws of the Yukon Legislature corresponding to the repealed and inapplicable federal laws.

Honourable senators, sponsoring Bill C-39 has been a personal privilege. Twenty-three years ago I was the commissioner who received a letter of instruction that changed the manner in which the Yukon government was administered. I resigned as a result. There were a number of reasons for such action, none of which had anything to do with loss of authority. However, the main reason was that I felt very strongly that the changes that were being made should be reflected in legislation and not just through a letter of instruction from a minister.

Today, almost a quarter of a century later, I am privileged to be in a position to sponsor Bill C-39 in this place — the bill that will give legislative certainty to that letter of October 9, 1979. Few people have such opportunities. For me, it is truly an event of destiny.

On motion of Senator Cochrane, debate adjourned.

•(1430)

NUCLEAR FUEL WASTE BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Gill, for the second reading of Bill C-27, respecting the long-term management of nuclear fuel waste.

Hon. Terry Stratton: Honourable senators, it is my understanding that Senator Wilson would like to speak first. The rules state clearly that the second speaker has 45 minutes. However, we would like to give notice that Senator Wilson will have 15 minutes and Senator Keon would then, as speaker for our side, have the 45 minutes.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Hon. Lois M. Wilson: Honourable senators, I thank you for this opportunity, since I have only a few days left in the Senate and I would like to have an input on this bill.

I wish to address some issues arising from Bill C-27. I do so from the perspective of one who served on the Environmental Assessment and Review Process Guidelines Panel appointed in 1989 for the review of nuclear waste management and the deep rock burial concept researched by Atomic Energy of Canada Limited in the late 1970s. The Seaborn panel — as it is popularly known — issued its final report in February 1998. I was one of eight panellists who met regularly over those nine years, hearing a great variety of witnesses who expressed all possible viewpoints on this particularly important issue in Canada. One criterion for selecting panellists was that we had not taken a public stand on nuclear issues. I cannot hope to address all the issues that emerged during those nine years, but I will try to highlight some of the important ones reflected in the bill.

Nuclear fuel waste, known as spent fuel or high level radioactive waste, is the used uranium fuel from nuclear reactors. It includes hazardous radioactive substances that must be isolated for millions of years to protect all living things from its toxic effects. On this there is full agreement.

Each company that runs nuclear reactors currently stores the nuclear fuel waste at the reactor sites, either in water-filled pools or dry storage cement canisters. To date there has been a good safety record on this type of storage, and the consensus is that waste fuel can safely be stored by this method for up to 100 years. This leaves plenty of time to thoroughly research options that Canadians need in order to be fully informed and make a reasonable and informed decision. There need be no haste.

The federal government responded to the Seaborn panel in December 1998 with a report indicating that there was broad agreement with the panel in many areas. One area where general agreement does exist is in funding for waste management. The fuel waste owners will be required to fund the Waste Management Organization and the implementation of whatever plan is approved.

However, there were critical ways in which there was disagreement, and it is these I wish to highlight. The Seaborn's recommendations were built on two consensus panel conclusions, which are not adequately recognized in this bill. The first is that:

> From a technical perspective, safety of the AECL concept has been on balance adequately demonstrated for a conceptual stage of development, but from a social perspective it has not.

You will notice that our conclusion was filled with caveats, such as "on balance" and "a conceptual stage of development," indicating that we were not at all convinced that the concept was technically safe. Indeed, 95 deficiencies in the technical proposal were documented. The last important phrase, "but from a societal perspective, it has not" — that is, social safety has not been adequately demonstrated — has been eliminated from all government documents, as though the concept of social safety is invalid or unknown, and that all that is required is to convince the uninformed public of the technical safety of the proposal. This duplicity does not build confidence with the informed public, some of whom attended the hearings and studied and read our recommendations.

The second conclusion, from which all else flows, was that:

> As it stands, the AECL concept for deep geological waste disposal has not been demonstrated to have broad public support.

There was total panel consensus on this statement.

Bill C-27 differs from the recommendations of the Seaborn panel in a number of areas. I want to bring those to the attention of this chamber, as I think they weaken the bill and erode the confidence of the public.

First, clause 6 states:

> The nuclear energy corporations shall establish a corporation...(to)
>
> (*a*) propose to the Government of Canada approaches for the management of nuclear fuel waste; and
>
> (*b*) implement the approach —

I am disappointed in this major decision, as the Seaborn panel has discovered that there is a great deal of mistrust by the public of nuclear energy corporations, based on experience over a few decades. We saw this legislation as a golden opportunity to establish an agency at arm's length from government, and from the AECL and the utilities, and thereby to ensure a fresh start, a new agency with players whom the public would trust. It would also guarantee the new agency's independence from vested interests. This bill does not do so, and my educated guess is that it therefore sets itself up for more and more confrontation with informed citizens in the future.

