CANADA

Debates of the Senate

1st SESSION • 37th PARLIAMENT • VOLUME 139 • NUMBER 120

OFFICIAL REPORT
(HANSARD)

Wednesday, June 5, 2002

THE HONOURABLE DAN HAYS
SPEAKER

CONTENTS

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

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

Published by the Senate
Available from Communication Canada – Canadian Government Publishing, Ottawa, Ontario K1A 0S9.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Wednesday, June 5, 2002

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

Prayers.

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

The Hon. the Speaker *pro tempore***:** Honourable senator's, pursuant to rule 43(3) of the *Rules of the Senate*, the Clerk of the Senate received earlier today notice of a question of privilege from Senator St. Germain. In accordance with rule 43(7), I now recognize the Honourable Senator St. Germain.

Hon. Gerry St. Germain: Honourable senators, earlier today, pursuant to rule 43(3), I gave notice to the Senate, through the Clerk of Senate, that I would be raising a question of privilege later this day. I believe it has been circulated to all honourable senators. As required, pursuant to rule 43(7) of the *Rules of the Senate*, I now give oral notice that I will rise later this day to address my question of privilege.

This matter concerns actions taken and discussions held by the Minister of Justice with the Chair of the National Liberal Rural Caucus and Member of Parliament for Dufferin—Peel—Wellington—Grey, Mr. Murray Calder, in relation to Bill C-15B passed yesterday in the other place, to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act. This matter relates to a news release sent out by the member of the House of Commons on June 3, 2002. The press release references a deal struck between the Minister of Justice and the Liberal rural caucus regarding an amendment to Bill C-15B. This deal involves the Senate and represents a dismissive view, by the Minister of Justice, of the legislative role of the Senate that, I believe, is an affront to its authority and consequently constitutes a contempt of Parliament.

In accordance with the rules, at the completion of the Orders of the Day today, I will go into more detail with respect to the issue. I should like honourable senators to know that I am prepared to refer the matter to the Standing Committee on Rules, Procedures and the Rights of Parliament, for examination and report.

Clearly, honourable senators, this is an action in contempt of Parliament and a breach of the privileges of all senators. It anticipates the passage by the Senate and Royal Assent of Bill C-15B. Ministers of the Crown cannot act without parliamentary authority. They are not above the law.

THE HONOURABLE ALEXA MCDONOUGH

TRIBUTE ON RESIGNATION FROM LEADERSHIP OF NEW DEMOCRATIC PARTY

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I rise today to pay tribute to Alexa McDonough, who announced her resignation as the Leader of the New Democratic Party.

Alexa McDonough, although born in Ottawa, quickly came to Halifax where she lived all of her life. I am proud to call her a friend. She was first elected leader of the party in Nova Scotia, in 1981. Therefore, she has now served 21 consecutive years as leader of the party, first at the provincial level and, most recently, at the federal level.

Alexa and I worked together for a couple summers on the *Halifax Chronicle-Herald* and the *Halifax Mail-Star* as junior reporters. It is clear that we have not shared the same political party, but we have often shared similar values. Alexa has always been strong in her defence of equality issues for women. She has frequently defended the need to have tougher laws on the abuse of children. On those two issues, she and I are on identical paths.

We have also had similar experiences as women leaders. We have been on panels together on women in politics, coming from a different party perspective but quite often coming from an experience of women who have shared leadership, some of the good times and some of the not so good times.

Alexa has served her party extremely well. She has been an exemplary member of the democratic process of this country, and I wish her and her family well.

POLITICS OF LIBERAL PARTY

Hon. Lowell Murray: Honourable senators, one need not be a constitutional scholar, as I am not, to know how off-the-wall are Prime Minister Chrétien's threats to resolve current internal problems in his caucus and party by calling an election. The idea that, 19 months into this mandate, Mr. Chrétien could properly seek or obtain dissolution of Parliament because of a perceived crisis of confidence in his leadership, even including defeat of a government bill, is offensive to our constitutional tradition. Were Mr. Chrétien to seek a dissolution under such circumstances, it would be not only the prerogative but, in my humble opinion, the clear duty of the Governor General to refuse the request. She would consult with members of the governing party to ascertain whether there was another Liberal, able to form a government to command a majority in the House of Commons. Although I obviously have no direct information on the subject, it is a safe bet that there is at least one Liberal, who could and would try to do so. Mr. Chrétien implied that Mr. Harper might be called on to form a government. This is nonsense. There is not the slightest evidence nor the slightest possibility, in my opinion, that any of the opposition leaders could put together a majority in the present House of Commons. Even if a Chrétien majority ceased to exist today, there would likely still be a Liberal majority in that chamber.

Our esteemed late friend Dr. Eugene Forsey defined the issue with his usual cogency in 1985. He wrote:

> Our constitutional system was never intended to be a plebicitary democracy, in which Parliament exists, debates and votes only on sufferance, under threat of dissolution at any moment by the Government in office, whether or not that Government has a majority in the House of Commons. A system of that sort has no right to be called parliamentary government. It may be questioned whether it has any right to be called democratic.

• (1340)

Parenthetically, I should observe that it would be ironic indeed if, under the circumstances to which I have referred, Mr. John Manley were to be the chosen one and take office by grace of the Crown in Canada that he so despises.

While I believe the situation alluded to by Mr. Chrétien and others remains highly hypothetical, still, the Prime Minister has now propounded an erroneous doctrine that ought to be demolished. In the coming days, it would be helpful to have informed comment on this matter from within and outside the Senate.

FOREIGN AFFAIRS

AFGHANISTAN—CUTS TO FOREIGN AID

Hon. Joseph A. Day: Honourable senators, I should like to draw to your attention an article that appeared at page 11 in yesterday's *Globe and Mail*. Under the headline "Broken Foreign-aid promises force cuts in Afghan relief," the article reads as follows:

> After the fall of the Taliban, Afghanistan's war-weary population was promised that $4.5-billion (U.S.) worth of foreign aid would pour in to rebuild their impoverished country. That promise, like so many others made in the past, may be in danger of being forgotten.

Later in the article there is a quotation by a United Nations representative who stated:

> We still have an immediate humanitarian crisis facing us.

The article goes on to state:

> Governments often make splashy announcements, then drag their feet. But there are indications that this shortfall is affecting a number of programs.

The "shortfall" refers to the serious shortfall in foreign aid to Afghanistan.

Honourable senators, I have been assured by the minister responsible for foreign aid and CIDA that Canada is not one of those governments.

The second aspect of the issue that I would bring to your attention relates to a magazine that I had delivered to each of your offices. It contains an article on serving officers in Afghanistan who were trained at the Royal Military College, one of Canada's wonderful national institutions that has been training representatives of the military and foreign affairs officers for over 125 years. In particular, I would draw your attention to page 12.

Two brothers, graduates of the Royal Military College and serving in Afghanistan, encountered young people with virtually no clothing and walking without shoes in an area where shrapnel was all around. They met young women who previously had been barred from going to school, but were now attending school but had no classroom materials. These men undertook to provide humanitarian aid on their own by asking people to send materials. In the article they ask for donations of the following items for the Afghani people: shoes, not socks since Afghanis do not wear socks, school supplies, antibiotic creams and bandages. They state: "Please do not send clothing."

The Hon. the Speaker *pro tempore***:** I regret to inform the honourable senator that his time has expired.

Senator Day: I would request leave to continue.

Some Hon. Senators: No.

HUMAN FRONTIER SCIENCE PROGRAM

Hon. Yves Morin: Honourable senators, from June 9 to June 12, Canada will be hosting the annual conference of the internationally renowned Human Frontier Science Program. It is a model of international cooperation and excellence in science. Its origins lie in a proposal by Japan's Prime Minister Nakasone in the late 1980s, with Japan contributing half of its U.S. $50 million annual budget. Its membership includes the G7 countries plus Switzerland. The program's management and peer review committees are models of scientific objectivity, untainted by national interest.

[*Translation*]

The program funds international cooperation between biologists and specialists in other disciplines, in order to find new approaches to understanding complex biological systems.

[*English*]

The program generates one of the biggest returns on Canada's investment in health research. Through the granting councils, Canada contributes more than $1 million each year to its annual budget, but Canadian researchers regularly win at least twice that amount in research awards and fellowships. Amongst the excellent Canadian researchers recognized in April are Dalhousie University's Alan Fine, who is leading a team of colleagues from the U.S.A. and Japan; Paul Melançon from the University of Alberta, whose teammates include colleagues in France and Germany; and Janet Werker from the University of British Columbia, with a team drawn from the United States, Italy and Spain.

[*Translation*]

Honourable senators, the selection of Canada as the host of the International Human Frontier Science Program conference is just one more sign of the high esteem Canadian research is held in everywhere in the world.

