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Thursday, October 3, 2002



THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Thursday, October 3, 2002

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

[*Translation*]

Prayers.

SENATORS' STATEMENTS

WOMEN'S HISTORY MONTH

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the month of October has been recognized as Women's History Month. This year's theme is "Women and Sports — Champions Forever."

We are very proud of the remarkable performance of our women athletes at the most recent Winter Olympics and Paralympic Games. Their success has given to young athletes everywhere the encouragement that their goals can be achieved.

This year's focus of women in sports is meritorious because, as we know, when women are active in sports, it benefits almost every aspect of their lives. Studies have shown that girls who are active in sports are 90 per cent less likely to use drugs and 80 per cent less likely to have an unwanted pregnancy. Sports are clearly a deterrent to social ills. They provide benefits not just to women's health but also immeasurable benefits to their future.

Despite historical culture disapproval, women have still managed to build women's sports associations for themselves and to become exceptional athletes. The most undefeated basketball team in history is the Edmonton Commercial Graduate Basketball Team, which had 502 wins and only 20 losses over a 25-year period when it disbanded in 1940.

Marilyn Bell is still remembered by many of us for swimming across Lake Ontario at the age of 16 and for being the youngest person to cross the English Channel.

Chantal Petitclerc became a wheelchair athlete at the age of 18 and has since won gold and silver medals in the 2000 Paralympic Games, as well as a gold medal in the 2002 Commonwealth games.

Honourable senators, I am proud to say that, in my capacity as Minister with Special Responsibility for Palliative Care, I have had the privilege of working with Abby Hoffman, who had to pretend she was a boy to play on a hockey team because in 1956 there was not a girl's hockey team for her to join. When her team made the finals and it was discovered that Abby was really a girl, the story made international headlines. She went on to become an Olympic athlete in track and field. She also became the first woman to be elected to the Canadian Olympic Association and the first woman Director General of Sport Canada.

Women's History Month is an ideal time to reflect on these dreams of Canadian women — dreams that they turned into reality. It is also a good time to remind ourselves that active, athletic women benefit not only themselves but all of us and future generations of Canadian children.

ILLEGAL DRUGS

CONGRATULATIONS TO THE HONOURABLE PIERRE CLAUDE NOLIN ON CHAIRMANSHIP OF SPECIAL COMMITTEE

Hon. Marcel Prud'homme: Honourable senators, we have some guests from Italy with us today, the family of Giovanni Ianiro, and they will now have an opportunity to see how Senator Marcel Prud'homme, friend of Giulio Andreotti, participates in the debates of the Senate.

Yesterday, I was interrupted after 2 minutes and 32 seconds. I now have time to finish what I wanted to say yesterday. The final paragraph of my speech should please my Liberal colleagues. When I was interrupted by the Speaker of the Senate, a man whom I greatly respect, I was in the process of saying what follows.

In this context, must we decriminalize cannabis, or merely regulate it? This is the debate Senator Nolin is inviting us to take part in over the next few months. In my opinion, as citizens, parents or responsible parliamentarians, we will need to give very careful attention to the committee's proposals.

In closing, I want to point out, as the Leader of the Government in the Senate, Senator Carstairs, did, with great diligence, intelligence, wisdom and sensitivity when she presented her committee's report on palliative care, that Senator Nolin once again demonstrated that the Senate is very well equipped to undertake studies on highly controversial issues.

THE HONOURABLE JEAN-ROBERT GAUTHIER

CONGRATULATIONS ON RECEIVING THE ORDER OF THE LEGION OF HONOUR

Hon. Marie-P. Poulin: Honourable senators, on behalf of Francophone Ontario, and in my capacity as president of the Fédération Canada-France, I wish to congratulate Senator Jean-Robert Gauthier, just as the Leader of the Opposition did yesterday.

We are well aware of the determination, dedication and generosity our colleague has devoted to ensuring that the French language and culture continue to flourish on the provincial and national scene. In Ottawa, he took up the cause of Montfort Hospital, and he is an active member of the Association canadienne-française de l'Ontario. He is also active in the Association des parlementaires francophones, to defend the status of official bilingualism in Canada and throughout the world.

