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OFFICIAL REPORT  
(HANSARD)

**Thursday, May 30, 2002**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Thursday, May 30, 2002

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

• (1340)

Prayers.

[*Translation*]

### SENATOR'S STATEMENT

#### COMMENTS BY LEADER OF CANADIAN ALLIANCE PARTY ON ATLANTIC CANADIANS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**

Honourable senators, Atlantic Canadians are an assiduous, industrious and creative people. Atlantic Canadians are also proud Canadians. They are proud, as all Canadians are, of the contributions made by our many peoples. We are proud of the contributions made by our francophone and Acadian communities to the development of Canada. We were proud, for example, to welcome the world community to Moncton, New Brunswick, during the highly successful La Francophonie summit. We are proud of the self-reliance of the large and small entrepreneurial communities, and we are proud to follow the success of our highly skilled and well-educated youth, who have generously put their collective shoulder to the building of our great national enterprise.

However, honourable senators, Atlantic Canadians, while a tolerant people, are also a people impatient with mediocrity, and particularly impatient with the aristocratic mediocrity that is based on culpable ignorance demonstrated by the Leader of the Official Opposition in the other place.

Honourable senators, the Business Development Bank of Canada says that Newfoundland and Labrador led the country in terms of economic growth last year and are expected to do the same this year. On Tuesday, the Conference Board of Canada reported the same thing, also saying that Prince Edward Island will have the country's second highest economic expansion, due to a strong rebound in the agriculture industry. New Brunswick and Nova Scotia are also expected to have strong economic growth this year, fuelled by construction activity.

Honourable senators, Atlantic Canadians rightfully reject the stark stereotyping attempted by the man living at the official residence of the opposition leader, Stornoway. Atlantic Canadians have nothing to learn from a prejudiced and stereotypical view of the Atlantic region — a view that could only be formed by living in intellectual isolation behind a firewall of ignorance.

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

### ROUTINE PROCEEDINGS

#### SCRUTINY OF REGULATIONS

##### SIXTH REPORT OF JOINT COMMITTEE TABLED

**Hon. Céline Hervieux-Payette:** Honourable senators, I have the honour to present the 6th report of the Standing Joint Committee for the Scrutiny of Regulations relating to the aboriginal communal fishing licences regulations and the amendments thereto.

[*English*]

#### NATIONAL SECURITY AND DEFENCE

##### BUDGET—STUDY ON HEALTH CARE SERVICES AVAILABLE TO VETERANS—REPORT OF COMMITTEE PRESENTED

**Hon. Michael A. Meighen,** for Senator Kenny, Chair of the Standing Senate Committee on National Security and Defence, presented the following report:

Thursday, May 30, 2002

The Standing Senate Committee on National Security and Defence has the honour to present its

#### SEVENTH REPORT

Your Committee, which was authorized by the Senate on October 4, 2001 to examine and report on the health care provided to veterans of war and of peacekeeping missions; the implementation of the recommendations made in its previous reports on such matters; and the terms of service, post-discharge benefits and health care of members of the regular and reserve forces as well as members of the RCMP and of civilians who have served in close support of uniformed peacekeepers, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place within Canada for the purpose of such study.

Pursuant to section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

COLIN KENNY  
*Chair*

(For text of budget, see today's Journals of the Senate, Appendix A, p. 1630.)

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

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

[Later]

#### FOREIGN AFFAIRS

##### BUDGET—STUDY ON EMERGING DEVELOPMENTS IN RUSSIA AND UKRAINE—REPORT OF COMMITTEE PRESENTED

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

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

Thursday, May 30, 2002

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

#### THIRTEENTH REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1st, 2001 to examine and report on emerging political, social, economic and security developments in Russia and Ukraine; Canada's policy and interests in the region; and other related matters, now requests approval of funds for 2002-2003.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

PETER A. STOLLERY  
*Chairman*

(For text of budget, see today's Journals of the Senate, Appendix B, p. 1636.)

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

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

##### BUDGET—STUDY ON ISSUES RELATED TO FOREIGN RELATIONS—REPORT OF COMMITTEE PRESENTED

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

Thursday, May 30, 2002

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

#### FOURTEENTH REPORT

Your Committee, which was authorized by the Senate on Thursday, March 1st, 2001 to examine such issues as may arise from time to time relating to Foreign relations generally, now requests approval of funds for 2002-2003.

Pursuant to Section 2:07 of the *Procedural Guidelines for the Financial Operation of Senate Committees*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that Committee are appended to this report.

Respectfully submitted,

PETER A. STOLLERY  
*Chairman*

(For text of budget, see today's Journals of the Senate, Appendix C, p. 1642.)

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

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

#### AGRICULTURE AND FORESTRY

##### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF INTERNATIONAL STATE AND NATIONAL STATE OF AGRICULTURE AND AGRI-FOOD INDUSTRY

**Hon. Leonard J. Gustafson:** Honourable senators, I give notice that on Tuesday, June 4, 2002, I will move:

That the date of presentation by the Standing Senate Committee on Agriculture and Forestry of the final report on its study into international trade in agricultural and agri-food products, and short-term and long-term measures for the health of the agricultural and the agri-food industry in all regions of Canada, which was authorized by the Senate on March 20, 2001, be extended from June 30, 2002 to March 30, 2003.

## UNITED NATIONS GENERAL ASSEMBLY SPECIAL SESSION ON CHILDREN

### NOTICE OF INQUIRY

**Hon. Landon Pearson:** Honourable senators, pursuant to rule 57(2), I give notice that on Wednesday next, June 5, 2002, I will call the attention of the Senate to the United Nations General Assembly Special Session on Children, which took place in New York on May 10, 2002.

## IMPACT OF CORPORATE GOVERNANCE IN CANADA

### NOTICE OF INQUIRY

**Hon. Jim Tunney:** Honourable senators, I give notice that on Wednesday next, June 5, 2002, I will call the attention of the Senate to corporate governance in Canada and the impact it has on ordinary individual Canadians, including shareholders, pensioners, employees and suppliers.

## PERSONAL WATERCRAFT BILL

### PRESENTATION OF PETITIONS

**Hon. Mira Spivak:** Honourable senators, I have the pleasure to present 62 petitions, bearing the signatures of 588 Canadians who are urging the Senate to pass Bill S-26, the personal watercraft bill. This brings the total number of petitioners to 3,357.

## QUESTION PERIOD

### TREASURY BOARD

#### AMNESTY FOR PUBLIC SERVICE WHISTLE-BLOWERS ON SPONSORSHIP PROGRAM

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my question is to the Leader of the Government in the Senate. Last evening our Standing Senate Committee on National Finance had the privilege of hearing, as a witness, the President of the Treasury Board. We had, to my estimation, an excellent exchange of views.

We also dealt with the matter of our common interests, "our" in the sense that the Senate has adopted at second reading a bill dealing with whistle-blowing, and we have been working closely, as a committee, with the President of the Treasury Board. We had an exchange on that topic, and I think the President of the Treasury Board expressed an appreciation for the work of the Senate on that file.

My question arises from a feeling that public servants are concerned about the unravelling of a number of issues of controversy. Will the government make a statement to the effect that whistle-blowers, who bring forward information relating to matters like the Groupaction affair, will be granted a type of amnesty?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator has indicated, he introduced the interesting concept of whistle-blowing into this chamber about a year and a half ago. In June of last year, the minister responsible for the Treasury Board, after discussions with the honourable senator opposite, introduced a policy on whistle-blowing. The policy is very clear and is meant to protect whistle-blowers, as well as to ensure that there is an appropriate process in place. That process is now up and working.

Honourable senators, it would be inappropriate to give some individuals amnesty while denying it to others. What is appropriate is that there be a means within the existing policy by which public servants may make a complaint, a process which should be followed by each and every public servant.

**Senator Kinsella:** Honourable senators, is it the minister's view that we encourage employees of the Department of Public Works and other ministries to, indeed, come forward if they have information on wrongdoing and that there will be no adverse job action taken against them for shedding light on any such matter?

**Senator Carstairs:** Honourable senators, it is the position of the government that the policy is in place and that it is a good policy. It is a policy that, in large part, owes its development to the honourable senator opposite. All public servants have been made aware of that policy, and it should be strictly followed.

*[Translation]*

## CITIZENSHIP AND IMMIGRATION

### STATUS OF REFUGEE CLAIMS

**Hon. Roch Bolduc:** Honourable senators, my question is for the Leader of the Government in the Senate. Last year, if my memory serves me well, there were some 30,000 or 40,000 people awaiting refugee status. Could the minister indicate whether some of these claimants have been processed?