VIOLENCE AGAINST NURSES IN THE WORKPLACE

Hon. Lucie Pépin: Honourable senators, as it has done for the past 12 years or so, the Fédération des infirmières et des infirmiers du Québec (FIIQ) has recently revisited the problem of violence in the workplace. The results of a survey carried out by the federation this year indicate that the situation is far from improving. On the contrary, nurses continue to be the target of blows, insults and threats.

The statistics provided by this study are quite simply horrifying. Judge for yourselves! Over the last five years, 57 per cent of nurses feel that the level of violence in their workplace has increased; 67 per cent have been victims of violence. Close to 63 per cent of those who have been attacked on the job name patients as the perpetrators.

We know quite a lot about nurses' difficult working conditions, but not much about the physical, psychological or verbal violence to which they are subjected.

Unfortunately, this situation is not exclusive to Quebec, as is confirmed by a recent study by the International Council of Nurses, comprised of more than 120 national associations. This is a growing phenomenon worldwide. Of all health care providers, nurses are the most exposed to violence. According to FIIQ President Jennie Skene, they are three times more likely to be faced with it than other categories of professionals.

Nurses, already highly stressed by staff shortages, consider this situation unacceptable and are very vocal about it. Clearly, improved service, lessening of the burden on emergency departments and shorter waiting lists, as well as more nursing staff, would all contribute to improving the relationship between patients, who are frustrated, and nurses. The federation has decided to undertake activities focusing on education, prevention and mobilization, with a view to ensuring that an anti-violence policy is in place by June 2003.

Honourable senators, there is currently a serious intent to reform our health care system. We must not lose sight of the fact that nurses are major and indispensable partners, without whom it would be difficult to build a viable health care system. I trust that the campaign against violence will receive the support it deserves.

[*English*]

FOREIGN AFFAIRS

AFGHANISTAN—CUTS TO FOREIGN AID

Hon. John G. Bryden: I would bring to the attention of honourable senators that the packages destined for Afghanistan have been cleared with the military. There will be a distribution from Senator Day's office to all honourable senators' offices, outlining the procedure to be followed.

ROUTINE PROCEEDINGS

CANADA NATIONAL MARINE CONSERVATION AREAS BILL

REPORT OF COMMITTEE

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

Wednesday, June 5, 2002

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

THIRTEENTH REPORT

Your Committee, to which was referred Bill C-10, respecting the national marine conservation areas of Canada, has, in obedience to the Order of Reference of Tuesday, February 5, 2002, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

NICHOLAS W. TAYLOR
Chair

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

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

STATISTICS ACT
NATIONAL ARCHIVES OF CANADA ACT

BILL TO AMEND—COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT

Hon. Michael Kirby: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(*a*), I move:

That notwithstanding the Order of the Senate adopted on April 25, 2002, the Standing Senate Committee on Social Affairs, Science and Technology, which was authorized to examine and report on Bill S-12, to amend the Statistics Act and the National Archives of Canada Act (census records), be empowered to present its final report no later than September 30, 2002.

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

Hon. Senators: Agreed.

Hon. Lowell Murray: Honourable senators, I do not rise for the purpose of expressing objection to this motion. However, I wonder whether the chairman of the committee could explain the reasons for the extension of time that is being sought by the committee on this matter.

Senator Kirby: Honourable senators, I had a discussion yesterday with Senator Murray, who moved the motion to send Bill S-12 back to the committee, and with Senator Milne, the sponsor of the bill. My original hope had been to seek a two-week delay.

A solution to the issue raised by Senator Murray is in fact to go before a cabinet committee tomorrow. It had been my hope that it would go to the cabinet committee tomorrow and on to the cabinet next week. We would then call Dr. Fellegi, the Chief Statistician of Canada, the following week. Unfortunately, he is going out of the country on Monday and will be gone for three weeks. He will not be back until after the Senate has adjourned for the summer, even if we sit until the end of June. I picked September 30 to ensure that we would deal with the issue as soon as we come back from the summer recess.

Honourable senators, I am happy to make a commitment to the house on behalf of the committee that, if the issue is not resolved, we will have Dr. Fellegi as a witness at the committee's first sitting following our return in September.

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

Motion agreed to.

QUESTION PERIOD

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— WITHDRAWAL OF NH INDUSTRIES FROM COMPETITION

Hon. J. Michael Forrestall: Honourable senators, does the Leader of the Government in the Senate have responses to the questions I asked her yesterday?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I assume that the Honourable Senator Forrestall is referring to his Sea King questions and not his last question of yesterday. I can tell him that the government has not received any indication of the withdrawal of NH Industries from the bidding process.

REPLACEMENT OF SEA KING HELICOPTERS— EXPECTED DELIVERY DATE OF NEW AIRCRAFT— RELIABILITY OF GOVERNMENT RESPONSE

Hon. J. Michael Forrestall: Honourable senators, that is for another day because I cannot be that far ahead of the government. Believe me, I know of what I speak, unless something has happened to turn the course of events over the last 24 hours.

Part of my question has to do with the credibility of information given to us by the government in response to questions that are of concern to many Canadians, not necessarily a partisan concern, but a concern about the well-being of the 60,000 men and women we ask to stand in harm's way.

In the last few years, the Leader of the Government in the Senate and the government, generally, have been telling us that the government would start replacing the Sea King fleet in 2005. We were told the same thing by Ms Jane Billings, ADM, Public Works and Government Services Canada, when she appeared before the Committee of the Whole on October 30 of last year. She appeared with Allan Williams, ADM, Materiel, Department of National Defence. I have, in my possession, a briefing note from the staff of Mr. William's branch, presumably prepared under his instructions and with his approval, which states that we will not see a replacement start to arrive for the Sea King before the end of 2006. Witnesses who appeared in front of the Committee of the Whole at that time knew that information, and yet this chamber was not told.

A year does not seem like much, honourable senators, but it is a long time when one has to fly a Sea King. If one has to maintain it, it is twice as long. The government has misinformed the chamber in this regard repeatedly. When the minister rises to respond to questions, we want to know whether we can accept the briefing material she has been given or whether we must take it with a grain of salt.

It is very important that we get on with this question of the replacement of the Sea Kings. It is now common knowledge that we will not see the last of the Sea Kings until 2010. The government has even asked a Halifax-based company to produce a report with respect to the viability of the Sea Kings beyond 2005-06. Can the minister tell us how much of what she gives us in response to serious and concerned questions we can take with certainty and to what degree of certainty?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the exception of questions of a humorous vein, I take every single question seriously. When the honourable senator says that the government misinforms, clearly he is implying that I am the spokesperson for that misinformation. I want him to know that I do my best to obtain the most up-to-date information.

In light of his question yesterday, June 4, Senator Forrestall asked if NH Industries is in the process of withdrawing from the Maritime Helicopter Project competition. That information was immediately sent to the Prime Minister's Office where it was then circulated to and vetted by the various ministries. The answer I received today, and it is only the last 24 hours we are dealing with here, is the following: The government has not received any indication of withdrawal from NH Industries.

• (1400)

Senator Forrestall, I can only assume that that is the most up-to-date information. I give it on the basis of the information with which I am provided for in this chamber. That will be the case with every other question that the honourable senator asks with respect to the Sea King helicopters.

Senator Forrestall: Honourable senators, I will not ask the hypothetical question of whether or not the government could then move, theoretically, to call for final proposals, but just pose it so that it is out there, and honourable senators will understand the concern.

I am not charging the minister with not taking her responsibilities seriously. God knows that, in the years I spent as a parliamentary secretary, if those responsible for that book did not check four ways from last Sunday with respect to the veracity and the accuracy of information contained in those replies, the minister would have had our heads. I do not think there is any doubt about that.

I am not casting any aspersions, one way or another; I know the responses are well-meant and well directed. It is just that, somewhere along the line — and I can demonstrate if the minister wants to see it, and I need a magnifying glass to read it since it appears in such fine print, the minister knew a full nine months beforehand that what she was saying was not accurate. Her government knew, or at least somebody in the government knew, because it is contained in Public Works documentation.

My supplementary is this: Clearly, the former minister of National Defence, who had a propensity for not being the most forthcoming, did not inform the Leader of the Government, his caucus colleague, that the information given with regard to the replacement of the Sea King helicopters in 2005 was wrong, or at least incorrect.

Can the minister tell the chamber, does she know why she was not given accurate and correct information? Has anybody drawn it to her attention since the event, and if so, did she take any action to correct it?

Senator Carstairs: Honourable senators, was I given incorrect information? Certainly not to my knowledge. To my knowledge, I have only been given the most up-to-date information. However, I can assure the honourable senator that if at some time in the future I learn that I had been deliberately given misinformation, no one will be angrier than I.

Senator Forrestall: I am pleased to hear that. On behalf of my colleagues on this side, I appreciate that, and thank the minister for it.

Let me end by suggesting this to the minister: Yesterday, I wondered whom I should support, the Prime Minister or Paul Martin. Last night I received a host of telephone calls advising me not to support either one of them because Mr. Martin is even worse than Mr. Chrétien when it comes to supporting the Armed Forces.