Second, we recommended that an advisory board be appointed by the federal government on the basis of proposals from professional organizations, including those that played an active part in the panel's hearings; that it meet frequently with the board and staff; and that it be heavily involved in all stages of agency work. Under the proposed legislation, this still could happen. However, clause 8(2) suggests that the advisory council reflect a broad range of scientific and technical disciplines, expertise in nuclear energy, expertise in public affairs, and expertise "as needed in other social sciences."

Our decade-long experience with this issue and a strong submission from the Royal Society, among others, confirmed that experts from the social sciences were as important to the process as were technical people. We had in mind an ethicist and a sociologist, who would develop an ethical and social assessment framework for this contentious issue. I should hope that the small phrase "as needed" is deleted from the bill.

Third, we recommended that multiple review mechanisms be put in place in order to ensure checks and balances, and strongly stated that Parliament itself be one such mechanism. Other mechanisms we recommended were federal regulatory control with respect to its scientific-technical work and the adequacy of its financial guarantees, policy direction from the federal government and regular public review. Since a broad public consensus on the most acceptable options is necessary before implementation begins, the Seaborn panel deemed it wise to accord wide review to the final proposal. Instead, this bill proposes review only through the minister. Clause 14(1) states that the minister "may" engage in such public consultations with the general public on the approaches set out in the study as the minister considers necessary. This permissiveness leaves entirely too much discretion to the minister of the day, who may well be influenced by political considerations.

Further, it is recommended in clause 15 that the Governor in Council shall select one of the approaches, and the decision shall be published in the *Canada Gazette*. I hope that the experts in public affairs will have the wit to ensure that this decision is widely known by the Canadian public, since a very select few are acquainted with or have access to the *Canada Gazette*, venerable as it may be. I think people in the far north of Ontario, where the nuclear waste is likely to be disposed of, will probably not know how to access the *Gazette*.

The bill directs the agency to explore and propose options for the disposal of nuclear waste and public consultation on these options, including consultation with the Aboriginal community. This is a very welcome part of this bill, since all things nuclear have to do in the public mind with fear, dread and mistrust. This cannot be allayed by information alone, which is why we recommended that persons with societal understandings be front and centre in the decision-making in this venture. Our recommendation was that a process of consultation with the Aboriginal community begin long before legislation is initiated, according to their criteria and their design, but this has not been done. However, the bill promises such consultations as the process develops. Many of us will be watching closely to see if in fact this happens.

Finally, I was a witness to the House of Commons committee that examined this bill. The only questions asked were by members of the opposition parties. I hope that when this bill goes to the appropriate Senate committee, it will be the subject of rigorous and detailed questions from all sides of this chamber. It is too important a matter to our children and grandchildren to be passed without more than the usual scrutiny.

On motion of Senator Keon, debate adjourned.

• (1440)

BILL TO REMOVE CERTAIN DOUBTS REGARDING THE MEANING OF MARRIAGE

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Wiebe, for the second reading of Bill S-9, to remove certain doubts regarding the meaning of marriage.—(*Honourable Senator Jaffer*).

Hon. Lois M. Wilson: My understanding of the procedure is that Senator Jaffer ceded the floor to me in view of the fact I will not be here next week.

Honourable senators, on Bill S-9, to remove certain doubts regarding the meaning of marriage, I was raised with the idea that homosexuals needed extensive counselling in order to be like the rest of us. It was not until my adult years that my view gradually changed. I have a male friend whom I have known for 50 years who married and fathered children, two of whom I baptized. For some years we lived in the same provinces, but then we moved and I lost track of him. After a five-year interval, I ran into him again and immediately knew something significant had happened to him. "Your face is different," I said. "I cannot define it. What has happened?" His astonishing response was: "I have never been happier in my whole life. I have been a homosexual all my life, and my wife and I finally came to terms with it and I am now on my own. We parted amicably. My identity is now clear."

I could not deny this man's life or testimony. He is still the same responsible, caring person I had known at an earlier time. Now relieved of having to conceal what he fought against all his life, his sexual orientation, and now able to affirm who he was, he was free to live more affirmatively than ever before. A few years later, I met his male partner. I was an overnight house guest and rejoiced in the obvious love, mutuality and partnership evident in the relationship. He continues to see his former wife and children, with whom he maintains caring relationships.

If anyone could demonstrate to me his partnership with his male partner is any less responsible, any less in the qualities that make a healthy marriage, such as expressing one's sexuality through commitment, trust and love, any less a marriage than his former one with his then wife, I would be glad to hear it.

Is the main public interest in marriage reproduction, continuation of the species and procreation of children? I think not. A quote from the 1549 Church of England's Book of Common Prayer states the purpose of marriage is for the "hallowing of union betwixt man and woman, for the procreation of children." However, the 1549 Book of Common Prayer is not the law of Canada and has never been the law of Canada. The Book of Common Prayer is the prayer book of the established Church of England. We do not have a state religion in Canada, nor have we ever had a state religion. The dissenters suffered terrible persecution in England because of state enforced religion.