There are a large number of refugees. The semi-judiciary process we have in Canada takes a great deal of time. Could you give us an idea of where we are at now? Have the numbers of refugee claims gone down or up?

*[English]*

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I must advise the honourable senator that I cannot give him a status report on refugee claims at this point in time.

• (1350)

I do know that the boards have been meeting and that they have been processing claims. I do not know whether the overall number is greater. However, there has been a halt in changing the procedures because it was felt that, given the backlog, it was important to deal with it without having to spend time re-educating people in the new processes, which would have removed those who function as commissioners. Therefore, the whole purpose was to ensure that the process was made as effective as possible.

[Translation]

**Senator Bolduc:** Minister, could you ask the department to provide us with some figures on the current situation that are a little more precise? They might have some statistics they could give us.

[English]

**Senator Carstairs:** Yes, I will ask the department to give me an update on the status of refugee claims.

#### ADMINISTRATION OF REFUGEE CLAIMS

**Hon. Roch Bolduc:** My second question also relates to immigration. We know that the screening process for immigrants, not refugees, is more strenuous. According to a Montreal newspaper, Montreal is becoming the prostitution capital. Apparently, there are networks of possibly thousands of girls coming from Russia. I wonder why it is so difficult for some people to get through, while others apparently get through easily.

Does the government leader have an explanation?

**Hon. Sharon Carstairs (Leader of the Government):** There is no question that the trafficking of human beings — and I happen to consider prostitution a form of trafficking of human beings — is unacceptable, not only to this government but to the opposition as well. The issue of prostitution, in all of our cities, is one of great seriousness to this government, but I think it would be a hard stretch to tie the incidents of prostitution with refugee claims or with immigration into this country.

Sadly enough, there are those who are brought into this country, frequently illegally, and then put on the streets of this nation as prostitutes. Their living conditions are deplorable and the condition of their “employment,” using the word very loosely, is totally unacceptable.

**Senator Bolduc:** Honourable senators, I should not like to leave the impression that I do not think of that situation as a tragedy. Of course, it is, and we on our side all agree. However, what I wanted to stress is that the administrative processes, in this situation, do need a second look.

**Senator Carstairs:** There is no question that the government is serious in trying to get to the root of this problem. Illegal immigrants are entering countries throughout the world, particularly countries that are seen as advantaged countries. Obviously, we need to give our police the adequate support to investigate these cases, with a view to ensuring that trafficking of human beings is eliminated wherever possible.

[Translation]

#### SOCIÉTÉ RADIO-CANADA

##### LOSS OF RIGHTS TO *LA SOIRÉE DU HOCKEY*

**Hon. Jean-Claude Rivest:** Honourable senators, my question concerns *La Soirée du hockey* and Société Radio-Canada. It appears that the Montreal Canadiens hockey team reached an agreement this morning with RDS, the French-language sports network, giving it the broadcasting rights for all its games. This means that the Société Radio-Canada, which is the French-language public network, will no longer broadcast *La Soirée du*

*hockey* on Saturday evening. This is an injustice to all Canadian francophones, since the English network will, of course, continue to broadcast *Hockey Night in Canada*.

For francophones from Quebec and outlying areas, RDS is a specialty channel only available on cable. Since not everyone can afford cable, this means that less affluent francophones will clearly be discriminated against. This is the reality.

Could the minister inform her cabinet colleagues of this concern? Canadian francophones consider that hockey is an important part of their culture. They will feel discriminated against. It should have been the Société Radio-Canada's responsibility to ensure fairness between the two major networks regarding a very important activity, namely, *La Soirée du hockey*.

[English]

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for raising that question this afternoon. I shall take his representations to the cabinet and add a few of my own as well, which will be in direct line with his.

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## ORDERS OF THE DAY

### EXCISE BILL, 2001

#### SECOND READING

**Hon. George J. Furey** moved the second reading of Bill C-47, respecting the taxation of spirits, wine and tobacco and the treatment of ships' stores.

He said: Honourable senators, Bill C-47 proposes a moderate legislative and administrative framework for the taxation of spirits, wine and tobacco products, under a new Excise Act. It also implements other excise measures that relate to ships' stores provisions and tobacco tax increases, that were announced last fall.

• (1400)

The Excise Act, as honourable senators may know, is the foundation of the federal commodity taxation system for alcohol and tobacco products in Canada. It imposes excise duties on spirits, beer and tobacco products manufactured in Canada. It also includes extensive control provisions over the production and distribution of these products. Specific duties and taxes are also imposed on these products under two other federal statutes — the Customs Tariff and the Excise Tax Act.

Customs duties equivalent to the excise duties on domestically produced goods are levied under the Customs Tariff on imported spirits, beer and tobacco products, while excise taxes on domestic and imported wine and tobacco products are applied under the Excise Tax Act. The new framework, however, does not address

the substantive tax rate or base matters for alcohol and tobacco products, and it does not address beer which, with the concurrence of the brewing industry, will remain under the current Excise Tax Act for the time being.

Honourable senators, the Excise Act is one of the oldest taxing statutes in Canada. Parts of it existed in previous configurations prior to Confederation, while other provisions date back to the Consolidated Inland Revenue Act of the 1880s. Historically, commodity taxes on specific goods have been an important element of our federal tax system. In the early part of the 1900s, these levies accounted for as much as 25 per cent of federal revenues. In the year 2000-01, excise duties and taxes on alcohol and tobacco products contributed \$3.4 billion in federal revenues. While amendments have been introduced over the years to address specific issues as they arose, the Excise Act, as a whole, has never been thoroughly reviewed and revised until now.

Honourable senators, outdated and pervasive controls in the act impose high compliance costs on industries and impair the competitiveness of Canadian alcohol producers, who are facing increased foreign competition in the Canadian marketplace. As well, the Excise Act does not accommodate new technology implemented by industry and contemporary marketing and distribution initiatives.

It is time for a new and completely modern excise framework. This is the 21st century and not the 19th century, when parts of the existing act originated.

Honourable senators, allow me to provide you with a few examples of the kinds of archaic rules that are still on the statute books today. The Excise Act allows excise officers to enter premises at any time and break up or remove parts of the premises such as walls, ceilings and doors. Taxpayers who suffer losses because of the actions of excise officers are only entitled to damages of 20 cents. An individual found guilty of possessing or selling alcohol in contravention of the Excise Act, under the existing regime, could face up to 12 months of hard labour. Licensed producers cannot operate at night without prior authorization from Canada Customs and Revenue Agency, CCRA, and they are required to have an excise officer present at their own expense. Licensees who intend to make alterations to their premises must provide CCRA with a detailed description of their proposed alterations, and once the work is completed, they must provide the plans of the work. Pipes used in a distillery to convey spirits must be coloured blue and those used for beer must be green. Licensees are prohibited from erasing any words or figures from their books and records; and the only changes to the books may be made by crossing out words or figures with ink in such a way as to ensure that they remain legible.

Honourable senators, these are hardly appropriate rules for a taxation framework in 2002. Clearly, the time has come for a new Excise Act.

Industry and government have been aware, for some time, of the need for a substantive review of the framework. After all, industry has to comply with the outdated rules and government must administer the rules. As I indicated previously, the current act does not accommodate new technology and current industry practices. Even though industry is facing greater foreign

competition in Canadian markets for beverage and non-beverage alcohol, the act continues to impose high compliance costs and controls that impair their ability to compete at home.

Honourable senators, from an administrative standpoint, it has become increasingly difficult for the CCRA to fully adopt modern administrative practices under this archaic act. It is clear as well, that recent wine contraband pressures need to be addressed. Wine is currently taxed under the Excise Tax Act and there are no substantive controls on its production. Tobacco is taxed under two acts — the Excise Act and Excise Tax Act. This creates complexities and inefficiencies for industry and government. Simply, a revised excise framework would be to everyone's benefit.

The government's review of the Excise Act was guided by three objectives: first, to provide a modern legislative framework for a simpler and more certain administrative system that recognizes current industry practices; second, to facilitate greater efficiency and fairness for all parties leading to improved administration and reduced compliance costs; and, third, to ensure the continued protection of federal excise revenues.

In 1997, a discussion paper was jointly released by the Department of Finance and CCRA that outlined a proposal for a revised legislative and administrative federal framework for the taxation of alcohol and tobacco products. Two years later, in 1999, the government released draft legislation and regulations. Public consultations with affected industry groups and businesses, provincial governments, liquor boards, various federal departments, the RCMP and other enforcement agencies were an integral part of the review. The end result of this process is the introduction of Bill C-47, which has broad support among the spirits, wine and tobacco sectors, the provincial liquor boards and law enforcement agencies.