Senator Carstairs: Honourable senators, that particular response from the honourable senator does not surprise me. He has been a distinguished member of the Conservative Party for many years, and I certainly would not want him to be, in any way, shape or form, disloyal to that for which he has always stood.

Senator Kinsella: Bravo.

INCREASE IN BUDGET ALLOCATION

Hon. W. David Angus: Honourable senators, the House of Commons Defence Committee is calling for unprecedented peacetime increases in defence spending — as much as a 50 per cent increase over three years. In a report tabled yesterday, the committee said that without substantial increases the military will face a collapse of morale, a rust-out of equipment and the loss of important basic capabilities.

As we all know, the Senate's National Security and Defence Committee also tabled a report recommending an increase in the National Defence budget in the order of $4 billion.

Will the Leader of the Government in the Senate please tell us if this government has any intention of listening to the pleas of the House of Commons committee, the Senate committee and the Auditor General, or will it convene a public inquiry immediately to examine the state of our Canadian military?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, let me begin by saying that, in the opening moments of last week's cabinet meeting, held on Thursday instead of its normal Tuesday slot, I presented the new Minister of Defence, the Honourable John McCallum, with a copy of the Senate's report, of course recommending it for his reading. He told me that he had already been briefed on the document, and that clearly there would be a House of Commons report.

He went on to say it was his intention to meet with the National Security and Defence Committee of the Senate to hear first-hand from them of their experiences. He has also indicated publicly that he is looking towards putting into place a defence review.

PORT SECURITY—LAWSUIT BY ARMED FORCES PERSONNEL DUE TO OVERWORK

Hon. W. David Angus: Honourable senators, I thank the minister for her answer. Just on that point, however, the minister will recall that, in regard to the so-called Kenny report on National Security and Defence, I have asked on a number of occasions about the security situation in our ports. I believe the minister has responded that the matter was under review. May I infer, from her answer, that this issue of alleged organized criminal activity in our ports is one of the issues into which the new minister will be looking?

Perhaps I may also add this question: I have been reading, as I am sure we all have, about two former peacekeepers, George Dumont and Jean Claude Drolet, who are suing the government due to stress-related illnesses, saying that they were forced to take on more than they could handle and that they were treated improperly when they succumbed to the rigors of the job they were carrying out in the Canadian military.

Mr. Dumont stated, and I quote:

> Canada has some of the best soldiers in the world. But the ... administration system is down the drain. The system ... is not working.

He claims there are hundreds of Canadian soldiers in the same condition, with problems of depression, burnout and other major stress-related problems, and that the situation will only get worse. He goes on to say that the army is understaffed and that soldiers are overworked, underpaid and being stretched to the point where many can no longer even tolerate being there due to the stress and the pressures of the job.

Again, my question is — and I imagine the answer will be the same, since it is a serious situation when we are being sued by our peacekeeping forces based on these kinds of allegations — could the minister amplify, perhaps, the government's reaction to this lawsuit?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, first, with respect to the honourable senator's question on the ports, I have to say that I did not raise the specific question of the ports with the new Minister of National Defence. However, I will now do so.

I think the honourable senator is well aware that large sums of money have been spent on the ports, and that there is now an agreement with the United States for joint inspections and joint use of technology, to make those inspections much more clear and definitive.

With respect to the honourable senator's specific question regarding the two officers who are going to court, I certainly cannot comment on any pending court case, and he knows that. However, in terms of the overall questions that underlie their court action, I am pleased to announce that, due to the recruitment policy — because recruitment is a serious issue here — we have actually exceeded the number of troops that have been recruited successfully into the Armed Forces this year by approximately 1,000. I believe the estimate was for 10,000, and we have, in fact, recruited over 11,000. That momentum obviously needs to be ongoing, and it will be. The honourable senator has identified a very significant issue.

Senator Angus: In conclusion, honourable senators, since by all accounts we are nearing the end of the session before the summer break, and because the report did recommend an inquiry into not only the state of the military but, specifically, the port situation that I have asked about on a number of occasions, has the minister any idea at all whether there is a possibility that an inquiry will be convened or an appropriate inquiry team appointed before the summer recess?

• (1410)

Senator Carstairs: Honourable senators, I have heard nothing in that regard. However, I would suspect that no such announcement will be made, if for no other reason than that the Honourable John Manley is getting up to speed on the broad range of his new portfolio. In response to Senator Angus's specific question, the answer is no, I have heard nothing.

FINANCE

TAX OVERPAYMENTS TO PROVINCES

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate and it concerns an issue that I spoke to in the house yesterday. The matter of tax collection overpayments keeps coming back, much like a bad toothache.

A report in today's *Winnipeg Free Press* puts the total overpayment to Manitoba at about $710 million. The same report states that, and I quote:

> Paul Martin's office had given Manitoba assurances that it would cover at least 70 to 80 per cent of the overpayment and may even bite the bullet for the full amount.

Honourable senators, the Leader of the Government in the Senate is Manitoba's representative in the cabinet. I assume that the former Minister of Finance kept her fully briefed on the file. Did Mr. Paul Martin's office give the Government of Manitoba, in the words of the article "assurances that it would cover at least 70 to 80 per cent of the overpayment and may even bite the bullet for the full amount?"

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, this is clearly an issue of grave concern to me as well as to the honourable senator. I would have been kept as informed as possible, and I was never informed of any such arrangement with the Province of Manitoba. Had I been informed, I clearly would have been quite jubilant. However, I have been informed of the continuing discussions on this matter since the problem was first identified. First, the government said it would take absolutely no action until it received the Auditor General's report, which was received on Monday. By that time, we had a new Minister of Finance, the Honourable John Manley.

Senator Stratton: Honourable senators, I appreciate and accept what the minister is saying. Manitoba's Minister of Finance, Greg Selinger, is the individual who, I think, was led to believe that at least 70 per cent to 80 per cent of the overpayment would be covered. I ask the honourable senator to read the article, to which I referred, in the *Winnipeg Free Press*.

If the Auditor General's report on this matter came out on Monday, can the Leader of the Government in the Senate inform the chamber as to how long it will take to make a decision?

Senator Carstairs: Honourable senators, clearly this is an issue of grave concern, not just to Manitoba but also to British Columbia, to Alberta and to Ontario, which are the provinces most affected. There were some minor changes to the payments to some other provinces as well, but not within the realm of the number of dollars per capita that have impacted on those four provinces.

The Auditor General has provided four reports, which are currently being analyzed. I know that there is a desire on the part of the government to solve and resolve this issue as soon as possible.

FOREIGN AFFAIRS

INDIA AND PAKISTAN—DISPUTE OVER KASHMIR—STATUS OF CANADIAN NATIONALS—POSSIBILITY OF BEING INCLUDED ON AGENDA OF UPCOMING G8 CONFERENCE

Hon. Douglas Roche: Honourable senators, the Leader of the Government in the Senate will recall that, last week, I raised the subject of India and Pakistan with respect to Canada's role in trying to help alleviate the terrible crisis taking place in that part of the world. The honourable leader said, at that time, that my suggestion that Canada send emissaries to both India and Pakistan was valid, and that she would bring it forward to Minister Graham. Is the Leader of the Government in the Senate in a position to inform the Senate, now, on the government's action to seek to resolve the differences between Indian and Pakistan, in order to reduce the risks of nuclear conflict?

In addition, could the honourable leader tell us about the status of Canadian nationals in both India and Pakistan today? Will they be allowed to stay? What is the government's assessment of their personal security?

Later this month, the G8 will be meeting in Kananaskis, Alberta, where they will be discussing terrorism, generally. Does the Leader of the Government in the Senate think that it would be appropriate to put the question of India and Pakistan, and of Kashmir, on the G8 agenda?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator raised similar questions last week and I am pleased to tell him that there have been discussions by the G8 partners about this particular issue. As a result of that, the Minister of Foreign Affairs, the Honourable Bill Graham, had telephone conversations with the Foreign Minister of India and the Foreign Minister of Pakistan, on May 31. Clearly, there is

deep and grave concern in the Department of Foreign Affairs about the escalating problems between India and Pakistan.

Canadian nationals in both Pakistan and India, including the immediate families of our diplomatic staff, have been urged to leave those countries. We have some control over our diplomatic staff because, generally, such an advisory is considered an order with which they would comply. However, we cannot order other nationals out of other countries. We can only do our best to advise them. It is my understanding that there has been some cooperative effort, including some advertising, in this respect, to inform the nationals of all three countries — the United States, Australia and Canada — that, on the recommendation of their respective governments, they should leave Pakistan and India.