From the beginning of English rule, the enlightened policy of religious tolerance was the official policy of the day in Canada. However, sadly, Canada has also known religious intolerance. Some people thought that the Book of Common Prayer should be the law of the land. Ontario's first marriages were valid only if performed by priests of the Church of England. Marriages that I would have performed in those former days would not have been recognized as legally valid because I was not a priest of the Church of England. Even Catholic marriages were not recognized legally until 1847, and Jewish and other non-Christian marriages were not legally recognized until 1857. Fortunately, our society and our laws have moved somewhat beyond that time of intolerance.

Even the rituals of the Anglican Church of Canada ceased making the main purpose of marriage the procreation of children some time ago. In its 1959 prayer book, a prayer of the wedding ceremony for the expected children was bracketed with the admonition that "this prayer shall be omitted should the woman be beyond child bearing age." Wisely so. To tie marriage to the procreation of children denies the validity of marriages of post-menopausal women who cannot conceive children. In 1985, the phrase "and that they may be blessed in the procreation, care and upbringing of children" was removed from the prayer book and made optional.

In Canada, it is only required that the civil laws of the provinces and territories be met. The law also respects the human rights of those who are different under the Charter of Rights and Freedoms. To deny these rights to those who are not mainstream is a violation of the Charter, a gross act of discrimination and a denial of the personhood against those who suffer that discrimination.

The law respects religious choice and diversity. For Christian people, all churches also provide a religious rite, but the Christian churches in Canada do not make the law as to who can marry. They do retain the right to decline to marry the people they do not believe are free to marry. Those people can always go to another church or to a civil authority. It is a reality that increasing numbers of persons of faith communities authorized to perform marriages continue to bless the "holy unions," as they are sometimes called, or "same gender covenants." Some faith communities have been presiding at holy unions and covenanting services for years. These include some reform Rabbis, ministers of the Metropolitan Community Church and some of the United Church, and even some Anglican bishops. Parliament cannot choose sides in the religious debate by enforcing one religious view of marriage on all. Otherwise, we are on the path to state religion, a concept that is currently unconstitutional and morally repugnant.

As we know, technological advances have made procreation of children possible by those who are members of the same sex. That is the reality. People marry even if they have no intention of having children or when they cannot do so. Yet their marriages are not denied legality. The Modernization of Benefits and Obligations Act, Bill C-23 of June 2000, makes it clear that marriage means "one man and one woman to the exclusion of all others." That is a quote from the 1866 UK judgment in the case of *Hyde v. Hyde*. That should give us pause. The *Hyde* case is not a Canadian case. It was decided in Victorian England, at a time when many women in Canada were not even persons in the eyes of the law. Since then, the law has changed and so has society, for the better, I think. The full definition from *Hyde* is this:

> For this purpose I conceive that in Christendom, marriage is the lawful union of one man and one woman for life to the exclusion of all others.

This "purpose" was to deal with polygamy. It had nothing to do with same sex marriages. The phrase "in Christendom" is quaint. Canada is not officially Christian, and we value religious diversity and pluralism. The "for life" part came from the Church of England's definition of marriage, as it did not allow divorce. The inflexible *Hyde* case was good for England in 1866 but does not belong in Canada in 2002.

Not all homosexuals want to marry, but some do. Not all heterosexuals want to marry, but some do. Can we not respect diversity and choice in this country where we constantly boast of tolerance and pluralism? Some same-sex couples want a way to say publicly they are responsible for each other their whole lives long.

What about family values? The Supreme Court of Canada in a 1992 majority decision in the case *Moge v. Moge* said:

> Many people believe that marriage and family provide for the emotional, economic, and social well-being of its members. Marriage and family are a superb environment for raising and nurturing the young of our society by providing the initial values that we deem to be central to our sense of community.

If marriage is the best place to raise children and same-sex couples choose to have children, surely those children should not be deprived of what is best for them. There is food for thought in Madam Justice L'Heureux-Dubé's comment on this worthy passage in her dissent in the 1993 case of the *Canada (Attorney General) v. Mossop* as follows:

> — these values are not exclusive to the traditional family and can be advanced in other types of families. For example, while we may see marriage as an indicator of stability, it appears from the current rate of marriage breakdown that heterosexual union is not an absolute guarantee of stability....stability is a desirable value, but may be achieved in a variety of family forms....long lasting and stable relationships have been maintained outside the bounds of legal marriage, as well as within same-sex relationships.

In short, I hope the Senate does not pass this unnecessary bill. It is not necessary to make clear what has been the practice since at least the beginning of Confederation and confirmed ever since on numerous occasions. There is no need to try to make clearer what is already the law of the land. Remember that law is not static. I hope that individual senators follow closely the Ontario court case proposing recognition of same sex marriages. Among other things at stake is the continuing violation of basic human rights for a number of citizens of our country.

•(1450)

Hon. Anne C. Cools: Will the Honourable Senator Wilson take a question?

Senator Wilson: Certainly.