Congratulations to the new member of the Order of the Legion of Honour.

• (1410)

THE SENATE

EFFECT OF RAPID SPEECH ON QUALITY OF INTERPRETATION AND COMPUTER ASSISTED REALTIME TRANSLATION

Hon. Jean-Robert Gauthier: Honourable senators, yesterday, during the sitting of the Senate, the interpretation and computer-assisted realtime translation system broke down. When certain senators took the floor, the message “too fast, impossible to interpret” appeared on the screen on which I follow the debates. The Speaker supports my request in this regard. We will have to speak more slowly. As you know, I have been a hard-of-hearing person for three years now, and I must rely on the cathode ray screen that is in front of me to know what is going on. For at least half an hour yesterday, I could not follow what was going on in this chamber. As you can imagine, this is a problem because I am a senator who wants to and who can participate in the discussions. However, I must read what I cannot hear, and it is impossible for the interpreters to follow, and for the computer-assisted realtime translators to put the proceedings in writing if senators speak too fast. Yesterday, this happened on several occasions.

There is also the issue of the language spoken. Spoken English is easier to follow than French. How many times have French-speaking senators in this chamber been told: “You speak too fast, I can’t follow you”? It is true that we speak fast, but it is also true that in French the last syllable is not always stressed and often runs into the following one. In English, each syllable is clearly sounded and the end of the word does not trail off.

Therefore, I am asking honourable senators to please slow down when they speak in the chamber so that our interpretation and computer-assisted realtime translation services can deal with what is being said, and so that I can follow the debate and understand what is going on. It is no more complicated than that.

[English]

Hon. Senators: Hear, hear!

Senator Gauthier: Time constraints sometimes make us nervous when we are speaking. Often, there is much to be said but not enough time in which to say it. I think it would be appropriate for His Honour to signal a speaker to slow down. It should be at the discretion of His Honour to indicate when the delivery of a speech is not in keeping with a normal conversation, which is about 150 words per minute. Over several years I have heard some senators who speak as quickly as 250 words per minute. I offer these comments in a constructive spirit.

THE HONOURABLE GÉRALD-A. BEAUDOIN, O.C., Q.C.

CONGRATULATIONS ON RECOGNITION BY INTERNATIONAL COMMISSION OF JURISTS

Hon. George Baker: Honourable senators, I rise to speak to the honour bestowed upon one of our distinguished senators last

[Senator Poulin]

August by the Canadian Bar Association during their convention in London, Ontario.

The honourable senator was presented a medal by Justice Ian Binnie, of the Supreme Court of Canada, on behalf of the International Commission of Jurists, which is comprised of judges and lawyers from 20 nations. I am sure that all honourable senators who followed the statements would agree with the comments made by Justice Binnie and agree that he is not prone to exaggeration or overstatement. About the honourable senator, Justice Binnie said:

You, sir, have been in the forefront of virtually every positive development in Constitutional Law and Human Rights in Canada over the last half century.

Honourable senators, that comment was greeted with prolonged and admiring applause from the judges and from the lawyers who were present on the occasion. I am confident that I speak on behalf of all honourable senators in extending hearty congratulations to Senator Gérald Beaudoin for his wonderful work.

Hon. Senators: Hear, hear!

Senator Baker: Honourable senators, when Justice Binnie made his presentation to the international judges and lawyers who were present, he pointed out that a book had just been published. The book, in honour of Senator Beaudoin, is entitled *Les mélanges Gérald-A. Beaudoin: les défis du constitutionnalisme*. The English subtitle is “Essays in honour of Gérald-A. Beaudoin: the challenges of constitutionalism.” The book was received last week at the Library of Parliament. Again, I convey my congratulations to Senator Beaudoin.

[Translation]

ROUTINE PROCEEDINGS

OFFICIAL LANGUAGES

2001-02 ANNUAL REPORT OF COMMISSIONER TABLED

The Hon. the Speaker: Honourable senators, I have the honour to table the 2001-02 annual report of the Office of the Commissioner of Official Languages, pursuant to section 66 of the Official Languages Act.