INDIA AND PAKISTAN—DISPUTE OVER KASHMIR—SENDING OF EMISSARIES

Hon. Douglas Roche: Honourable senators, while I welcome, of course, the intervention of Minister Graham by way of phone calls to his counterparts in India and Pakistan, the comments of the honourable leader indicate that the Government of Canada still views the situation as dangerous, or perhaps extremely dangerous, in that there is a continuing attempt to have Canadian nationals leave both India and Pakistan. Would that not call for even greater steps? Thus, I return to my original question about the Canadian government sending high-level emissaries to both capitals; emissaries who would carry the full credibility and impact of the Government of Canada to urge, on behalf of this entire nation, that the leaders of both countries cease and desist their nuclear sabre-rattling.

Hon. Sharon Carstairs (Leader of the Government): The Government of Canada would fully agree with the conclusion that India and Pakistan immediately cease and desist, as the honourable senator called it, their nuclear sabre-rattling. Both countries apparently have nuclear capability, although we do not know that for certain. However, there is strong evidence that that is so, and that is of grave concern. The Canadian government is working cooperatively with all members of the G8 on the idea that more voices are better than one individual voice on this particular issue. The G8 is a rather formidable organization in terms of their relationships with both India and Pakistan.

I anticipate, Senator Roche, that this will continue to be a cooperative effort with the G8 nations, which is why Minister Graham made the call on behalf of the G8.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour of tabling two delayed answers. The first one is in response to the oral question raised by the Honourable Senator Prud'homme on May 9, 2002, concerning submarines and the names of firms or lobbyists; the second question is in response to the oral question raised by the Honourable Senator Forrestall on March 14, 2002, concerning the war in Afghanistan and the number of engines used so far by our Sea Kings in Operation Apollo.

NATIONAL DEFENCE

PURCHASE OF SUBMARINES FROM UNITED KINGDOM—INVOLVEMENT OF LOBBY GROUPS

(Response to question raised by Honourable Marcel Prud'homme on May 9, 2002)

For the period March 1996 — November 1998, VAdm (Ret'd) J. Allen was registered as supporting Vickers Shipbuilding for "UPHOLDER Submarine Service Support." For the period July 1998 — April 2001, RAdm (Ret'd) E. Healy was registered as supporting GEC Marine for "Acquisition of four UPHOLDER Class Submarines by DND from the Government of the UK."

WAR IN AFGHANISTAN—OPERATION APOLLO—REPLACEMENT OF SEA KING HELICOPTER ENGINES

(Response to question raised by Honourable J. Michael Forrestall on March 14, 2002)

ANSWER (as of May 2002)

So far, a total of seven (7) engines requiring minor repairs have been removed from Operation Apollo aircraft. Most of these engines have already been returned to service.

[*English*]

ORDERS OF THE DAY

LEGISLATIVE INSTRUMENTS RE-ENACTMENT BILL

REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eighteenth report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill S-41, to re-enact legislative instruments enacted in only one official language, with amendments), presented in the Senate on June 4, 2002.

Hon. Lorna Milne moved the adoption of the report.

She said: Honourable senators, I rise this afternoon to present the eighteenth report of the Standing Senate Committee on Legal and Constitutional Affairs, concerning Bill S-41. Your committee has recommended five amendments to this bill. Before I deal briefly with each one, I wish to make several observations.

Your committee worked exceptionally hard on this bill, and significant contributions were made from all around the committee table. I want to thank all the members of the committee for taking the time to work together, as we wrapped our heads around what I thought, at first, was a straightforward bill.

As our hearing progressed, we collectively realized that significant constitutional principles were at the heart of this bill. Our deliberations focused on those issues and have led to these amendments.

Your committee made many changes to the bill because we all believed that these improvements were needed to safeguard constitutionally entrenched language rights. Constitutional law requires all statutory instruments to be enacted, printed and published in both English and French. There are many statutory instruments that were enacted and published in only one language. In the bill as referred to committee, the executive was given wide latitude to fix these problems as they arose, not in any time limit, by re-enacting the problematic instruments. Your committee felt that this approach did not live up to the government's constitutional obligations. The amendments redefine the framework under which language problems in legislative amendments will be fixed.

The first amendment, which is to clause 2 on page 1 of the bill, limits the government's ability to re-enact legislative instruments to those that were enacted "before the coming into force of section 7 of the Official Languages Act on September 15, 1988." Your committee believes that by that date the government was, or should have been, fully aware of its constitutional obligations and thus should have to pay the price for any mistakes it made after that date.

The second amendment is to clause 4 on page 2 and has two parts. The first was necessary to close a loophole in the bill as written. Bear with me while I try to explain the loophole.

All government regulations must be published either in the *Canada Gazette* or in some other publication. If a regulation is not published, it is unconstitutional and invalid. It is possible that there are some regulations that were enacted but never published. As previously written, the bill allowed the government to fix the regulations that were, first, published in the *Canada Gazette*; second, published in some other publication; or, third, never published at all. The first part of the second amendment prevents the government from fixing legislative instruments that were never published at all.

The second part of the second amendment makes it clear that no person can be convicted of an offence under an improperly enacted legislative instrument unless the government fixes the instrument before the alleged offence is committed. One cannot be convicted of this retroactively. Under the original version of the bill, the person could be convicted if the government had taken reasonable steps to make that person aware of the law, regardless of whether or not the government had fixed the problem. Again, your committee believed that the government should be held to a higher standard. The government must prove that the law is in place constitutionally before any person is convicted under its provisions.

The third amendment is to clause 4 on page 3. It sets a deadline for the government to fix the problem. All legislative instruments that were improperly enacted, printed or published and that are not fixed within a period of six years after the date that this bill comes into effect are immediately repealed. Under the original bill, there was no deadline for the government to fix the problem. Your committee believes that the Canadian public has a right to know what its laws are and felt that six years would be sufficient time to allow the minister to complete his or her work.

The fourth amendment, on page 3, again to clause 6, states explicitly:

> The English and French versions of an instrument re-enacted under section 3 or 4 are equally authoritative.

That is self-explanatory.

The fifth amendment, on page 3, adds a new clause to the bill. It has three parts. The first part adds a new clause 7. This clause states that no instrument that was repealed or had otherwise ceased to be in force will be revived by this bill. In short, if a regulation was repealed or expired yesterday, it will remain repealed or expired after the bill is passed.

The second part of the fifth amendment merely renumbers a clause that was already in the bill.

The third and final part of the fifth amendment contains a review provision. Briefly stated, the Minister of Justice has five years to complete a review of the work his or her government had done under this bill. The minister then has one further year to report to Parliament, on the findings of his or her review. In that report, the minister must first describe the measures taken to identify legislative instruments that are unconstitutional. Second, he or she must list all legislative instruments that have been repealed and re-enacted under this bill. Third, he or she must list all legislative instruments that the minister has discovered are not constitutional but have not yet been fixed.

Honourable senators, I believe that the five amendments in the committee's report substantially improve this bill. More to the point, they effectively carry out the constitutional responsibilities of the government.

I urge all honourable senators to vote in favour of the adoption of this report.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, the Standing Committee on Legal and Constitutional Affairs studied Bill S-41 at length, in a climate of honest cooperation, to the credit of all members of the committee. We heard from many witnesses and, as the chair, the Honourable Senator Milne, pointed out, we came to the conclusion that a number of amendments were needed to improve the bill.

Senator Milne gave a good summary of the amendments we are proposing. These amendments are technical in nature. I would like to say a few words about them.

The first amendment has to do with clause 2 of the bill and specifies that the legislation applies until September 15, 1988, the date on which the second Official Languages Act came into effect. Incidentally, there is no valid reason for legislative instruments being published in only one language after that date. If any legislative instruments have been published in one language only since September 15, 1988, they will be dealt with on a case-by-case basis. The ideal date would have been April 17, 1982, the date the Constitution Act, 1982, took effect. But September 15, 1988, also makes sense.

We are proposing three amendments to clause 4 of the bill. The purpose of the first is to close the non-publication loophole, since clearly the instrument in question was supposed to be published, but was not; it will be published in both official languages.

• (1430)

The second amendment clarifies the non-retroactive scope of the legislation as regards offences. As a result, no one can be convicted for an offence that is a violation of a newly re-enacted legislative instrument, unless this offence took place after the re-enacted instrument came into force and after its publication in both official languages.

Lastly, if legislative instruments specified by the bill are not re-enacted within the six years after their coming into effect, they will automatically be repealed.

The amendment proposed for section 6 would ensure that both versions of the re-enacted instruments have equal force of law. This goes without saying.

The new clause 7 provides for a safeguard clause to cover all situations. Legislative instruments that have already been repealed will not be re-enacted by accident.

The new clause 8 would exempt statutory instruments re-enacted under clauses 3 and 4 of Bill S-41. Furthermore, this clause specifies that instruments re-enacted under clause 3 and 4 of the bill will automatically be examined by the Joint Committee on the Scrutiny of Regulations.

The new clause 9 provides for an update report. It includes re-enacted legislative instruments, legislative instruments that have not been re-enacted and instruments that have been identified, but neither repealed nor re-enacted. It sets out measures that will be taken to identify instruments described in subclause 4(1). Finally, it provides the number of legislative instruments that are not published — those described in subsection 15(3) of the Statutory Instruments Act. It is basically an accountability provision.