Senator Cools: It will take some time to respond to all of the points Senator Wilson has made. However, in terms of the law of the land as it currently stands, could Senator Wilson share with this chamber the result of the legal court challenge in British Columbia respecting same sex couples' assertions that the law of marriage discriminated against them, asking the judge in the case, Justice Pitfield, to strike down marriage? What was Mr. Justice Pitfield's response?

Senator Wilson: Honourable senators, I am unable to answer that question.

Senator Cools: For the sake of the record, this chamber should be aware that there have been three challenges on the grounds Senator Wilson has described. In point of fact, the first judgment in the first case has been rendered, and the judge has upheld marriage as between a man and a woman. The justice rejected all of the arguments put forward.

Honourable senators, perhaps I could defer and let my friend Senator LaPierre speak. He seems to want to say something.

Hon. Laurier L. LaPierre: Honourable senators, I was just telling Senator Cools that judges can be wrong.

The Hon. the Speaker: To ensure that we are following the proper procedure, I want the Honourable Senator Cools to know that she is entitled to ask a question. Senator Wilson accepted the question. We then gave the floor to Senator LaPierre.

Senator Cools: Out of order. I want an apology from this man.

The Hon. the Speaker: This is Senator Wilson's time. Does the honourable senator wish to comment?

Senator Wilson: The burden of my intervention was that I am aware of the law of the land and that there have been other court challenges and, in particular, I am familiar with the Ontario court challenge. I do not know how it will be resolved, but I would urge senators to pay close attention to it.

Senator Cools: I am certain that the honourable senator is as informed as she claims to be, but I am saying that the outcome in the first court challenge is already well known. I was hoping that, in terms of keeping a balanced record and in the hopes of maintaining a sufficient record here on this debate, Senator Wilson could share with the house the outcome of the first challenge.

The fact of the matter is that Mr. Justice Pitfield of the Supreme Court of British Columbia ruled, I believe last October 3, 2001, that marriage is between a man and a woman. In addition to that, I believe he upheld section 91.26 of the Constitution Act, 1867, which gives exclusive jurisdiction to the Parliament of Canada over marriage and divorce. Mr. Justice Pitfield upheld *Hyde v. Hyde* and the fact that the nation, as a nation state, has an unquestioned interest in the public interest that the phenomenon of marriage as an institution be between a man and a woman.

It is not wholesome or proper that debate in this chamber should proceed without bringing that to the attention of honourable senators. I was asking Senator Wilson to put that on the record. If Senator Wilson is not informed, then she should at least receive this information because this is the current state of the law as it exists right now.

Again, could Senator Wilson comment on Mr. Justice Pitfield's findings?

Senator Wilson: I will be making no further interventions on the debate on this bill. It is my understanding that the point of interventions is to test the mind of the chamber. I assume that other honourable senators will wish to speak to Bill S-9, and they may, perhaps, fill in the deficiencies of my intervention.

Senator Cools: I would also submit, honourable senators, that the mind of this chamber has already made a judgment on this question, and that the mind of this chamber has already spoken — that marriage is between a man and a woman. I would refer honourable senators to Bill C-23, 2000 in respect of the Modernization of Benefits and Obligations Act, which Senator Wilson voted on and, indeed, supported. That bill upheld very clearly in statute that a marriage is between a man and a woman.

In addition, Bill S-4, in respect of the Federal Law-Civil Law Harmonization Act, No. 1, of the Province of Quebec, upheld that marriage is between a man and a woman. I submit to Senator Wilson and all other senators in the house today that those judgments of the chamber already made are binding on us as we speak.

The Hon. the Speaker: Does Senator Wilson wish to comment?

Senator Wilson: To reiterate, I know that this is the law. I also said that the law is not static and senators should monitor what is happening in the evolution of the law.

The Hon. the Speaker: Honourable senators, Senator Wilson's 15 minutes have expired.

On motion of Senator LaPierre, for Senator Jaffer, debate adjourned.

LOUIS RIEL BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Chalifoux, seconded by the Honourable Senator Gill, for the second reading of Bill S-35, to honour Louis Riel and the Metis People.—(*Honourable Senator Stratton*).

Hon. Laurier L. LaPierre: Honourable senators, I rise to speak to Bill S-35. I take part in this debate because I must attempt to reconcile many conflicting elements that assail me in supporting Senator Chalifoux's proposal to honour Louis Riel and the Metis people.

I have no problem honouring the Metis people, but I do have a problem honouring Louis Riel. I find that he had the most enigmatic, paradoxical, perplexing and infuriating personality in the annals of our history. When this discussion about a possible pardon and recognition of some sort began some years ago, I was not particularly interested in changing by fiat what had happened in the past.

However, there was an injustice committed in November 1885. I have no doubt about that. Riel was not hanged because he led the rebellion, but rather he was hanged because he had participated indirectly in the execution of Mr. Thomas Scott. Therefore, the time has come to make amends for the harm caused, through time, to Louis Riel and his people.