The new legislative framework for the taxation of spirits, wine and tobacco, to be implemented by the passage of this bill, will provide the following: a simpler and more certain taxation procedure or structure; equal treatment of all parties; improved administration and lower compliance costs; greater flexibility for business to organize their commercial affairs; and enhanced protection of excise revenues.

Honourable senators, let me be more specific. Bill C-47 incorporates key elements of the framework that were outlined in the 1997 discussion paper. These elements include maintaining the production level of spirits, replacing the excise level at the time of sale for wine with a production levy at an equivalent rate, deferred payment of duty for spirits and wine to the wholesale level and introducing modern collection tools.

Maintaining the production levy and extending it to wine means that there will be stricter controls on the production, importation, possession and use of non-duty-paid alcohol, along with significant penalties for breaking the law. Removing the outdated and onerous controls on premises and equipment, which have hindered the spirits industry for years, will provide businesses with greater flexibility to organize their commercial affairs so that they can respond more quickly to changes in the marketplace.



Anyone, vintners included, who produces or packages spirits or wine, will now have to be licensed, although the existing small manufacturer's tax exemption will remain in place for vintners with sales not exceeding \$50,000 in the previous 12 months. Individuals producing wine for personal use will continue to be exempt from having to be licensed and to pay duty.

The new warehousing regime for deferring duty on packaged alcohol will put domestic and imported packaged alcohol on an equal footing. This new regime will also accommodate provincial privatization initiatives for the warehousing of liquor. At the same time, the current comprehensive controls on the non-beverage uses of spirits will remain in place and will be extended to cover the use of wine. These include controls on the licensing of users and the authorization of non-beverage uses of alcohol. Maintaining these controls will protect the federal excise revenues that are derived from beverage alcohol.

• (1410)

The existing nominal duties on certain authorized non-beverage use of spirits, such as in the manufacture of pharmaceutical goods, will be eliminated. These duties are not applied in a consistent manner and place domestic products manufactured with spirits at a disadvantage with foreign products entering Canada.

Although the fundamental controls on non-beverage alcohol remain unchanged, new measures on imported industrial alcohol will ensure the integrity of the domestic alcohol market and protect federal revenues. In particular, imported denatured industrial alcohol will have to be sampled and tested to ensure it meets Canadian standards. In addition, new enforcement measures will help the government counteract the smuggling of alcohol. Fines for alcohol-related offences will increase substantially and proceeds of crime provisions will cover serious alcohol offences.

Honourable senators, the new excise framework also extends to tobacco products and incorporates the revised tobacco tax structure introduced in April 2001, which includes: an excise levy on manufactured tobacco sold in duty-free shops; a customs duty on manufactured tobacco imported by returning residents under the travellers' allowance; and a revised excise tax structure for exported manufactured tobacco. Further, the current excise duty and excise tax on tobacco products other than cigars will be merged into a single production levy, a measure that will improve administration for the CCRA and reduce compliance costs for industry.

While this is a more streamlined system for the taxation of tobacco than what currently exists, the new framework in no way diminishes current controls over tobacco. For example, the current stamping and marking requirements for tobacco products will continue to apply and play a key role in the enforcement of the tobacco provisions in this bill. The current offence provisions relating to the illegal production, possession or sale of contraband tobacco, which have proven to be effective, will also be part of the new framework.

Measures that will enable the CCRA to improve its level of service to clients and its overall administration of the excise framework for alcohol and tobacco products are another key

component of the new system. These measures are consistent with the CCRA's integrated accounting initiative and include: a duty remittance and return structure harmonized with commercial accounting periods and the GST/HST legislation; assessment and appeal provisions similar to those under the GST/HST legislation; and a range of modern collection mechanisms.

The new legislative framework also provides an array of other modern administrative and enforcement tools to ensure compliance. In particular, a number of new administrative penalties will be enforced against those dealing with excisable goods that fail to comply with the act.

Honourable senators, I now want to discuss the three remaining excise measures that are legislated through this bill. The first relates to ships' stores provisions that grant relief from duties and taxes for goods based on board ships and aircraft in international service. Ships' stores changes were announced last September in response to a Federal Court of Appeal decision that the ships' stores regulations went beyond the scope of their enabling legislation. Bill C-47 provides the proper legislative authority for these regulations. The changes will take effect on the date the provisions identified by the court were incorporated into the regulations.

A second measure implements a temporary fuel tax rebate program for certain ships that will no longer qualify for ships' stores relief as a result of amendments to the ships' stores regulations effective June 1, 2002. Ships eligible for the rebate include commercial tugs, ferries and passenger ships travelling on the Great Lakes and lower St. Lawrence River, that are not engaged in international trade. This rebate will apply on fuel purchased between June 1, 2002 and December 31, 2004, and is intended to provide the affected operators with adequate time to make the transition to the new ships' stores rules.

The third measure implements the federal tax increases on tobacco products announced last November. Like the April 2001 measures, these increases are part of the government's comprehensive strategy to improve the health of Canadians by discouraging tobacco consumption. These increases — amounting to \$2 per carton of cigarettes for sale in Quebec, \$1.60 in Ontario and \$1.50 in the rest of Canada — re-establish a uniform federal tax rate for cigarettes across the country and are coordinated with provincial tobacco tax increases.

The government remains committed to working toward restoring tobacco taxes to pre-1994 levels in ways that will minimize the risk of renewed contraband activity as quickly as possible. These measures are another step in achieving that important objective.

In closing, honourable senators, all the elements of this bill deserve your attention and deserve to be passed without delay. First, it makes sense to implement a new Excise Act to address a long-standing need of both industry and government. The modern framework implemented through the bill will generate stable and secure revenues and also address contraband pressures. At the same time, these results will be achieved without imposing unrealistic or unnecessary costs and administrative burdens on industry participants.

Earlier, I made the point that parts of the Excise Act predate Confederation. In the year 2002, the time has come to provide industry and government with a modern and effective excise framework within which to operate, one that reflects the realities of the world in which they work. Industry and government have made changes over the years to keep up to date. It is time the Excise Act reflects today's world. It also makes sense to rationalize the ships' stores provisions and to provide tobacco tax increases for reducing tobacco consumption. I urge all honourable senators to support this legislation.

**Hon. Terry Stratton:** Honourable senators, I rise to speak to Bill C-47, which has three main objectives. First — surprise, surprise — it raises taxes. Second, it provides a legal basis for the existing regulations granting tax relief to ships' stores. A recent court decision found that those regulations were invalid because there is no authority in the current act for them. Third, the bill updates and overhauls the legal framework governing the excise taxes levied on spirits, wine and tobacco. In other words, there are several amendments that deal not so much with how much cash the government squeezes out of the poor taxpayer, but more with the terms of engagement. The changes include such matters as new rules for certain goods produced by individuals for their own use, tighter controls on the possession and distribution of goods on which duties have not been paid, and new enforcement mechanisms.

The government has been consulting on administrative changes to the excise tax since at least 1997. Since the consultations lasted some four or five years, one would think they would get it right. However, smaller vintners from Quebec appearing before the Finance Committee in the other place made a legitimate case about the new rules regarding excise warehouses. I would suspect that their particular grievance would also apply to small estate wineries in Ontario, Nova Scotia, British Columbia and Prince Edward Island.

Bill C-47 replaces the excise duty of sales on wine with an equivalent tax on production — as is already the case for spirits. The tax will be payable at the time of packaging, which in this case means bottling. However, if the wine is moved into an excise warehouse, the production levy will be deferred until the wines and spirits are sold out of the warehouse.

• (1420)

That is fine for larger wineries, but for a small estate winery with production of no more than a few thousand cases, the wine is vinted, bottled, corked, stored and sometimes sold in the same building. A special excise warehouse is not a cost-effective option. The small vintner will have to pay tax the minute the wine goes into the bottle. Unlike the larger wineries, the small vintner cannot defer the tax until the wine is sold. The cash flow of the small vintner will clearly be affected, as that wine may rest in the bottle for months, or years, before it leaves the winery. Cider producers have a similar concern.

The opposition moved an amendment at committee stage in the other place to exempt wineries with annual production of less than 150,000 litres from the excise warehouse rule. The government members defeated it, instead promising a review. Clearly, the government does need to rethink this.

Honourable senators also have to wonder about the cost to the government of this new duty scheme. Will this new tax structure raise the government's costs by requiring it to hire more excise

warehouse inspectors? Will there be new costs for the large wineries also, as their flexibility is reduced?

Honourable senators, I should now like to say a few words about the tobacco tax increases in this bill. I have serious problems with the health aspects of smoking. I have lost, as we all have, too many good friends and colleagues to cancer. Some 45,000 Canadians die each year from smoking-related illnesses. That is one person every 12 minutes. Friday of this week is World No Tobacco Day, which is organized annually by the World Health Organization to draw international attention to the problem of tobacco use and to the avoidable disease and death it causes.