In closing, I would like to say that Bill S-41 is a very important legislative measure. Statutes adopted by the Parliament of Canada are passed in French and in English, pursuant to section 133 of the Constitution Act, 1867, section 18 of the Charter of Rights and Freedoms, and the Official Languages Act. In 1979 and 1992, the Supreme Court of Canada ruled that legislative instruments must also be adopted and published in French and in English. There is a possible exemption for orders and measures that are not of a legislative nature, that are not of public interest or that concern state security.

Unfortunately, this is why Bill S-41 was drafted; some regulations were not published in both official languages. This bill rectifies this very serious deficiency.

The Standing Committee on Legal and Constitutional Affairs spent a great deal of time and energy to solve this problem. I invite honourable senators to adopt our report.

[*English*]

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

Motion agreed to and report adopted.

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

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

BILL TO REMOVE CERTAIN DOUBTS REGARDING THE MEANING OF MARRIAGE

SECOND READING—DEBATE CONTINUED

On the Order:

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

Hon. Herbert O. Sparrow: Honourable senators, with permission, I should like to make a few comments in support of Bill S-9.

Honourable senators, marriage, the lawful union of a man and woman, is a foundational institution to Canadian and world society. Many Canadian men and women choose to enter into marriage relationships. Furthermore, the meaning of a marriage, as between a man and a woman, currently exists in law. Bill S-9 clarifies the meaning of marriage by repeating and upholding existing legislation.

In my support of Bill S-9, I wish to briefly discuss the importance of marriage to Canadian society. In so doing, I shall begin by providing a brief examination of marriage as a social institution. Marriage provides a secure, coherent framework within which a man and woman commit to loving, serving and honouring each other for the remainder of their lives. The marriage relationship provides a stable context in which a man and a woman procreate and raise the children who are our nation's future. Marriage relationships underpin and reinforce households and families. Many Canadian men and women have chosen to express their long-term commitment to each other and their future children. Canadian men and women continue to support and uphold marriage as a social institution.

I have stated that the marriage relationship is unique and distinctive from other human relationships in that it provides the framework within which a man and woman join together for the procreation and raising of children. No other human relationship, no matter how loving and committed, is the same as the marriage relationship. No other human relationship provides a framework for procreation and raising of children as does marriage. We must continue to support and uphold marriage as unique and significant to Canadian and world society.

The meaning of marriage as it exists in legislation is that marriage is a union of one man and one woman. That is the state of the law. Bill S-9 simply repeats and upholds existing legislation.

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

• (1440)

[*Translation*]

FISHERIES

BUDGET AND REQUEST FOR AUTHORIZATION TO ENGAGE SERVICES AND TRAVEL—STUDY ON MATTERS RELATING TO OCEANS AND FISHERIES—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Fisheries *(Budget 2002-2003)* presented to the Senate on June 4, 2002.—*(Honourable Senator Comeau)*.

Hon. Gerald J. Comeau moved the adoption of the report.

Motion agreed to and report adopted.

[*English*]

QUESTION OF PRIVILEGE

The Hon. the Speaker: Honourable senators, we have now reached the point in the Orders of the Day to deal with the question of privilege of which Senator St. Germain gave proper notice under Senators' Statements. I call on the Honourable Senator St. Germain.

Hon. Gerry St. Germain: Honourable senators, I rise on a question of privilege on a matter of importance to all honourable senators as it impacts upon the way in which we fulfil our duties and responsibilities as senators. It impacts on the mandate, function and practices of this place.

My question pertains to a news release sent out by a member of the House of Commons, Mr. Murray Calder, on June 3, 2002. The press release references a deal struck between the Minister of Justice and the Liberal rural caucus regarding an amendment to Bill C-15B. This deal involves the Senate and represents a dismissive view by the minister, of the legislative role of the Senate, that I believe is an affront to its authority and a contempt of Parliament.

I will submit the press release in its entirety to His Honour, but for the purpose of my question of privilege I will read the offending paragraph.

> Previously Calder had indicated that he and others would vote against the bill unless it could be amended.
>
> The breakthrough came when Justice Minister Martin Cauchon agreed that he would look favourably on a rural-caucus-initiated amendment in the Senate that would offer limited assurances to responsible animal users.

The press release identifies this deal as a win, a fait accompli, close the file and stop worrying because the minister fixed the bill. The press release goes on to further offend the Senate by stating:

> This is a win, win situation. This is a good bill that will provide much tougher penalties for those who wantonly abuse animals. It modernizes an outdated law and treats animals as being with a capacity to feel pain, and not merely as property. At the same time, when amended, it will reassure those who use animals responsibly in their livelihood or recreation.

Members of the House of Commons are making a deal based on a future decision of the Senate. So confident are these members in the Minister of Justice's perceived power over the Senate that they are willing to vote a certain way, and they are justifying their vote to their constituents based on the Senate taking certain decisions favourable to them. The Minister of Justice is giving the impression to the public that it is his decision, not the Senate's, that will determine the outcome of amendments proposed in the Senate.

I should like to submit a ruling by the Speaker of the House of Commons, from October 10, 1989. Speaker Fraser ruled on a similar matter regarding an advertisement put out by the government that made it appear that the GST was approved by Parliament before Parliament actually approved it. The Speaker referenced the member for Windsor West, the recently retired Deputy Prime Minister Herb Gray, as saying:

> When this advertising says in effect there will be a new tax on January 1, 1991, the advertisement is intended to convey the idea that Parliament has acted on it because that is, I am sure, the ordinary understanding of Canadians about how a tax like this is finally adopted and comes into effect. That being the case, it is clearly contempt of Parliament because it amounts to a misrepresentation of the role of this house.

While Speaker Fraser in 1989 did not rule a prima facie question of privilege, he did say:

> I want the House to understand very clearly that if your Speaker ever has to consider a situation like this again, the Chair will not be as generous.

Speaker Fraser was in a quandary and not sure on which side he should rule, so he gave a warning. He warned that the next time he would rule on the side of granting a prima facie question of privilege.

A similar case was raised in 1997 involving the Department of Finance anticipating a decision of the House, and the Speaker ruled on November 6, 1997, that:

> The Chair acknowledges that this matter is a matter of potential importance since it touches the role of members as legislators, a role which should not be trivialized. It is from this perspective that the actions of the department are of some concern. The dismissive view of the legislative process, repeated often enough, makes a mockery of our parliamentary conventions and practices. I trust that today's decision at this early stage of the 36th Parliament will not be forgotten by the minister and his officials and that the department and agencies will be guided by it.

Honourable senators, I believe that if this house is to function with authority and dignity, then it must be respected, especially by members of Parliament and the executive branch of the government. Therefore, I ask that His Honour rule that this matter is a prima facie question of privilege, at which time I would be prepared to move the appropriate motion.

Honourable senators, I see this not as a partisan issue, but one of respect for this great institution in which we sit as senators.

Hon. Nicholas W. Taylor: Honourable senators, although I can sense what is driving the honourable senator to raise this question of privilege, there is possibly a bit of misunderstanding here. I am a senator and a member of the Liberal rural caucus.

The rural caucus has been quite concerned with the bill as it appears in the House of Commons with respect to the cruelty to animals. By the time our rural caucus was able to make our point to the minister, the bill had already floated past the House of Commons and was on its way to the Senate. Contrary to what the honourable senator says, I think that this honours the Senate.

• (1450)

When was the last time you heard a minister of the government willing to say in the House of Commons that, whether or not the Senate amends a bill, they will accept it?

Senator Forrestall: I hear you Senator Taylor, and I do not believe it.

Senator Taylor: It may well be that when they were in power, your ministers refused to listen to any recommendations from the Senate. However I think ours will do so, at times. This is only a statement by the chairman of a committee within the caucus.

What I wish to get across to His Honour is that there is no violation of privilege intended here. If anything, it flatters the Senate, to the extent that a minister of the Crown is saying that if the Senate returns a bill and wishes to make a change to it, he will accept that change.

The point is that we in the Senate have always had that right to make changes, which a minister may or may not accept. All that has happened is that this minister has said that if this change is made and the bill returned to the House of Commons with that change, he will accept it. I do not see that as infringing on the privileges of the Red Senate. If anything, it is a compliment.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I strongly believe this is not a question of privilege. I have the press release in hand to which Senator St. Germain is referring. It states that the members of the Liberal rural caucus are calling for government support as a result of the agreement whereby the bill might be amended in the Senate.

When I go out to speak in the schools, I tell the students that the Senate plays the same role as the House of Commons. We can propose amendments to bills, or reject them. This is what is stated in the first paragraph. The third refers to statements by Minister Cauchon, namely that he would be agreeable to giving favourable attention to an amendment from the Liberal caucus in the Senate. My reading of this is not that the minister is saying that there will be a Senate amendment to the bill. Nor is he saying that there will not be one. His language is neutral.