Honourable senators, I have therefore decided to help with that process. I made that decision when I was writing about the relationship of Louis Riel and Sir Wilfrid Laurier. I will make Laurier's words my own for they constitute Riel's best defence and are the greatest homage to be paid to the Metis people. They also constitutes the best arguments for all of us to support Senator Chalifoux's bill before us.

Sir Wilfrid Laurier was elected to Parliament in the same election that elected Riel in 1874. His first speech in the House in English was related to Riel. In the fashion of Sir Wilfrid Laurier, I will speak in English on the matter of Riel because two of his most important speeches were in English and were about Riel.

Laurier first addressed the House on April 15, 1874, dealing with the treatment that the government proposed to deal with Louis Riel. There was much talk of putting Riel on trial for the execution of the Orangeman, Thomas Scott — an inconsequential twit, at best, and at the worst, a racist agitator from Ontario. It was an execution that took place during what is called the first Riel Rebellion in 1869-1870.

•(1500)

Laurier objected to the procedure as well as the exile being planned for Riel, because, as he said:

> Since the days of the Magna Carta, never has it been possible on British soil to rob a man of his liberty, his property, or his honour except under the safeguard prescribed by tradition and the law.

Laurier was very proud of the rebellion of 1869-1870. In the same speech of 1874 he said:

> 'What were they fighting for, these brave men?' he asked his colleagues. All Riel and his friends 'wanted was to be treated like British subjects and not to be bartered away like common cattle. If that be an act of rebellion, where is the one amongst us who, if he had happened to have been with them, would not have been rebels as they were?' In conclusion he affirmed that, 'taken all in all, I would regard the events at Red River in 1869-70 as constituting a glorious page in our history, if unfortunately they had not been stained with the blood of Thomas Scott. But such is the state of human nature and of all that is human: good and evil are constantly intermingled; the most glorious cause is not free from impurity and the vilest may have its noble side.'

In 1876, Laurier met Riel in a rectory in Athabasca. He did not like him at all. He found Riel quite charismatic but highly disturbed and considered him a monomaniac.

The years passed by. Riel went to Montana, and the Metis of the Red River Valley, who were persecuted and taken advantage of, fled to the territory around Batouche on the North Saskatchewan River. Unable to obtain the rights and recognition they felt entitled to, they became restless. Gabriel Dumont, one of the greatest generals we have ever produced, and a few others, travelled by horseback to Montana to convince Riel to come back with them and lead the struggle for the recognition of the rights and liberties of the Metis people.

Riel accepted, and the rest you know well. A frightful battle ensued with many casualties, Riel's crazy antics, Dumont's superb talent, the courage of young and old men, the conspiracy of the men of a certain god to conspire with the Ottawa authorities, the futility of at all, the surrender of Riel on May 15, 1885, his being taken to Regina, and his trial and execution on November 16 1885.

Canada was never the same after that. Large unrest followed in the Province of Quebec with various assemblies condemming the Conservatives and the government of John A. Macdonald. Mourning, anxiety, fear, targeting, vulnerability, compassion and determination were the characteristics of the discussion. A part of us, I say that as a Quebècois de longue souche, had died on the gallows in Regina.

As for Laurier, in these terrible days of this dreadful November 1885, he kept faith with his remarks of some 10 or 11 years previous. The sorry episode had been caused by the incursion of the federal government. The Metis cause was just, and had he been on the banks of the Saskatchewan,

> I would myself have shouldered a musket to fight against the neglect of governments and shameless greed of speculators.

In the session of 1886, the debate moved to the House of Commons. There were more debates about this very sad moment in our history of our beloved country. On Tuesday, March 16, 1886, Wilfred Laurier rose to speak. History was about to be made.

> It was late, almost 11 p.m. Zoë had arrived in Ottawa a few days earlier. She was sitting in the Speakers Gallery, waiting and knitting. She didn't know when it was actually to happen that night. The exact day and time had been left to the vicissitudes of the debate. The House was practically empty and the members were restive. From the front row on the left side of the Speaker, Laurier stood up. Zoë dropped her knitting and leaned forward in her seat. She saw several members on both sides...enter and take their seats. The gallery also filled up, and officers of the governor general's guard and members of his household arrived unannounced. Laurier, pale and coughing lightly, began to speak.
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> 'Mr. Speaker,' he said, as he shuffled the papers on his desk and waited for the latecomers to take their seats. When he was satisfied that he had everyone's attention, he declared that Riel's death had been a judicial murder and that the *Canadiens* had not lost their heads. He admitted that if an injustice was committed against a fellow being, the blow fell deeper into his heart if it involved one of his kith and kin.
>
> He reviewed the government's record and the procedure at Riel's trial. He found the former inexcusable and the latter unjust. Then, in prose unparalleled in the annals of Canadian parliamentary debate, he had the courage to continue:
>
> I appeal now to my friends of liberty in this house; I appeal not only to the Liberals who sit beside me, but to any man who has a British heart in his breast, and I ask, when subjects of Her Majesty have been petitioning for years for their rights, and these rights have not only been ignored, but have been denied, and when these men take their lives in their hands and rebel, will any one in this House say that these men, when they got their rights, should not have saved their heads as well, and that the criminals, if criminals there were in this rebellion, are not those who fought and bled and died, but the men who sit on these Treasury benches?
>
> As for those who attacked him for his notorious remark...on the Champ de Mars on that Sunday in November, he attempted to explain the powerful reaction of his province to Riel's execution. He knew he wouldn't have an easy time of it but he felt impelled to do it just the same. The men who took up arms on the Saskatchewan, he pointed out, were in the wrong and their rebellion had to be put down. However, the men who waged that rebellion were 'excusable,' for they were the victims of hateful men who, having the 'enjoyment of power, do not discharge the duties of power; who, having the power to redress wrongs, refuse to listen to the petitions that are sent to them; who, when they are asked for a loaf, give a stone'...'I ask any friend of liberty, is there not a feeling rising in his heart, stronger than all reasoning to the contrary, that those men were excusable?'
>
> As for Riel himself, he was no hero to Laurier. 'At his worst, he was a subject fit for an asylum; at his best he was a religious and political monomaniac.' That he was insane was 'beyond the possibility of controversy.'