[English]

PUBLIC SERVICE WHISTLE-BLOWING BILL

FIRST READING

Hon. Noël A. Kinsella (Deputy Leader of the Opposition) presented Bill S-6, to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistle-blowers.

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

On motion of Senator Kinsella, bill placed on the Orders of the Day for second reading on Wednesday next.

NATIONAL DEFENCE

AFGHANISTAN—NOTICE OF MOTION TO RECEIVE FORMER COMMANDING OFFICER IN COMMITTEE OF THE WHOLE

Hon. Colin Kenny: Honourable senators, I give notice that at the next sitting of the Senate, I will move:

That the Senate do resolve itself into a Committee of the Whole on Tuesday, October 29, 2002, in order to receive Lieutenant-Colonel Pat Stogran, former Commanding Officer, 3 Princess Patricia Canadian Light Infantry Battle Group, Canadian Forces Battle Group in Afghanistan, February to July 2002, for the purpose of discussing the preparation and training prior to deployment as well as the experiences of the Canadian Forces in Afghanistan in the war on terrorism.

That television cameras be authorized in the Chamber to broadcast the proceedings of the Committee of the Whole, with the least possible disruption of the proceedings.

[*Translation*]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO CONTINUE STUDY ON STATE OF HEALTH CARE SYSTEM

Hon. Yves Morin: Honourable senators, I give notice on behalf of the Honourable Senator Michael Kirby, that at the next sitting of the Senate, he will move:

That the Standing Senate Committee on Social Affairs, Science and Technology, be authorized to examine and report upon the state of the health care system in Canada. In particular, the Committee shall be authorized to examine:

- (a) The fundamental principles on which Canada's publicly funded health care system is based;
- (b) The historical development of Canada's health care system;
- (c) Health care systems in foreign jurisdictions;
- (d) The pressures on and constraints of Canada's health care system; and
- (e) The role of the federal government in Canada's health care system;

That the papers and evidence received and taken on the subject and the work accomplished during the Second Session of the 36th Parliament and the First Session of the 37th Parliament be referred to the Committee;

That the Committee submit its final report no later than October 31, 2002;

That the committee retain the powers necessary to publicize its findings for distribution of the study contained in its final report for 60 days after the tabling of that report; and

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

• (1420)

[*English*]

The Hon. the Speaker: Honourable senators, I draw to your attention that at this stage in the Second Session of the thirty-seventh Parliament, the Senate does not yet have committees to which to refer matters. Accordingly, such a notice of motion could not be dealt with until such time as the Senate has committees underway, and the motion will have to stand on the Order Paper. If there is some objection, notice will have to be given again.

QUESTION PERIOD

PRIME MINISTER'S OFFICE

BRIEFING OF OPPOSITION ON ETHICS PACKAGE—CREATION OF INDEPENDENT ETHICS COUNSELLOR

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. The news media today have indicated that members of the Liberal caucus received a privileged briefing on the working draft of the new ethics rules for parliamentarians and cabinet ministers and were given an opportunity to comment.

Could the Leader of the Government advise the Senate as to whether the government plans to provide a similar briefing to the opposition parties, or will the honourable senators continue to learn the details of the proposed ethics package through media reports about the government's problems with its backbenchers?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the ethics package is still in raw form at this point in time, other than, of course, the most important document, the one the honourable senator co-authored and is referred to as "the Oliver-Milliken report." The so-called briefing was a search for ideas from members of the caucus as to what the members would like to see in such a package, should one be presented some time in the future.

Senator Carney: They did not like what they saw.

Senator Oliver: According to a report on that caucus meeting in Thursday's *Toronto Star*:

... a number of Liberals believe the proposal is inadequate. Instead of a new federal official supervising MPs, they want the government to revert to an earlier campaign promise that calls for creation of an ethics tsar who would function independent of the Prime Minister's office.

Why will the government not create an independent ethics counsellor as promised in the original Red Book?

Senator Carstairs: That topic was discussed, and I can assure the honourable senator that no decision has been taken at this point.