However, I have an excerpt from the *House of Commons Debates* of June 3, 2002. It just so happens that a member of the other place asked a direct question to Minister Cauchon. It would be appropriate for us to be aware of that question and of the answer provided. It deals precisely with the point of order raised by the Honourable Senator St. Germain. The question was put by Jim Abbott, the member for the riding of Kootenay—Columbia. He represents the Canadian Alliance, just like the Honourable Senator St. Germain.

> Mr. Speaker, in order for the legislation to go through, the minister and the government whip must have the full co-operation of the backbenchers of the Liberal Party. I have it on good authority that the minister has been advising backbench Liberal members that whatever necessary amendments may have to be done in order to make the legislation proper will be done in the Senate after the bill passes third reading in the House.
>
> I would like to have a simple answer. Has the minister or anyone on his behalf made those assurances in order to get people in his party on side? The answer is either yes or no.

The reply given by the Hon. Martin Cauchon was as follows:

> Mr. Speaker, we have to be careful and respect the Senate process. There are different stages. The bill is in the House of Commons at this point in time after which it will be referred to the Senate. The Senate will have to look at the bill. We will see what takes place at that time.
>
> Bill C-15B is a good bill. It modernizes the existing sections of the criminal code and creates a definition of animals to increase penalties. As well it creates the new offence of viciously killing animals.
>
> Let us proceed in the House of Commons and respect as well the process on the Senate side.

Honourable senators, I believe that this excerpt clearly spells out the minister's intentions, who never indicated to the members of the rural caucus that there would be an amendment in the Senate. The minister has a clear understanding of the process that takes place in the House of Commons and in the Senate. Honourable senators, based on this information, I do not think that this is a question of privilege.

[*English*]

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I think that one should read this press release carefully, because it contradicts what both Senator Taylor and Senator Robichaud have said. There is a commitment between the government and the Liberal rural caucus that an amendment will be tabled in this chamber and passed. I emphasize the "and passed," otherwise, the bill would still be in the House of Commons.

I draw the attention of honourable senators to the second-to-last paragraph, where Mr. Calder says "at the same time when amended." Not "should it be amended" or "hopefully an amendment will be passed" but "when amended." In other words, there is a commitment on the government side over there to the Liberal rural caucus that the bill, once tabled here and sent to committee, will be subject to an amendment.

I assume, without proof, that that amendment is already written, and the question to be asked is why was the amendment not proposed in the place where it should have been proposed? Why are we now to be considered an extension of the House of Commons? Why, even worse, are we to be considered an extension of the Liberal caucus, and of the government?

It is not for us to complete the work of the other place; it is for the other place to send us completed work, and then it is for us to examine the legislation, as we always do, and try to improve it, if improvements can be found, through amendments or whatever other means. Now, we are being practically instructed, once we get this bill, to look with favour on an amendment that we have not even seen. We have no idea what they are talking about, except that it is something to satisfy some 18 or 20 members of the Liberal rural caucus who told their government that if they do not receive some assurance the bill will not get out of the House of Commons, and we are becoming a tool of that political infighting.

If that is not an attack on our privilege, I do not know what is. Let me quote from two authorities, to strengthen my argument.

• (1500)

Jeanne Sauvé, former Speaker of the House of Commons, said in the House on October 29, 1980, that the definition and application of the concept of contempt is ever changing. She said, at page 4214 of Hansard, on October 29, 1980, the following:

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

The government, by announcing even before we receive the bill that an amendment is to be presented to us and passed by us, is interfering in our proceedings. It is as simple as that. Allow me to quote from Erskine May, *Parliamentary Practice,* twenty-second edition, chapter 8, page 108:

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

Honourable senators, there is no precedent, as far as I know, of the Senate of Canada being alerted, even before a bill is tabled before it, to the fact that an amendment is in the works that the House of Commons wishes for but does not have the courage to pass itself.

Why was the amendment at issue not tabled in the House of Commons? I will not go beyond the argument on the question of privilege; however, I suspect that this is a convenient way for the government to kill the bill.

Honourable senators, my thinking on this matter is as follows: The bill is before us. Next week, depending on the outcome of the question of privilege, the bill may be sent to committee. We will not have a chance to consider it until we resume in September or October. Prorogation will follow shortly thereafter. As a result, the bill will die on the Order Paper and the minister will say this: "I am sorry, but I could not do anything about it. It is beyond my control."

This may all seem Machiavellian — and goodness knows, these days that word is not an exaggeration — but why was the amendment, which satisfied the Liberal rural caucus, not tabled in the House of Commons?

It is an insult to the House of Commons to be told: "You people are not qualified to complete the work on the bill, so send it over to the other place, they will do it, and then we will get it back and rub our hands in glee." We should not be party to that kind of exercise because it is demeaning to the parliamentary process. It is an insult to the House of Commons; it shows contempt for this place; and certainly, it is an insult to the responsibilities that this place has been carrying out for so many years.

For those reasons, I support the question of privilege raised by the Honourable Senator St. Germain. I hope, Mr. Speaker, that you will entertain it favourably.

[*Translation*]

Senator Robichaud: If the Leader of the Opposition's reasoning were correct, I would agree completely with him. But he is basing his argument on a fictitious amendment. I have not seen it. I have not been told of it. His argument is based on the fact that the government influenced its members to vote in favour of the bill on the assumption that there would be an amendment in the Senate.

I do not see any amendment, I do not have it, I have not seen it. If anyone has seen it, I would certainly like to know about it. His argument is based on a non-existent amendment.

Senator Lynch-Staunton: A promise.

Senator Robichaud: Did anyone hear the minister make this promise? I did not. There is a bit of speculation going on. If the other side is assuming that the Senate can do as it pleases and that will be that, it is mistaken. The other place was made well aware of the powers and proceedings of the Senate. We will exercise our powers during consideration of this bill. We have sent back amended bills, which were returned to us. The chamber is well aware of what we can do, and what we do well for that matter.

However, taking the argument a bit further, if a minister took it for granted that amendments could be easily passed in the Senate, he was taking the risk of seeing his amendment defeated and his bill thrown out completely.

Further to the Honourable Leader of the Opposition's comments that this is one way of not taking the process of considering this bill to its completion, I think that the government wants this bill to be considered seriously in the Senate. The honourable senator is telling us that there may be prorogation in the fall. He is speculating again.

Maintaining that there is a question of privilege on a fictitious amendment or a hypothetical prorogation does not, honourable senators, constitute sufficient grounds for a question of privilege from Honourable Senator St. Germain.

Senator Lynch-Staunton: I agree completely with Senator Robichaud. There is no amendment before us. That is what makes matters worse. We are being sent an incomplete bill.

If we believe what Murray Calder is telling us, and so far the Minister of Justice has not denied it, and I quote from the English version:

[*English*]

> The breakthrough came when Justice Minister Martin Cauchon agreed that he would look favourably on a rural-caucus-initiated amendment in the Senate that would offer limited assurances to responsible animal users.

Senator Taylor: What is wrong with that?

Senator Lynch-Staunton: The problem is that we have before us an incomplete bill. We have a bill for which the government, according to the press release, through the Minister of Justice, will look favourably on an amendment. How can we look intelligently at a bill that is incomplete? I return to the question: If this amendment is so good, why was it not passed in the other place? It is offensive to take this place for granted. Before we even look at the bill, there is an amendment in process that, obviously, the majority will support.

Do we want to agree to being an extension of the House of Commons, to do the work that they should be doing? That is not our role, honourable senators. That is where the privilege arises. It offends our freedom to act as we want, openly and without undue pressure.

• (1510)

Hon. Joan Fraser: Honourable senators, it seems to me that we are getting very confused here. We are discussing two points: The first has to do with the press release that was issued by Mr. Calder, who is a private MP. Members of Parliament have been known to make mistakes before, and I will not judge the nature of the mistake that Mr. Calder has made, in my view, in making that press release. The second point is whether, indeed, some kind of deal has been made that pre-empts this chamber's freedom to conduct its business.

I can tell honourable senators that, as the sponsor of the bill, I was as surprised as anyone to see Mr. Calder's press release. I have not been party to any deal. Indeed, I have been assured that there is no deal, and that the minister meant what he said when he said that it was important to respect the Senate's freedom to conduct its own business.

I would have been astounded if there had not been suggestions made before the committee to amend the bill, because there are always suggestions made to amend every bill. When someone has failed to have an amendment made in the other place, they frequently will try to have it made in the Senate. I was expecting that to happen this time, and I expect Mr. Calder will be out there lining up his troops to try to have an amendment made here. I assume that our committee will consider any representations made by Mr. Calder, and by anyone else, including the minister, on their merits, and act accordingly.

I do think, however, that it is important to separate the question of what the committee does from the question of whether the press release was, in some way, reprehensible.