When Laurier was asked why Riel was executed, while his secretary, William Jackson, was not due to insanity, Laurier replied that it was because one was of English blood and the other was French.

> Those were his sentiments and he shared them with his people. He would not apologize. Nor would he retract the words spoken on the Champ de Mars. Was he being disloyal? Certainly not. If the hypocrites of the Conservative Party expected him to allow fellow-countrymen like the Métis, 'unfriended, undefended, unprotected and unrepresented in this House to be trampled under foot by this government,' they had the wrong man. 'That is not what I understand by loyalty; I would call it slavery.'
>
> He had spoken for over an hour and a half, but his words had a power that was compelling attention. Zoë sensed that the whole House was aware of it, for not a sound could be heard but the ticking of the clock. He looked in her direction, then he turned to the Speaker and, with great emotion and love, said:

> Today, not to speak of those who have lost their lives, our prisons are full of men who, despairing ever to get justice by peace, sought to obtain it by war; who, despairing of ever being treated by free men, took their lives in their hands, rather than be treated as slaves. They have suffered a great deal, they are suffering still; yet their sacrifices will not be without reward. Their leader is in the grave, they are in durance, but from their prisons they can see that that justice, that liberty which they sought in vain, and for which they fought not in vain, has at last dawned upon their country. Their fate in the truth of Byron's invocation to liberty, in the introduction to the 'Prisoner of Chillon':
>
> Eternal Spirit of the chainless mind!
> Brightest in dungeons, Liberty thou art!
> For there thy habitation is the heart —
> The heart which love of thee alone can bind;
> And when thy sons to fetters are consigned —
> To fetters and the damp vault's dayless gloom,
> Their country conquers with their martyrdom.
>
> Yes, their country has conquered with their martyrdom. They are in durance today; but the rights for which they were fighting have been acknowledged. Two thousand claims so long denied have been at last granted. And more — still more. We have it from the Speech from the Throne...

That justice "could not come then, but it came after the war; it came as the last conquest of that insurrection."

•(1510)

Again, I say that their country has conquered with their martyrdom, and if we look at that one fact alone, there was cause sufficient, independent of all others, to extend mercy to the one who is dead and to those who live.

He then sat down, as I do. Thank you. Vive le Canada!

On motion of Senator Stratton, debate adjourned.

FEDERAL NOMINATIONS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Cohen, for the second reading of Bill S-20, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions.—(*Honourable Senator Cools*).

Hon. Anne C. Cools: Honourable senators, it had been my intention to complete my remarks on this measure that the Honourable Senator Stratton has put before us, Bill S-20, to provide for increased transparencey and objectivity in the selection of suitable individuals to be named to certain high public positions. As honourable senators know, I have frequently raised here the issue of Royal Consent and the phenomenon of the process by which a member of the opposition may be able to obtain a Royal Consent.

In any event, honourable senators, we are under a time constraint. Could I impose upon the Senate to be allowed to adjourn the debate and continue it on another day when our agenda is not so crowded and we are not under the constraint of time, as we are all trying to get out of this chamber by 3:30.

Hon. Terry Stratton: May I ask the honourable senator a question?

The Hon. the Speaker: Will you take a question, Senator Cools?

Senator Cools: Yes. I thought I was trying to take the adjournment, but I could take questions.

The Hon. the Speaker: Senator Cools is beginning a speech and adjourning it to the next sitting.

Senator Cools: As I said before, we are under a time constraint.

The Hon. the Speaker: Senator Cools is beginning a speech that she will adjourn, which is in keeping with our past practice. However, it is also a rule that if the senator whose time is before us in terms of speaking will take a question, then a question can be put or comment made.

Senator Stratton: Honourable senators, my point is very brief. This item has been on the Order Paper since last fall. It keeps getting kicked over and kicked over. I would ask that if the honourable senator were rewinding the clock, when would she speak?