One can only hope that more people will get the message, and that those who missed the chance to butt out on Weedless Wednesday will do so this Friday on World No Tobacco Day. However, sadly, the reality is that many smokers are unable to stop smoking, no matter how often they try, even though cigarettes can cost over \$8 a package, approximately 35 cents a cigarette. They cannot quit because the product is too addictive.

Honourable senators, while I have concerns with the health aspects of tobacco, I also have serious problems with taxes. It is hard not to think that higher tobacco taxes have more to do with feeding this government's addiction to taxes than they do with the health concerns. The tobacco measures in this proposed legislation will add \$240 million a year to the government's coffers. If that money were put into smoking-cessation programs, that would be fine. One would then expect the impact to be revenue neutral, or even negative, as the tax base would shrink.

If the government were sincere about this being a health measure, one would expect it to use every last dime raised by taxes to fund new programs to help people kick the habit or to reduce taxes by a corresponding amount on products and activities that make us healthier.

Honourable senators will recall that some years ago excise taxes were cut in provinces where smuggling across the Canada-U.S. border was a problem. That led to another problem, that of smuggling between provinces. It was very easy to make a living tossing cigarettes into the back of a van and hauling them from Kenora, Ontario, to Winnipeg, Manitoba. Smuggling between provinces replaced smuggling between nations.

Bill C-47, if passed, will raise federal tobacco taxes in five provinces to the rate that applies in the other five. However, even with these proposed changes, which we are being asked to pass retroactively to last November, smuggling will continue, as each province has a different provincial tax rate on tobacco. An individual who is bringing more than five cartons into Manitoba from Ontario is required to report that at the border and pay the tax. You can imagine how many people do that.

Other forms of crime beyond smuggling can be a problem as long as taxes are kept high. These days, the main reason a crook hits a convenience store is not for the cash but for the cigarettes, which are more valuable than the cash in the till.

Honourable senators, I will conclude by stressing that, with the government now in a surplus position, its two key priorities should be to reduce both taxes and the debt. While some taxes have slowly come down, others are going up. This bill raises tobacco taxes. Just a few months ago, the government instituted an airline security tax. At the end of this year, the Canada Pension Plan premium will increase. The government is still using Employment Insurance as a cash cow. Moreover, user fees, which are taxes by another name, continue to escalate as departments are told to raise more of their own revenues. Canada's income taxes on individuals and businesses remain among the highest in the G20.

Honourable senators, it is time to bring taxes down, not raise them.

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

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

[Earlier]

#### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to draw your attention to the presence in the gallery of Mrs. Heshmat Moynfar, wife of the Iranian Ambassador to Canada, Mrs. Imani A. Atallah, wife of the Saudi Arabian Ambassador to Canada, Mrs. Naima Bsaikri, wife of the Libyan Ambassador to Canada, and Mrs. Joumna Al-Halidi, wife of the Syrian Ambassador to Canada. They are the guests of Senator Jaffer.

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

#### NATIONAL ANTHEM ACT

##### BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Banks, for the second reading of Bill S-39, to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Jaffer*).

**Hon. Mobina S. B. Jaffer:** Honourable senators, I am pleased to rise today in support of Bill S-39, a bill to amend the national anthem to include all Canadians, male and female, who have contributed to this great nation of ours.

As we all know, women's rights have been evolving in Canada over the past century. These changes are reflected in our homes, in our laws and in our communities. At the same time, our national anthem has also evolved over the past 40 years. It is time again, in this millennium, to ensure that our anthem continues to resonate with all our citizens by more accurately reflecting our society today.

The start of this new millennium provides us with an ideal opportunity to ensure that our national anthem communicates to Canadians and the world that we acknowledge the past, current and future generations of women who have, who are and who will continue to contribute to the greatness of our country.

• (1430)

As Senator Poy stated in her address to the Senate on February 20, 2001:

...I would argue that Parliament should not forget the contributions women have made to the growth of our nation, nor can we afford to ignore the daughters of tomorrow. We have an obligation as legislators to both acknowledge and celebrate the accomplishments of Canadian women through both practical and symbolic measures....

...let us join together to send a clear message to Canadians and to other nations of the world that Canada respects gender equality by changing the wording of the national anthem to more closely reflect the reality of our country.

[Translation]

Women have always had fewer rights than men. In law, in religion and in everyday life, the masculine has included the feminine.

[English]

This bill proposes a change of only two words in the national anthem — that the words “thy sons” be replaced with “of us” in the third line, so that it reads “in all of us command.”

Honourable senators, Canadians are continuously striving to improve women's rights, access and opportunities, in what is still a very male-dominated world. Although some major challenges have been overcome, they have not been overcome without great struggle.

Until 1897, women could not practise law in Canada. In 1897, Clara Brett Martin became the first woman advocate to try and practise law. She overcame editorials opposing women lawyers on the grounds that the physical attraction between them and the judges and juries would be intolerable. She lobbied for a bill in the Ontario legislature that would overturn the Law Society of Upper Canada regulations barring women, because only “persons” could be admitted. She was taunted and ridiculed by classmates, professors, the public and the media simply for enrolling in law school.

I am glad to say that, today, women make up somewhere between 45 to 50 per cent of first-year law students, and almost 50 per cent of the students called to the bar are women.

Until 1919, most women could not vote in a federal election. The majority of Canadian women got the federal vote in 1919, but that did not include Aboriginal women who were status Indians and some immigrant groups, for example, Chinese or South Asians.

Although women were granted the right to vote federally in 1919, it took another two decades for women to be given the vote in all provinces, with Quebec being the last province to give women the vote in 1940.

Until 1929, women were not considered persons. In 1927, Emily Murphy appealed to the Supreme Court of Canada to define the word "persons" in the British North America Act so that women would qualify as persons. Emily Murphy, Henrietta Muir Edwards, Louise McKinney, Irene Parlby and Nellie McClung, all came to be respected for their tireless work to gain rights for women. They asked the Supreme Court if the word "persons" in section 24 of the BNA Act included female persons. When they were told that they were not persons, these five women continued their quest with a petition to Canada's highest Court of Appeal, the Judicial Committee of the Privy Council in London.

On October 18, 1929, the Lord Chancellor of the Privy Council announced that women were persons and were therefore eligible to be summoned and may become members of the Senate of Canada. The decision was a milestone in women's legal rights. Those five women became known as Canada's Famous Five.

Until 1943, women could not work outside the home. Women were expected to stay home and take care of the family. The year 1943 marked a massive influx of women into the paid labour force because, until then, men had all the jobs and women could not work.

In 1945, Saskatchewan MP Gladys Strum announced in Parliament:

No one has ever objected to women working. The only thing they have ever objected to is paying women for working.

Women's wages did not reach 50 per cent of the male average until 1981. That year, women in all earning categories earned 53.5 cents for each dollar earned by men. This included part-time workers. If we compare only full-time workers, then women averaged only 53 cents to the average male worker's dollar in 1981. Today, women earn approximately 75 cents to the male worker's dollar.

Until 1955, married women could not work in the federal public service. Being married while working for the government was seen as unacceptable. In 1955, the restrictions on married women in the federal public service were removed. Up until 1955, female public service employees were fired upon marriage. It took 45 years, until 1974, to refute a 1910 report that concluded, "Where the mother works, the baby dies."

Until 1971, women were not protected from discrimination on the basis of sex. We could not earn wages similar to those of men. We could not take maternity leave.

In 1971, amendments to the Canada Labour Code were implemented that included the prohibition of discrimination in the workplace on the grounds of sex and marital status. The 1971 amendments also reinforced the principle of equal pay for work of equal value, and introduced provisions for a 17-week maternity leave.

Until 1978, married women were not entitled to an equal share of marital assets if their marriage broke down. The Supreme Court of Canada case *Murdoch v. Murdoch* was a catalyst for change in this aspect of family law. The Murdochs worked on ranches as a hired couple, with their pay being given to Mr. Murdoch. Their funds were used, in part, to purchase a ranch and homestead. Over the next 20 years, Mrs. Murdoch made a substantial contribution to the operation and management of the farm.

When the marriage broke down, she sought a judicial separation and claimed she was entitled to one-half share, not only of the homestead, but also of the ranch. However, in the absence of a direct financial contribution, or an extraordinary financial contribution, the court held that Mrs. Murdoch's actions were, "...just about what an ordinary rancher's wife does." As there was no explicit agreement linking her labour efforts to an entitlement to a share of the ranch, she was deemed to have no interest in the ranch, that is, she was not entitled to any share. Later, the federal government changed the laws so that women are now entitled to shares in matrimonial property.