Hon. Eymard G. Corbin: Honourable senators, I was rather shocked yesterday when I read the account of this attempt by the House of Commons to shirk its responsibilities. If there is a valid question of privilege, I think that question of privilege lies in the House of Commons itself and with its members. In my opinion, it is unprecedented that the House of Commons would knowingly send to the Senate an incomplete or defective bill without taking the necessary measures to correct those defects.

I am not speaking for the government here. I am not speaking for the minister. I am not speaking for the bill. I have a great deal of sensitivity — I must admit my bias — in favour of animal rights. I am speaking about the respective roles of the independent institutions: the Senate on one side and the House of Commons on the other.

In my lifetime in the House of Commons, I do not recall an instance of deliberately sending to the upper house an incomplete or distorted bill because of fear of embarrassing divisions, or approaching holidays, or any other reasons. That House knows that a bill which it wants to send our way is defective, in the sense that it has not been submitted to the full process of scrutiny and finality by way of a decisive vote. Inasmuch as I have a great deal of sympathy for Senator St. Germain's proposition in asking the Speaker to see this as a prima facie case of breach of privilege, if I were a member of the other House, I would rise in that House and claim privilege, and not do it here in this house.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I concur in what the previous honourable senator has just stated. It seems to me that this matter is about the integrity of Parliament, in a bicameral Parliament. I think Senator Corbin is quite correct when he observes that the members of the other place should be on guard to protect their privilege. Senator St. Germain has raised the matter in this house because it has come to this house. I think he is quite right. Clearly, there is a prima facie case of breach of privilege.

In order to be helpful to the Speaker, I would like to put on the record the June 3 Hansard from the other place. I quote Mr. Jim Abbott, Kootenay—Columbia, of the Canadian Alliance:

> Mr. Speaker, in order for the legislation to go through, the minister and the government whip must have the full co-operation of the backbenchers of the Liberal Party. I have it on good authority that the minister has been advising backbench Liberal members that whatever necessary amendments may have to be done in order to make the legislation proper will be done in the Senate after the bill passes third reading in the House.
>
> I would like to have a simple answer. Has the minister or anyone on his behalf made those assurances in order to get people in his party on side? The answer is either yes or no.

If you continue to read that edition of the House of Commons Hansard, there is no clear "yes" or "no" answer. There is a soft expression of view that the other place — meaning, to them, the Senate — has its processes that must be followed. However, there is no rejection of that premise that the minister knows full well that his bill is not acceptable the way it is, and that to get it out of the House he has given these assurances. On what authority, I do not know, because none exists. He himself believes the bill is flawed and needs correcting, but will, nevertheless, allow it to leave the House of Commons without having the flaws corrected.

How many members of the House of Commons held their noses and voted "yes" at third reading on the promise of the minister that the bill would be amended — where? — in this chamber? This goes to the essence of the matter of a breach of privilege.

Honourable senators, Beauchesne, sixth edition, page 25, paragraph 3, speaks to interfering with members:

> It is generally accepted that any threat, or attempt to influence the vote of, or actions of a Member, is breach of privilege.

The statement that I just read from the Hansard of the other place clearly falls within that rubric.

Honourable senators, another very important point is that the breach of privilege can be reflective not only of an internal analysis of what is taking place — and it is all there in the Hansard of the other place — but also that there is an external dimension that speaks to this breach of privilege. The external analysis is the perception of the Canadian people as to the relevance of this house. That is the privilege that I think we are obligated to defend, that the privileges of the Senate of Canada — the second chamber in a bicameral system — are being undermined.

Why do I say that that is part of an external analysis? Honourable senators, we have heard what one news release said. From my province of New Brunswick, here is a report from the *Times & Transcript*. This is what the people of New Brunswick have heard:

> After threatening to vote against his own government's cruelty to animals bill, New Brunswick Liberal MP Andy Savoy and the rest of the rural caucus retracted their threats and voted for the bill unamended yesterday.
>
> The MPs are concerned that the cruelty to animals provisions in the bill, which now heads to the Senate, would be turned against farmers, turning them into criminals for traditional practices such as de-horning and branding.
>
> Savoy said he accepted a promise from Justice Minister Martin Cauchon to amend the bill at the Senate, despite the fact that Savoy had originally rejected the offer.
>
> He said Cauchon had preferred to amend the bill when it reached the Senate where the Liberal majority is larger and the opposition less complex.
>
> However, Cauchon's plan also means that the bill will return...

• (1520)

Honourable senators, there is the public perception that, I say, speaks to the external dimension of the privilege. We will become a laughingstock. This institution and its role in the bicameral system is undermined. I think that the issue of privilege is a very serious one as raised, and I think certainly there is a prima facie case that should be looked into.

[Senator Kinsella]

[*Translation*]

Senator Robichaud: Honourable senators, nothing I have heard here convinces me that there is cause to raise the question of privilege.

There is conjecture and reference to a release with statements that are unfounded. When he referred to extracts from the House of Commons Debates, my honourable colleague opposite spoke of a question asked of the minister, but did not refer to the response. He said that the response was not clear. I think that the response given by the Minister of Justice, the Honourable Martin Cauchon, is perfectly clear, and I will quote it in English.

> Mr. Speaker, we have to be careful and respect the Senate's process. There are different stages. The bill is in the House of Commons at this point in time, after which it will be referred to the Senate. The Senate will have to look at the bill. We will see what takes place at the time.

If the minister had stated at the time that there would be no amendments in the Senate, this accusation could have been made. Even this accusation is unfounded. The minister was very clear when he said that it was imperative that the parliamentary process in the Senate be respected, i.e. first reading, second reading and consideration in committee.

If he had said otherwise, I believe he would have been mistaken, that he would have gone too far and that we could find that there is cause to raise the question of privilege. The minister was very clear in saying that the parliamentary process in the Senate had to be respected.

I cannot confirm whether or not there will be amendments. At second reading, the bill will be considered in committee in the usual manner. The minister said that he respected this process and gave no assurance as to whether or not there would be any amendments.

I say this is based on suppositions. My honourable colleague speaks of "perception." If we were to rely on everything we read in the newspapers, we would spend all our time correcting allegations and trying to correct the image projected, which does not always reflect reality. In this case, the minister's answer is clear. It reflects reality and respects the actions that will be undertaken by responsible senators.

Hon. Roch Bolduc: Honourable senators, if I understand correctly, we can take for granted that no marching orders were given, as far as what will be done in the Senate. Is the press release a product of the MP's imagination?

Senator Robichaud: Honourable senators, I can say that this is not the case. Senator Bolduc is referring to the time he sat on the government side. I refer to senators, in general, on one side or the other, who do not follow orders blindly. On this side, we have to advance the government's agenda.

Bills represent a step forward. The opposition fulfils its role very well by pointing out flaws in a bill and moving amendments.

Senator Bolduc states that the press release is the product of the MP's imagination. I will not speak on behalf of a member in the other place, and I will not pass comment on what Senator Bolduc has said.

[*English*]

Hon. Lorna Milne: Honourable senators, since this bill is quite likely to come to the Standing Senate Committee on Legal and Constitutional Affairs, I would point out that we rarely take marching orders from anyone. We have just recommended five amendments to a government bill.

I also point out that we do not make amendments lightly. We do not make them unless evidence has been presented before the committee that supports those amendments, and I can assure the Senate that we will not make amendments lightly in the future.

Senator St. Germain: Thank you, Your Honour, for having the patience to listen to the arguments from both sides. It is in your purview and it rests with you to establish whether there is a prima facie case in this instance.

For clarification, Senator Taylor made reference to the fact that we are too late. Unless I am living in a different world, this issue that was promised to be amended here in the Senate, a promise that persuaded rural caucus members to vote for the bill as it was presented in the House of Commons, has been on the front burner from day one. This has been an issue with ranchers like myself and others who are in the ranching and farming business, such as Senators Sparrow and Gustafson and others here who own cattle. For clarification, I am sure that the issue did not come up too late, but I will not argue. If that is the way Senator Taylor sees it, I will respect what he said.

Senator Taylor: It came through the committee.

Senator St. Germain: Honourable senators, members of the other place voted on an action that was promised in this place. This clearly indicates that the minister must have been involved.

Senator Fraser said Mr. Calder made a mistake. We all make mistakes. However, if it is the minister's mistake that he entered into such an agreement, I say to honourable senators that he should be held in contempt of the Senate for his dismissive view of its role. The dimension of contempt of Parliament is such that the house should not be constrained in finding a breach of privileges of members or of the house. This is precisely the reason that, while our privileges are defined, contempt of the house has no limits.

Erskine May, *Parliamentary Practice*, twenty-first edition, at page 115, states that an offence for contempt:

> ...may be treated as a contempt even though there is no precedent of the offence. It is therefore impossible to list every act which might be considered to amount to a contempt, the power to punish for such an offence being of its nature discretionary.