Senator Cools: Very shortly.

Senator Stratton: What does "very shortly" mean?

Senator Cools: Soon.

Senator Stratton: I will respond in kind.

The Hon. the Speaker: It is moved by the Honourable Senator Cools, seconded by Senator Phalen, that further debate on the matter be adjourned until the next sitting of the Senate. Senator Cools will speak at that time and for the balance of the allotted time.

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

Hon. Senators: Agreed.

Motion agreed to.

NATIONAL SECURITY AND DEFENCE

MOTION TO AUTHORIZE COMMITTEE TO STUDY NEED FOR NATIONAL SECURITY POLICY—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Cordy, seconded by the Honourable Senator Milne,

That the Standing Senate Committee on National Security and Defence be authorized to examine and report on the need for a national security policy for Canada. In particular, the Committee shall be authorized to examine:

(a) the capability of the Department of National Defence to defend and protect the interests, people and territory of Canada and its ability to respond to or prevent a national emergency or attack;

(b) the working relationships between the various agencies involved in intelligence gathering, and how they collect, coordinate, analyze and disseminate information and how these functions might be enhanced;

(c) the mechanisms to review the performance and activities of the various agencies involved in intelligence gathering; and

(d) the security of our borders.

That the Committee report to the Senate no later than June 30, 2003, and that the Committee retain all powers necessary to publicize the findings of the Committee until July 30, 2003; and

That the Committee be permitted, notwithstanding usual practices, to deposit any report with the Clerk of the Senate, if the Senate is not then sitting; and that the report be deemed to have been tabled in the Chamber.—(*Honourable Senator Maheu*).

Hon. Shirley Maheu: Honourable senators, I have a very brief question for Senator Cordy. Permission was requested to deposit the report on June 30, 2003, even if the Senate is not sitting. We all know that the Senate will not be sitting on June 30. None of us would have an opportunity to see the report until probably September or October. Would Senator Cordy please comment?

The Hon. the Speaker: Senator Maheu is using her opportunity to speak, and she has put a question. Perhaps we could reverse it, and Senator Cordy could make a comment, which the honourable senator is entitled to do under the rules.

Hon. Jane Cordy: I thank the honourable senator for the question. This matter was raised last week when I brought forward this motion. After it was moved in the house, I discussed it with other members of the committee. All committees in the Senate, I am sure, wish to make every effort to report to the Senate when the Senate is in session. It does not always happen.

I researched the occurrence of reports being submitted while the Senate was not sitting during the period since June 2001. The Standing Senate Committee on Agriculture and Forestry reported on June 28, 2001. The Standing Senate Committee on Fisheries tabled a report in June 29, 2001. The Standing Senate Committee on Social Affairs, Science and Technology tabled reports on September 17, 2001 and January 29, 2002. The Standing Senate Committee on National Security and Defence tabled a report on February 28, 2002.

Honourable senators, keeping in mind that all of these reports were tabled while the Senate was not in session, Senator Maheu raises a very valid point that perhaps all committees of the Senate should keep in mind when setting a date to table or present a report. While our report states "no later than," and I think all committees do that, traditionally the tabling or presentation of a report tends to be pretty darn close to the date that has been cited.

In consideration of the concerns that were raised by Senator Stratton and by other senators, members of our committee informally discussed what we should do because we want to do what is best for the Senate. With that in mind, a member of our committee will move an amendment today, if there is time, or at the next sitting. In the best interests of the Senate, we will propose to amend the reporting date.

•(1520)

MOTION IN AMENDMENT

Hon. Michael A. Meighen: As the designated member of the committee, I would move the amendment. We could perhaps set a modest example and say that there can be no doubt that our report will be tabled when the Senate is sitting.

I move:

That the motion be amended in the penultimate paragraph to read:

That the Committee report to the Senate no later than October 30, 2003, and that the Committee retain all powers necessary to publicize the findings of the Committee until November 30, 2003; and

Hon. John G. Bryden: I rise on a point of order. Is Senator Meighen speaking on the report?

The Hon. the Speaker: No. Senator Meighen is moving an amendment to the motion. Did Senator Bryden wish to speak to the report?

Senator Bryden: Senator Meighen cannot just stand up and move to amend the reference to the committee.

The Hon. the Speaker: Just to recap what took place, Senator Maheu requested information on this matter. That information was sought from the last speaker, Senator Cordy. Senator Cordy provided the information sought by Senator Maheu.

Although I am sorry if honourable senators did not hear me, I then recognized Senator Meighen by calling his name. I saw Senator Bryden rising and that is why I asked him whether he wished to speak.

However, I did recognize Senator Meighen and I do so again.

Senator Bryden: Senator Cordy said that she believed another speaker would move an amendment. I take it Senator Meighen is that other speaker. If he is, once he has moved the amendment I can ask him if he will accept a question.

The Hon. the Speaker: Senator Bryden is quite right.

Will Senator Meighen accept a question?

Senator Meighen: Certainly.