Until 1982, women's rights were not entrenched in the Canadian Constitution. In 1981, 1,300 concerned women met to discuss women's rights being excluded from the proposed Charter of Rights and Freedoms. They lobbied Members of Parliament intensively, which resulted in the inclusion of women's rights in Canada's Constitution.

Today, discrimination against women and violence towards women are both against the law. Women who are physically abused by their husbands can seek help for themselves and their children in shelters. As a society, Canada has come a long way in legitimizing, acknowledging and protecting women. We now need to celebrate our efforts and also sing about them.

Until 1983, women had no legal recourse if sexually harassed in the workplace. In 1983, the Canadian Human Rights Act prohibited sexual harassment in workplaces under federal jurisdiction. Before this, women in their workplaces had no legal recourse if their employer demanded sexual favours.

The YWCA of Canada, the largest women's organization in Canada, is a movement of women, girls and their families in all our cultural, racial and ethnic diversity. In a letter to the Honourable Senator Poy, Elaine Teofilovic, the Chief Executive Officer of the YWCA, said:

As an organization that has for the past century worked to sustain Canadian women in their pursuit of equality and socio-economic autonomy, we are pleased to express our support for the motion you intend to put forth Bill S-39, An Act to Amend the National Anthem to include all Canadians, by substituting the current national anthem wording "thy sons" for "of us."

Ms Teofilovic went on to say:

At our spring 2001 annual membership meeting held last May in Calgary, the YCWA of Canada celebrated the Famous 5 and their contribution to the greatness of this country.

It is from their inspiration that YWCA member associations from across Canada have lent their support to your motion to adopt a more inclusive wording of the English national anthem and thereby recognize the contribution of Canadian women to the development of prosperity in this country. And I am pleased to forward you the petition, which was signed by 99 YWCA members from across the country.

Honourable senators, in 1919, women did not have the right to vote; now we do. In 1929, we were not considered persons; now we are. In 1982, our rights were not entrenched in the Canadian Constitution; now they are.

• (1440)

Today, we are not included in the national anthem. It is time that our national anthem acknowledged and recognized the rightful contribution of Canadian women to this great country of ours.

On motion of Senator Adams, debate adjourned.

[Translation]

## BILL TO CHANGE THE NAMES OF CERTAIN ELECTORAL DISTRICTS

### SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Poulin, seconded by the Honourable Senator Poy, for the second reading of Bill C-441, to change the names of certain electoral districts.

**Hon. Marcel Prud'homme:** Honourable senators, I advise the House that I will be speaking to this bill next week.

Order stands.

## OFFICIAL LANGUAGES

### PRIVY COUNCIL VOTE 35— NINTH REPORT OF JOINT COMMITTEE ADOPTED

On the Order:

Resuming debate on the consideration of the Ninth Report of the Standing Joint Committee on Official Languages (*Vote 35 under Privy Council*), presented in the Senate on April 25, 2002.—(*Honourable Senator Gauthier*).

**Hon. Jean-Robert Gauthier:** Honourable senators, I wish to speak about a topic of great interest to me, and that is official languages. I will be speaking to the ninth report of the Standing Joint Committee on Official Languages with respect to Vote 35 under Privy Council. The report was adopted by the committee on April 23.

I may be wrong, but not many committees report to Parliament on the estimates submitted to them. We have made it a point of honour for many years to examine and report on these votes, once they are approved by the committee, either in the House of Commons or the Senate.

In the House of Commons, the process is a bit different. The committee has until May 31 to submit its report, after which votes go into a general envelope. All these votes are then voted on. Few people understand this system.

In the Senate, this is how we proceed. Through its committees, the Senate examines the Estimates in general and specifically passes certain votes. In the case of the Standing Joint Committee on Official Languages, we have been doing this annually now for several years. The Estimates are only \$14 or \$15 million, but they are examined and used judiciously. We begin by meeting with all the individuals and departments with an important role to play vis-à-vis official languages, such as the Commissioner of Official Languages, Treasury Board representatives, the Department of Justice, and so on.

Vote 35 asks Parliament to approve expenditures for 2002-2003, which will come to approximately \$15 million. The votes requested have been verified. They are in order and well justified. The corporate management information system for these votes has been looked at closely this year.

The Office of the Commissioner of Official Languages is the ombudsman with the mandate to take any necessary measures to ensure that the objectives of the Official Languages Act are met. It mandates the constitutional obligations regarding the equality of French and English within the government, the federal administration and institutions that are subject to the Official Languages Act. The office ensures that language laws are respected to guarantee the equal status of both official languages in Canadian society. In order to do this, the office incites and encourages federal institutions that are subject to the act to respect both official languages, English and French, and to promote them both.

In order to take up this challenge and to ensure the full recognition of linguistic rights, the office takes measures required to ensure that the services provided by institutions are of equal quality. Furthermore, the office is involved in policy, as laid out in section 41 of the Official Languages Act.

Honourable senators know very well that this section establishes obligations for the government to support community development, promote the equality of English and French in Canadian society and promote the vitality of linguistic minority communities in Canada. This is the point that is critical.

Living in a minority situation is difficult. I was born in Ontario, but in the whole of Canada, given that my mother tongue is French, I am considered part of the minority. In Ontario, I feel doubly that I am part of the minority.

Until recently, 1982, we did not even have the right to have French schools in Ontario. It took 15 years for the province to guarantee this right and grant us control over our schools. 15 years of work and involvement in a society that was not wealthy. Our youth gradually but surely became assimilated. Barely 14 per cent of young people finished grade 10 in 1968, when I got involved in with schools. Eighty-six per cent of young people did not have the means to attend English high school, which you had to pay for. They did not have the money needed. Francophones were told to become janitors, farmers or stay in their small villages. No sir! Things have since changed.

In 1982, there was a radical change made to the Constitution. A Charter of Rights and Freedoms was added, and this has made a difference to many of us, in a society that claims to be generous and tolerant. It entrenched language rights, rights of expression, rights to equality and so on. I could give a long speech on the importance of section 16, for instance. The courts have been dealing with section 23 for nearly 20 years now.

A different hand has been dealt to official languages. The commissioner has told us so repeatedly, including just recently. In connection with the Estimates, she said that things had changed in the past 10 or 15 years. There are rights that must be recognized and implemented.

• (1450)

This may take still greater efforts of all kinds if this country is to continue to progress.

The one little problem is money. The \$15 million for the Commissioner of Official Languages is not much out of total budget in excess of \$150 billion. The Commissioner must feel supported in her work by Parliament. When she tells us she needs more money allocated, it is a pity we cannot comply. We could perhaps pass a resolution informing the House of Commons and the Senate that, if the Commissioner had more money at her disposal, she could do more on behalf of official languages.

Two recommendations were made by the Joint Committee on Official Languages. The first was to allocate another \$4 million in order to enable the Commissioner to finish studies, enhance programs and hire lawyers, experts in sociology, in psychology and so on, in order to help us. It is not a lot, but it is important.

The second recommendation was that the Commissioner of Official Languages launch a public awareness campaign to help Canadians better understand the Official Languages Act. It is also important to do some advertising to explain what official languages are. I often hear people say that they are opposed to institutional bilingualism. Recently, the Leader of the Opposition in the House of Commons, Mr. Harper, said that he wanted to abolish institutional bilingualism by opening up the Armed Forces, the RCMP and the public service to unilingual people. If we do that, Canadians will no longer get service in French when they contact federal institutions. They will be told: "Sorry, I don't speak French."

It is not easy to make Canadians understand that, fundamentally, it is the Canadian Constitution which says that the two official languages are equal across the country. It is not a

[ Senator Gauthier ]

matter of forcing everyone to be bilingual. A person can decide to remain unilingual if that is his choice.

[English]

One can be bilingual, too, if one likes. One can even be trilingual. As a matter of fact, I encourage Canadians to become quadrilingual, if they want to be.

There are over one billion Chinese. If Senator Moore and I can invent a new mousetrap, we could sell 100 million to one billion Chinese. He and I would not have a worry in the world.

What is wrong with being multilingual? Nothing. What is wrong with being bilingual? Nothing. More important, if one is in a bilingual environment — that is, in a region of this country where both languages are spoken regularly — it is just and fair to expect that the institutions of government are able to serve an individual in the official language of his or her choice. It is just and fair to expect that the institutions of government at all times are able to respond to requests in either official language. It is elementary.

I wish to return to the issue of the Commissioner. The Office of the Commissioner of Official Languages is important, efficient and underfunded. Since 1992, when restructuring of the government was instituted, the Estimates for this office have been reduced gradually every year. What the Official Languages Joint Committee is now suggesting is that the budget of the Commissioner be increased in 2002-03, either through Supplementary Estimates or perhaps through the next budget.