• (1530)

I cite Joseph Maingot's *Parliamentary Privileges in Canada*, second edition, at page 225:

> While privilege may be codified, contempt may not...there is no closed list of classes of offences punishable as contempt of Parliament.

I rest my case. I am hopeful that the decision Your Honour reaches will be based solely on the institution. If the past is any indication, I am sure that will be the case.

The Hon. the Speaker: I would like to thank all honourable senators who have intervened in the matter of the question of privilege that is before this house.

As honourable senators know, rule 43(12) of the *Rules of the Senate of Canada* provides as follows:

> The Speaker shall determine whether a *prima facie* case of privilege has been made out. In making a ruling, the Speaker shall state the reasons for that ruling, together with references to any rule or other written authority relevant to the case.

We have developed a substantial record. A number of authorities have been quoted; as well, there are, perhaps, others that should be considered. Therefore, I shall take the matter under consideration and return with a ruling to the Senate as soon as I can.

Having said that, I should advise honourable senators that I am not here tomorrow due to a commitment in my home province. However, the Speaker *pro tempore* will be in the Chair.

IMPACT OF CORPORATE GOVERNANCE IN CANADA

INQUIRY—DEBATE ADJOURNED

Hon. Jim Tunney rose pursuant to notice of Thursday, May 30, 2002:

> That he will call the attention of the Senate to corporate governance in Canada and the impact it has on ordinary individual Canadians, including shareholders, pensions, employees and suppliers.

He said: Honourable senators, like other nations, Canada has had its share of corporate failures and scandals. Often these situations highlight corporate practices that can have a negative impact on shareholders and other stakeholders such as employees, customers, suppliers, creditors and communities.

Recently, dramatic reductions in share value and bankruptcies in the technology sector, as well as several high-profile corporate collapses, have raised the question about the actions of corporate management, boards of directors, and auditors. Corporate governance, corporate social accountability, directors' duties, board independence and the role of audit committees are issues of serious concern to me and, in my view, should be so to all Canadians. These issues have been at the forefront of a number of Canadian reports on corporate governance and have also received considerable attention as a result of the Enron collapse in the U.S.

One of my prime areas of concern is the given trends we see where, in some cases, share values have decreased by as much as 94 per cent, resulting in the reluctance of private investors to participate in ownership.

We know that stock options are often used to compensate corporate management, directors and employees. Stock options can be an important incentive to achieve long-term growth; they can also serve as a form of compensation for employees of small companies that cannot afford to pay high salaries. Increasingly, however, stock options are being awarded to corporate executives when arguably their use is unwarranted.

The Ontario Teachers' Pension Plan Board has been an extremely vocal opponent of the excessive use of stock options. In its capacity as an institutional investor, it has voted against many stock options plans. The board has established standards for these plans, and only under certain restrictions does its corporate governance and proxy-voting guidelines provide that it will support stock options.

Honourable senators, how stock options are accounted for in the financial statements of companies is another of my concerns. Because stock options are not treated as an expense, corporate profits are overstated and retail investors, in particular, have a false impression of a company's profitability.

U.S. Federal Reserve Board Chairman Alan Greenspan has called for an expensing of stock options. In Canada, institutional investors such as the Ontario Teachers' Pension Plan Board have urged companies to do the same.

Interestingly, early last month, the Toronto-Dominion Bank became the first large Canadian corporation to state that it will treat stock options as an expense.

As an example of the impact that would have on Canadian corporations, Barrick Gold would see its annual 2001 profits cut from a reported U.S. $96 million to U.S. $65 million, whereas Alcan's loss would increase from U.S. $54 million to U.S. $59 million. JDS Uniphase's 2001 staggering U.S. $56.1 billion would swell to U.S. $56.6 billion.

Enforcement of illegal insider trading activity is an ongoing issue in Canada. Misuse of confidential information about a company, as we know, can have a material impact on the value of the company's securities. Insider trading, per se, is not illegal: Insiders are allowed to trade securities of companies in which they are insiders. What is illegal is insider trading based on material, non-public information. Very few jail terms have been meted out.

In my view, penalty of a monetary fine is no penalty at all. There needs to be a strengthening of enforcement associated with violations of insider trading rules. There must be both monetary penalties and maximum jail terms. A simple slap on the wrist will no longer do, nor should it be tolerated. Why not impose trading and/or directorship suspensions?

Another suggestion for improving enforcement is the creation of a national securities regulator. Currently, Canada has 13 securities regulators and 13 different sets of regulations, although by virtue of the concentration of business and the presence of the Toronto Stock Exchange, the Ontario Securities Commission is the principal regulator. Harmonization is underway in many provinces, but calls for a Canadian regulator continue to come from various quarters.

When one company acquires another, the purchasing company will sometimes issue shares to pay for the transaction. These new shares dilute the holdings of existing investors.

Honourable senators, consider Nortel. In a recent speech, Claude Lamoureux, Chairman and CEO of the Ontario Teachers' Pension Plan Board, said:

> ...in the 1990s Nortel went on buying binges, acquiring future revenue at ever-rising prices with the new and highly inflated currency of the day — their own shares. The number of shares exploded by 50 per cent to 3.2 billion shares between 1998 and 2001. During the same period Nortel reported 14 per cent sales growth over those four years. However on a per share basis that was a decline of 26 per cent, thus diluting their holdings and depressing the value of their shares.

• (1540)

After the latest of Nortel's massive job cuts, once the dust settles the company will have approximately 42,000 employees, down 56,500, or 57 per cent, from the 98,500 it had at the start of 2001. That is indeed a very sad reality for those employees facing downsizing.

I have some very current information, too late for inclusion in my report. As recently as yesterday, Nortel stock dropped to an all-time 13-year low. The shares have now lost 97.8 per cent of their value since their all-time high of $124.10 on July 26, 2001. As of yesterday, the price of shares dropped 47 cents to $2.67 on the TSE, the stock's lowest point since it was valued at a split-adjusted $2.75 on July 11, 1989.

Consider this, honourable senators: at one time, the CEO made a statement, a boast, that he was now in a position to buy one company every day. I am sure all honourable senators are aware of a venerable Canadian telephone icon that has suffered spectacular financial losses from such transactions. As examples, corporate buyouts of companies that were totally unrelated to the core business have proven to be a disaster: the acquisition of a national TV network, a cash deal at $2.3 billion, and a Canadian national newspaper, both of which are bleeding ongoing financial losses, and we must not exclude the $7.4 billion investment in an international phone company that is now worthless.

Board independence from management is a key corporate governance issue. Boards should, and must, control management and not vice versa. The Toronto Stock Exchange corporate governance guidelines stress that every board should have the necessary procedures and structures to ensure that it can function independently of management. However, as an example, both the perception and reality demonstrated by the Enron case clearly illustrates that board members did not ask the difficult questions.

One reason for board inaction is that directors are often chosen from a group of persons selected by the CEO. Consequently, there is no inducement for them to take management to task. Another reason is that they receive stock options as part of their compensation package. Their financial fortunes are tied to corporate profitability.

The final report of the joint committee on corporate governance outlined core responsibilities for corporate boards, with an emphasis that boards must have the capacity, independent of management, to fulfil their own responsibilities.

I believe that corporations should strive to be more socially responsible. A recent poll released by the Certified General

Accountants' Association of Canada states that almost half of Canadians believe a corporate scandal, such as the beleaguered Enron is facing, could happen in Canada. It is a fact that, in Canada alone, corporate governance has been explored in at least four reports over the last eight years, and the disease, which has been loosely referred to as the "mad cow disease of the corporate world," that continues to sweep a course across our landscape, including the mounting greed of CEOs, is the rewarding for failure and non-performance of those individuals.

I believe we should be investigating corporate governance. We should be considering the creation of a national securities regulator position. We should consider amending the Canadian Business Corporations Act to place limits on management authority, compensation and stock options, and limit directors' terms. Finally, we should review the appropriateness and fairness of using stock options.

Honourable senators, you know very well that I will not be here in this place when I hope that this matter is dealt with. What I will do, however, is give you all a little "heads-up." I have talked to several senators, friends of mine, in particular those who, I find, have an interest and whom I can trust, and I will be leaving here with the hope that some, and perhaps many, of you will follow on with this inquiry. I will promise honourable senators this: From my farm or wherever I happen to be, I will be paying some attention to this matter, just because of the concern that I have, and I have mentioned that in this report.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, I should advise that Senator Tunney's time has expired.

Hon. Joseph A. Day: Honourable senators, in adjourning the debate, I would like to thank Senator Tunney for bringing this important issue to the attention of this chamber by way of an inquiry, and to compliment him on his speech and the many issues he has canvassed therein, which require some elaboration. At this stage, I would like to adjourn the debate.

On motion of Senator Day, debate adjourned.

The Senate adjourned until Thursday, June 6, 2002, at 1:30 p.m.

CONTENTS

Wednesday, June 5, 2002

Available from Communication Canada – Canadian Government Publishing Ottawa, Ontario K1A 0S9