Senator Bryden: My question relates to timing. As a member of the committee, does the honourable senator not find it unusual that, before the Senate has had the opportunity to debate or assess the value of the report that was prepared in accordance with the last order of reference, a request is being made for a further order of reference, when we do not know whether the first order of reference to this committee produced a report that was of any value?

Would it not be fairer to the members of the Senate if they had the opportunity to debate the report and assess the value of the committee's work before giving a further mandate? As we know, the opposition is having a heyday with the first report of the committee.

Would it not be appropriate for members of the Senate to have the opportunity to determine whether the first report of the committee is of sufficient value to the Senate and the people of Canada to justify extending the terms of reference?

Senator Meighen: I cannot speak to precedents in this matter, because I have no knowledge of precedents. However, as to the substance of the question, it seems to me that members on both sides of this chamber have been having a heyday with this report. They have been very interested in and concerned about it. The report has been in the possession of senators for some time. I appreciate that we have not yet had the opportunity to debate the substance of the report.

This order of reference flows from the work of the committee over the past number of months. This is what we are seeking the authority of the Senate to do. The purpose of my amendment is merely, as honourable senators can well appreciate, to clear up any possibility of a repetition of the tabling incident that caused disquiet on both sides of this chamber, and to ensure that, next time, senators receive a copy of the report as soon as it is tabled.

I cannot say whether it is the practice to defer consideration of a subsequent order of reference until debate has been exhausted on the first report. However, I can say that the matters we studied in our initial report, which give rise to this order of reference, seem to me to be of reasonable urgency and not matters that would cause any prejudice to a full and open debate in this chamber on the findings of the initial report.

I am in the hands of the Senate. If the Senate prefers that we wait, that is what will happen. However, I do not think any prejudice would be caused if we were to proceed as I suggested.

Senator Bryden: Senator Meighen made reference to whether it is proper to introduce this motion when debate on the earlier report has not been exhausted. Has debate on the first report been initiated? Did the chair of the committee speak to his report?

Senator Meighen: Although I was not in the chamber, it is my understanding that Senator Banks adjourned the debate in his name. Therefore, I think it can be argued that the debate has been initiated, although I fully agree that it has not gone very far.

Senator Bryden: Has any honourable senator yet spoken to the report?

•(1530)

Senator Meighen: Although I was not present in the chamber, from what I read and I understand, Senator Banks merely adjourned the debate in his name. I do not think there has been any other speech than that, if one wishes to term that a speech.

Senator Bryden: It is fair to say the debate has not been exhausted.

Senator Meighen: It certainly is, unless you get tired very quickly.

Hon. Lowell Murray: Would the honourable senator indicate whether a request for funds has gone forward from this committee to the Standing Committee on Internal Economy, Budgets and Administration and, if so, for what amount to support this particular project?

Senator Meighen: Senator Murray has me at a disadvantage because he is far more versed in procedure than I am. My understanding is that it has not gone forward as yet, particularly because the order of reference has not yet been approved.

Senator Murray: Fair enough. I simply want to flag the fact that this order of reference, if it passes, as amended, together with a number of others, will bring in their wake a request for funds or a proposed budget before the Internal Economy Committee. Someone will correct me if I am wrong, but I have been told that the Internal Economy Committee now has before it almost $4 million in proposed budgets as opposed to an available amount of some $1.8 million. I do not want to single this one out, but our approval of this and other orders of reference must be done on the clear understanding that the Internal Economy Committee, and ultimately this chamber, will have some very difficult decisions to make and priorities to establish.

Senator Meighen: Once again, I find myself in agreement with Senator Murray.

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

Hon. Fernand Robichaud (Deputy Leader of the Government): On the amendment.

The Hon. the Speaker: To clarify, we are completing debate on an amendment moved by Senator Meighen, seconded by Senator Stratton. The question is on the amendment. It was moved by Senator Meighen, seconded by Senator Stratton, that the motion be amended in the penultimate paragraph by replacing the words "June 30, 2003" with "October 30, 2003" and by replacing the words "July 30, 2003" with the words "November 30, 2003."

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

Motion in amendment agreed to.

The Hon. the Speaker: Is the house ready for the question on the motion as amended?

[*Translation*]

Senator Robichaud: Honourable senators, we should continue with the practice that we have tried to establish lately. Before adopting the order of reference for a Senate committee, we should obtain information on the resources that will be required to carry out the order of reference. In order to ensure that we have all of this information, I propose the adjournment of the debate.

On motion of Senator Robichaud, debate adjourned.

STATUS OF PALLIATIVE CARE

INQUIRY—ORDER STANDS

Hon. Michael Kirby rose, pursuant to notice of February 5, 2002:

> That he will call the attention of the Senate to the status of palliative care in Canada.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate and the Honourable Senator Kirby, I ask that this inquiry stand in the name of the Honourable Senator Cordy from now on. The latter has agreed that this inquiry stand in her name.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Thursday, March 14, 2002, at 1:30 p.m.

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