It is important that Canadians be conscious of the difficulties with official languages that one sometimes encounters. There are many and the Commissioner is there to resolve these difficulties. Her office is there to help bring about a solution to the various problems. Not many in this place know that I cannot go to court in Ontario under the divorce laws of Canada and have my case heard in French. In law, there is a symmetry that says divorce falls under federal jurisdiction. However, try in London, Ontario, to go before a judge and get him or her to hear a case in French. The answer is, "Sorry, but there is no French-speaking judge here. It will take a month and a half or two months until we can get one." A woman may say, "I have three kids. I need some kind of direction. I need some money." The reply will be, "Sorry. If you choose to have your case heard in English, we can hear it next week." The subsequent reaction of the woman will be, "If I have to do that, then I will." The government then says to us, "There is no demand. Why should we appoint French judges in Ontario?"

[Translation]

**The Hon. the Speaker *pro tempore*:** Honourable Senator Gauthier, I am sorry to interrupt you, but your time is up. Are you asking leave to continue?

**Senator Gauthier:** Honourable senators, may I move the adoption of the report?

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, if I am not mistaken, Senator Gauthier is not asking consent to continue, but he would like to move the adoption of the motion now before us. Is that the case?

**Senator Gauthier:** I would need two more minutes to conclude my speech.

**Senator Robichaud:** We agree to give two minutes to Senator Gauthier, so that he can conclude his speech.

**Senator Gauthier:** Honourable senators, it is not often that a parliamentary vote is adopted on a timely basis. The deadline in the House of Commons is May 31, which is tomorrow. In the Senate, we do not have a deadline. However, some votes are deemed to have been reviewed in committee and adopted at the end of the session, around June 11.

I would like to congratulate the members of the Standing Joint Committee on Official Languages. It is good that this committee report to the Senate and the House of Commons in due form and due course. I therefore move that the ninth report be adopted.

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

**Hon. Senators:** Agreed.

Motion agreed to, and report adopted.

## STUDY ON HUMAN RIGHTS OBLIGATIONS

### REPORT OF HUMAN RIGHTS COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Andreychuk, seconded by the Honourable Senator Johnson, for the adoption of the Second Report of the Standing Senate Committee on Human Rights, entitled: *Promises to Keep: Implementing Canada's Human Rights Obligations*, tabled in the Senate on December 13, 2001.

**Hon. Gérald-A. Beaudoin:** Honourable senators, the Constitution Act, 1867 does not specifically mention the treaties, leaving aside section 132, which no longer applied after the Statute of Westminster, 1931.

• (1500)

With respect to treaties, several operations are involved, such as negotiating, signing, ratifying, accession, registration, publication and implementation.

In the *Labour Conventions* case of 1937, the Supreme Court of Canada took the position that the conclusion of treaties comes under federal jurisdiction. The Judicial Committee of the Privy Council made no statements on this particular point. However, Lord Atkin distinguished between the conclusion of treaties and their implementation. In terms of implementation, he said the division of powers had to be respected. As for the conclusion of treaties, he gave no opinion, because it was not necessary to comment on this point.

The 1937 Privy Council decision was well received by some, and less well received by others. Constitutional expert Frank Scott, from the University of Montreal, would have preferred that the implementation of treaties come under federal jurisdiction alone;

he would have preferred it to come under the residual powers of the federal government. Still others, like Jean-Charles Bonenfant and many of his French-speaking colleagues from Quebec, celebrated the 1937 ruling, viewing it as protection for provincial legislative jurisdiction. Indeed, with the number of treaties signed, there would have been interference in provincial areas of responsibility.

Professor Frank Scott, who found the law lords of the Privy Council too generous towards the provinces, said:

We had the Fathers of Confederation, we also had the fathers-in-law of Confederation: the Judicial Committee of the Privy Council, which decentralized the division of powers.

Chief Justice Laskin, in *The British Tradition in Canadian Law*, notes that unless there is a constitutional amendment, the Supreme Court of Canada will eventually have to rule on whether the federal power to conclude treaties is too broad, or if the provincial power to implement treaties is too limited.

In *Thompson*, the Supreme Court recognized that the federal government's power to conclude treaties is nonetheless limited by the constitutional division of powers.

For years, until the Quiet Revolution in 1960, the treaty process was not the object of much controversy in Quebec. Generally speaking, Quebec was delighted the Privy Council's judiciary committee had decided, in 1937, that legislative jurisdiction over the implementation of treaties was divided.

But the situation remained unclear. The central executive could sign a treaty but it could not implement it if it dealt with something provincial, and at the same time a province could implement a treaty it had never signed.

Legislation on the implementation of treaties, as has been said, was judged not to be part of the *residuum* of legislative jurisdiction.

The Supreme Court of Canada has had the opportunity, on several occasions, to refer to the key principles and values set out in certain international instruments.

In *Grail*, the Supreme Court finds, in connection with Canada's international obligations on human rights, that:

Although international law is not binding, upon Parliament or the provincial legislatures, a court must presume that legislation is intended to comply with Canada's obligations under international instruments and as a member of the international community.

In *Pushpanathan*, the Supreme Court referred to sources of international law which influence court decisions.

In *Keegstra*, the court commented as follows:

Following the Second World War and revelation of the Holocaust, in Canada and throughout the world, a desire grew to protect human rights, and especially to guard against discrimination. Internationally, this desire led to the

landmark Universal Declaration of Human Rights in 1948, and, with reference to hate propaganda, was eventually manifested in two international human rights instruments.

The two instruments in question are the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

As well, the court commented as follows in *Keegstra*:

Generally speaking, the international human rights obligations taken on by Canada reflect the values and principles of a free and democratic society, and thus those values and principles that underlie the Charter itself...

In *Kindler*, the highest court in the land stated:

Canada's commitment to human dignity has a lengthy and respected history in international affairs.

And in *Lucas*, the court added:

That a number of international conventions, ratified by Canada, contain explicit limitations of freedom of expression in order to protect the rights and reputations of individuals, further supports the conclusion that this constitutes a pressing and substantial objective.

The following is found in *Tran*:

The priority given to the right to interpreter assistance of criminally accused persons, which is seen not only in Quebec's guarantee but also more generally in the jurisprudence, is echoed in international human rights instruments.

In the *Edmonton Journal* case, Mr. Justice La Forest pointed out that:

The right to personal privacy, including the privacy of one's family and home, has also been recognized by leading international documents aimed at the protection of human rights.

Finally, in *Finta*, the court expressed the opinion that:

Most nations recognize that a statute can neither retroactively make criminal an act which was lawful at the time it was done, nor impose a penalty for past acts which were not criminal when they were committed.

So, based on these excerpts, the standards included in the international instruments designed to protect rights and freedoms are not compelling in Canadian constitutional law, even though they are of great interpretative value.

Accordingly, the Supreme Court recently pointed out, in *Burns* and *Suresh*, that the courts may invoke international law to interpret the Canadian Constitution.

As regards treaties, Canada has adopted a dualistic view. The federal authority signs treaties. However, these treaties do not change domestic law. We must legislate to implement treaties. To this end, we must comply with the division of powers between the federal and provincial governments.

[ Senator Beaudoin ]

In fact, this is what Justices Cory and Iacobucci said in 1999, in *Baker*:

...an international convention ratified by the executive branch of government is of no force or effect within the Canadian legal system until such time as its provisions have been incorporated into domestic law by way of implementing legislation.

• (1510)

I conclude, after all this, that it is the rule of law today in Canada. What can we do to change, or at least to improve, our situation? Several expert witnesses appeared before the Standing Senate Committee on Human Rights, including the Honourable Warren Allmand, Mr. Philippe LeBlanc, Professors Cr peau, Schabas, Mendes, and Toope, and Dean Peter Leuprecht.

The experts looked at possible solutions. We must continue our research. I am pleased that our human rights committee, chaired by the Honourable Senator Andreychuk, wants to delve more deeply into the issue of implementing treaties.

Perhaps Canada itself will have to innovate in this area. Of course, the Supreme Court, in its interpretation, could look to principles of international law and, over time, start interpreting the Constitution such that treaties, once signed, will increasingly become part of the law of the land. In other words, could we perhaps move in the direction of the monistic view?

In the meantime, the fact of enshrining a Charter of Rights and Freedoms in the Constitution in 1982, a charter which binds the federal government and the provinces, opens up, for Canada, a window on the great universal values and on the international instruments.

We could also take inspiration from Australia. Perhaps our Parliament will end up by finding a uniquely Canadian system. Perhaps the Supreme Court of Canada will allow itself to be influenced by international law. The debate is open.

[English]

**Hon. Nicholas W. Taylor:** Would the honourable senator accept a question?

[Translation]

**Senator Beaudoin:** Yes, of course.

[English]

**Senator Taylor:** My question relates to when the rights of individuals come up against group rights. The honourable senator referred to Australia, which has such a bad reputation for dealing with Aboriginal rights. That has frightened me.

Would the honourable senator explain how it will be possible to have the rights of the individual Aboriginal person — and that is important — fit in with the group rights found in our Aboriginal treaties?



**Senator Beaudoin:** Honourable senators, let me first address the question of Australia. It is a constitutional monarchy, with a federation and parliamentary system; hence, in that way, Australia is similar to us. Australia is looking at ways of implementing its treaties. In Canada, the United Kingdom and Australia, among other countries, to give effect to a treaty, there must be legislation. That is the reason I mentioned Australia.

In terms of Canada, the collective rights of Aboriginals are dealt with under section 35 of the Constitution Act, 1982. Section 35 is not in the Charter of Rights and Freedoms. Sometimes we forget that. Section 35 is a special article in the Constitution Act, 1982. It deals directly with collective rights. Sections 1 to 34 of the Charter, of course, deal mostly with individual rights, except that section 23 has been declared by Mr. Justice Bastarache and the court as being collective to a certain extent.

Therefore, the collective rights of the Aboriginal peoples are certainly very well enshrined in the Constitution of Canada.

[Translation]

**The Hon. the Speaker pro tempore:** I am sorry to inform you, Senator Beaudoin, that your time is up.

**Senator Beaudoin:** That is too bad.

[English]

**Senator Taylor:** The honourable senator was just getting to the nub of my question.

[Translation]

**The Hon. the Speaker pro tempore:** Are you asking leave to complete your answer?

**Senator Beaudoin:** Yes. I would be very pleased to.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we are certainly agreeable to the honourable senator having the time to complete his answer to Senator Taylor's question.

**The Hon. the Speaker pro tempore:** Senator Beaudoin, please finish your answer.

[English]

**Senator Beaudoin:** To summarize, the collective rights of Aboriginals come under section 35 and the very good jurisprudence of the Supreme Court. As to the individual rights with which the Charter is concerned, there are 450 Supreme Court cases related to that question. It is a field of law that is very impressive, but two different things are involved in it. Collective rights are one thing; individual rights are another. As well, the Canadian Charter of Rights and Freedoms in no way set aside the rights of the Aboriginal. There is no doubt that a special provision exists.

There are two different protections and two different fields of jurisprudence.

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

**Senator Taylor:** I have a supplementary question.

**The Hon. the Speaker pro tempore:** Permission was given for only one question.

**Senator Taylor:** This is one of the most important issues facing Canada today. As senators, we are appointed to represent minorities. My questions concern Aboriginal rights, and Her Honour is trying to shut down the dialogue. I ask, appealing to the Senate, whether I can explore this issue for a few minutes more.

**The Hon. the Speaker pro tempore:** I am sorry, Senator Taylor, I am not trying to shut down the dialogue. The house decided on one question only. Senator Beaudoin has not requested further time.

**Senator Taylor:** I did not hear the house say that the honourable senator would be allowed only two minutes to answer my question, after which Her Honour would put the question.

I would ask the house to allow an elaboration on the same question.

**Senator Stratton:** No.

**The Hon. the Speaker pro tempore:** Leave is not granted.

It is moved by the Honourable Senator Andreychuk, seconded by the Honourable Senator Johnson, that the second report on the Standing Senate Committee on Human Rights be adopted now. Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Agreed.

**Senator Taylor:** On division.

Motion agreed to and report adopted, on division.

• (1520)

## NATIONAL FINANCE

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXAMINE ADMINISTRATIVE CONTRACT AT GOOSE BAY, LABRADOR AIRFIELD

Leave having been given to revert to Notices of Motions:

**Hon. Bill Rompkey:** Honourable senators, I give notice that on Tuesday next, I will move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the administrative contract now in existence at the Goose Bay, Labrador airfield, as well as the Request for Proposals to renew the contract, to ascertain the effectiveness of this method of base operations in Canada in providing services for both military and non-military training activities;

That the Committee submit its final report no later than July 12, 2002; and

That the Committee be permitted, notwithstanding usual practices, to deposit the 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.

### THE HALIFAX GAZETTE

#### MOTION IN CELEBRATION OF THE TWO HUNDRED FIFTIETH ANNIVERSARY ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Graham, P.C., seconded by the Honourable Senator Buchanan, P.C.:

That the Senate of Canada celebrates with all Canadians the 250th anniversary of Canada's first published newspaper, the *Halifax Gazette*, the publication of which on March 23, 1752, marked the beginning of the newspaper industry in Canada which contributes so much to Canada's strong and enduring democratic traditions.—(*Honourable Senator Fraser*).

**Hon. Joan Fraser:** Honourable senators, I rise to participate in this debate marking the two hundred fiftieth anniversary of the *Halifax Gazette*. It is a date of significant historical importance to the evolution of the press in our democracy, and it is only right that we should honour John Bushell, the printer who moved from Boston to Halifax to take over the project of Bartholomew Green. It was Bartholomew Green, another Bostonian, who had first intended to start a newspaper in Halifax, but he unfortunately died shortly after arriving in Nova Scotia. John Bushell stepped into the breach, and the rest is the history that we have been marking in this debate on Senator Graham's motion.

Honourable senators, I hope that you will forgive me if I note that next week will see another date of historic importance in Canadian journalism. It was 224 years ago, on Wednesday, June 3, 1778, in Montreal, that Fleury Mesplet published the first issue of the newspaper then called *La Gazette du commerce et littéraire pour la Ville & District du Montréal*, the paper that is still published today under the name of *The Gazette*. Not only is *The Gazette* the oldest newspaper now published in Canada, it is also one of the oldest in the world — older, for example, than *The Times* of London, the *New York Times* or *Le Monde*.

[*Translation*]

Like John Bushell, Fleury Mesplet was a printer, and like him as well, came to us via the United States. His past was a little more checkered than Bushell's, however. He was born in France and learned his trade there before going to work in London. It seems that this is where he met the great American journalist and revolutionary, Benjamin Franklin. Because of his attraction to the American Revolution and his friendship with Franklin, Mesplet moved to Philadelphia, where he worked as a printer of French documents, including revolutionary propaganda targeting Quebecers, at the time known as "les Canadiens."

[ Senator Rompkey ]

When the U.S. army occupied Montreal, Congress decided they needed a good revolutionary newspaper in Canada, and who was better suited than Mesplet? Between the time he set off from Philadelphia with his press on March 16, 1778, and the time he arrived in Montreal in early May, the U.S. army had suffered a reversal, and within weeks Montreal was back in British hands. The British wasted no time throwing him in jail, but when released after a month he was soon back to printing.

His first text read as follows: "Gentlemen" — ladies were not included in those days —

Gentlemen:

I congratulate myself on having proposed to you the establishment of a periodical newspaper, not so much because of the benefits to myself as because of the benefits you will receive from it.

Here we have the very principle of the press, to serve the people.

[*English*]

It was a chancy business being a newspaper proprietor of known revolutionary and anti-clerical sympathies in Montreal in those years. The little paper lurched from crisis to crisis, with the worst no doubt being in 1779 when Mesplet was again imprisoned, this time for three years. When his term was up, he went right back to publishing the newspaper, though perhaps with a little less revolutionary zeal. After a few decades, the paper became bilingual, publishing in both French and English. Then, sometime around the middle of the 19th century, it became an English-language paper, as it remains today, though I note that it has again begun to publish one page a week in French.

Along the way, the paper's initial revolutionary and pro-American philosophy also changed. In the 1860s and 1870s, its editor, Brown Chamberlin, was one of Sir John A. Macdonald's closest advisors and a key architect of Macdonald's National Policy.

To return to the early days, there are marked similarities between the first issue of the *Halifax Gazette* and its younger cousin in Montreal. Both were printed on small sheets of paper — about the size of a sheet of letter paper today — and were very slim. Both contained old news, thanks to slow transportation and the lack of the telegraph at the time, slightly turgid commentary and as many ads as the hapless proprietors could attract. Both had the odd error. In the *Halifax Gazette*, I noted with some amusement an ad for an outfit called "Leigh and Wragg," who offered themselves as literacy instructors and who twice committed the egregious error of putting an apostrophe in the middle of the word "its." They referred, for example, to "Spelling, Reading, Writing in all it's different Hands." Never mind. Both had great ambitions, and they laid the groundwork for the press of the future, which is, as we know, not error free either. For their work, we owe them thanks across the centuries.

Senator Graham noted it is the *Halifax Gazette* that first employed a woman journalist, or at least printer, in Canada. She was John Bushell's redoubtable daughter Elizabeth. Honourable senators will forgive me if I say that this was, for at least some of

us, as noteworthy an accomplishment as the actual founding of his newspaper. Today, we honour John Bushell, Fleury Mesplet and, not least, Elizabeth Bushell. We owe them much.

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

Motion agreed to.

## STATUS OF LEGAL AID PROGRAM

### INQUIRY—DEBATE CONTINUED

On the Order:

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

**Hon. Joseph A. Day:** Honourable senators, I rise today to join in the debate on the inquiry brought forward more than one year ago by Senator Callbeck in respect of the legal aid system and, in particular, of the difficulties experienced by many low-income Canadians in acquiring adequate legal assistance for both criminal and civil matters.

Honourable senators, we have heard from several of our colleagues, primarily on problems in their respective provinces. Therein lies the first difficulty with respect to a legal aid system in Canada because the administration of justice is handled by the provinces. There is not a common standard that applies throughout Canada. Thus, I should like to discuss the role that I believe the federal government can play with respect to the legal aid system and bring honourable senators up to date on what has transpired since Senator Callbeck first brought this inquiry to our attention.

• (1530)

As some will recall, Senator Callbeck reported on the need for the federal government to increase its share of funding in both the criminal and civil legal aid areas. I am happy to report that, since she first introduced the inquiry in this chamber, there has been a significant increase in the federal government's participation.

In the fiscal years following the introduction of this inquiry, the federal government increased its funding to the criminal law component by \$40 million, bringing its total annual funding from \$80 million to in excess of \$120 million per year. This represents a 50 per cent increase in federal government participation. An additional \$10 million was given to the provinces experiencing unexpected demands due to new refugee claims.

Another piece of good news is that, since April 2001, the Department of Justice has embarked on a joint federal-provincial study into the legal aid system called "The Legal Aid Project." Its completion is expected by March 31, 2003. As honourable

senators will recall, the problems facing legal aid are not simply financial ones. That being the case, the study is fairly detailed, addressing 26 separate areas of concern. Let me provide honourable senators with a few examples of what is being studied under this program.

One area under investigation is a site study of courts in nine different centres of varying sizes across Canada. It involves both a quantitative and qualitative assessment of the types of criminal cases proceeding without representation to see how the lack of representation has affected the administration of justice.

[*Translation*]

Canada's duty counsel system is something else that needs to be further examined in order to determine where the weaknesses lie. When weaknesses are identified, the study will attempt to determine what the impact was, both on the accused and on the legal system itself. Another goal here is to determine what the start-up costs would be for jurisdictions which do not yet have this sort of system, and to find new alternatives.

[*English*]

I could go on in some detail about the 26 areas being investigated but, as my time to comment would likely run out, I will mention only some of the areas that honourable senators have previously touched on here in this chamber.

One area under investigation deals with identifying the barriers to criminal legal aid access for visible minorities, immigrants and refugees. Another area deals with the delivery of criminal legal aid services in rural and remote areas. Yet another deals with financial eligibility and limits to coverage.

Other areas of investigation concern the legal aid needs of Canada's Aboriginal people; the impact of drug prosecutions; the impact of organized crime legislation; and how the system can better deal with important, high-cost, test cases. Other areas will look at issues affecting civil legal aid, covering family law, poverty law services, and immigration and refugee services.

[*Translation*]

In addition to these areas of investigation, there are 12 pilot projects which have already been mentioned here in the house. I am referring to projects concerning family law in Newfoundland; child protection and mediation in London, Ontario; immigration and refugee services in Alberta; innovative and restorative justice for the Northern Cree in Saskatchewan; and a project to assist accused without counsel in British Columbia.

[*English*]

After reviewing the aforementioned study plan, as well as each of the statements made by Senators Callbeck, Chalifoux, Cook, Hubley, Milne, Bryden and Oliver, I believe that it would be helpful if we considered revisiting this subject by way of a motion so that we might clearly articulate a number of the principles that we believe should be guaranteed in a publicly assisted legal aid

system. For example, it would be of some assistance to state the extent to which legal representation is a matter of right as opposed to a privilege here in Canada. As lawmakers, we should not skirt this question.

The legal aid system goes to the heart of the rule of law in Canada and to the principle of due process. As such, it represents one of the lynchpins of social stability in our country. As Canada was founded on the principle of peace, order and good government — a principle that speaks to the maintenance of social stability — to ignore the role that legal aid plays in this regard is to effectively ignore one of this chamber's primary duties.

The research currently being undertaken at the bureaucratic level will help the government in its bid to respond to shortcomings in the system. The level of discussion that belongs to Parliament and to this chamber is to articulate the principles we feel should underpin broader legal aid policies.

[*Translation*]

As legislators, we are fully aware that what happens here in this chamber ends up in the country's law books. However, the laws that we pass lose much of their meaning if we overlook the fact that many of our fellow citizens are not able to use them and benefit from the protection they can provide.

For this reason, I believe it is our duty to determine together to what extent legal representation before the court represents a right that the state should defend.

[*English*]

This is why I believe it is our duty to collectively define the extent to which legal representation in a court of law is a right that should be supported by the state. However, another part of our job is to realistically reflect what we, as a nation, can afford in this regard.

Towards this end, I would suggest three possibilities. The first pertains to expanding the eligibility parameters of legal aid so as to capture the working poor. While I doubt that Canada could realistically afford a completely universal legal aid system — if only because we have enough fiscal challenges on our plate at the present time — I believe we should, as a matter of principle, help to reduce the costs for those whose incomes are above the current cut-off level, particularly the working poor. This could be accomplished by adopting a graduated eligibility standard under which state-subsidized coverage would gradually decrease as individual income rose.

Under such a regime, the subsidized component of legal aid could be shared between the federal and provincial governments, while the client would be required to cover the balance. Law societies and individual lawyers across Canada recognize that they have a role to play as well, and that they can do so in many different ways, some of which have been explained by other speakers. The aim should be to create a multi-stakeholder solution where all the parties to the legal aid system assume some measure of responsibility for making the system work.

[ Senator Day ]

• (1540)

A variant on this theme is to bring into being a public legal aid insurance scheme, similar to life insurance, or car or home insurance. Under this model, which has found some favour in the United States, the recipient will recover a percentage of actual legal aid costs, just as someone who has dental insurance recovers a percentage of the cost of dental work. The difficulty with such a program is that not everyone can afford the insurance premiums, but it could be an important complement to a graduated legal aid system that I have just suggested.

My second suggestion pertains to alternate dispute resolution. ADR is an expanding area. As a lawyer in my previous life, I did quite a bit of work in that particular area. I would lend my support to the process advocated by Senator Oliver. I do not think we should wait to move in that direction. I believe that the use of alternate dispute resolution means and processes should be one of the conditions for legal aid support when dealing with certain civil matters. Why tie up valuable court resources if the problems can be resolved in a less costly manner?

As it now stands, more than 90 per cent of cases are settled before a court appearance. ADR processes build on this fact, providing ways to help parties reach settlement in a more effective and efficient way.

My third suggestion is that we consider “debundling” legal aid for civil matters from the current transfer payments made by the federal government under the Canada Health and Social Transfer. As honourable senators will recall, that bundling includes education, health care and legal aid. The object would be to recognize the funding levels for legal aid, and monitor those funding levels so that they do not get lost in the bundle, since other funds are obviously very much needed for education and health care.

Moreover, to help make legal aid coverage more universally accessible, I believe the federal government needs to recommit to the previous program of a 50-50 cost-sharing split with the provinces. That is the sharing formula that was in place some years ago.

Each of these examples — and there are more as other honourable senators have mentioned — demonstrates how we can realize our goal to ensure that all Canadians have reasonable access to legal advice and support when and if needed. As legislators, we must remember that we cannot simply pass laws, as we do here every day, and then ignore the social problems that arise from our actions. The act of passing laws carries with it the responsibility of ensuring those affected by those laws have proper legal advice and representation in relation to those laws.

Upon the conclusion of the debate on this inquiry, I will suggest that we resolve to ask members of the Standing Senate Committee on Legal and Constitutional Affairs and Senator Milne to consider formulating a motion that would reflect the principles of representation that we as senators feel should apply to our legal system.

On motion of Senator Pearson, debate adjourned.

[*Translation*]

**ADJOURNMENT**

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

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

That when the Senate adjourns today, it do stand adjourned until Tuesday next, June 4, 2002, at 2:00 p.m.

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

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, June 4, 2002, at 2:00 p.m.

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