Hon. Pat Carney: Honourable senators, I know the honourable senator would not want to mislead the chamber by her answer when she said that the material presented to the other place was not, in fact, the proposed ethics package but was a search for ideas. In order to get a search for ideas, some material must have been presented to the other place. Would the honourable senator be more specific about the nature of the material we all read about in the media and whether that material will be made available to the honourable senators for the honourable senators' ideas?

Senator Carstairs: With the greatest respect, honourable senator, this was a caucus meeting made up of members of both the Senate and the House of Commons who are members of the Liberal Party. It was, as I indicated, a search for ideas. There was no documentation presented in hard copy, to my knowledge. I was not there.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— FUNDS FOR PURCHASE OF NEW CHALLENGERS FOR GOVERNMENT FLEET

Hon. J. Michael Forrestall: Honourable senators, I wish to return to a question that honourable senators were discussing yesterday and direct further questions to the Leader of the Government in the Senate. It had to do with the purchase of the Challenger aircraft.

On the day that the announcement of the purchase was made, I have information that a number of general officers entered the office of the Minister of National Defence.

Whether or not it was on the day the announcement was made, evidently several officers of general rank visited the minister, offered their resignations and demanded the return of the \$100 million-plus to the already overstressed military budget. Is that the reason the government found \$100 million extra to replace the money they had taken? If so, where did that money come from, and under what authority?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I simply cannot answer the honourable senator's question. I have absolutely no knowledge of anyone of any rank appearing before the Minister of National Defence. I certainly do not know of their demands or their requests to that effect, or if, in fact, such a meeting ever took place.

POSSIBLE WAR WITH IRAQ—CURRENT TRAINING PROGRAM OF THE SECOND BATTALION, ROYAL CANADIAN REGIMENT

Hon. J. Michael Forrestall: Honourable senators, I accept that. Like everything else I have, it is just hearsay and anecdotal and rumour. I wonder if the minister would confirm for me whether that happened and report at the minister's convenience.

My question today relates to the announcement made by the Minister of National Defence that Canada could, indeed, raise an Apollo-sized military contribution in the event of a war with Iraq.

Could the minister explain why it is that the Second Battalion, Royal Canadian Regiment, based in Gagetown, New Brunswick, is presently conducting extraordinary training, including live fire exercises and night operations? Why does it have such a huge ammunition outfit that the Atlantic area may not be able to fulfil that particular need? Has 2 RCR cancelled all leave, including maternity and paternity leave? Is 2 RCR preparing for deployment to Iraq if called upon?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, in reply to the first question, I must say, honourable senator, with the few details I have been given, I would not go on a witch hunt for who may or may not have appeared before the Minister of National Defence for a meeting. That is entirely inappropriate.

As to the honourable senator's statements with respect to potential for war, I think all of us in this chamber hope that there will be no war, that everyone hopes that the United Nations will be able to get their inspection teams into Iraq, and that those inspection teams will be allowed free access to any form of weapons of mass destruction which Saddam Hussein might have. In all cases, the Canadian government has established its role as being fully supportive of the United Nations.

• (1430)

AFGHANISTAN—PRESENT LOCATION OF HEAVY MILITARY EQUIPMENT

Hon. J. Michael Forrestall: Honourable senators, I have a final supplementary question on a related area, dealing with the training of forces for any eventuality with respect to Iraq.

Can the Leader of the Government tell the chamber the whereabouts of our heavy military equipment already in Afghanistan? Is this equipment back in Canada now, or is it in the area of the Persian Gulf, the Arabian Sea or a Pakistani port?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, there are two ships in the Arabian Sea at the moment. They are to be joined by two others. As for other military equipment, I do not know whether it is in Afghanistan or whether it has been returned to Canada, but I will seek that information on his behalf.

HEALTH

SPEECH FROM THE THRONE—POSSIBLE INCREASE IN TAXES TO PAY FOR SERVICES

Hon. Terry Stratton: Honourable senators, the day after the Speech from the Throne, Prime Minister Chrétien started backtracking on the promise not to raise taxes. I quote him as saying, "It has been said before and we on this side of the House agree that, like it or not, taxes are the price one pays to live in a civilized society." The editorial in today's *National Post* goes on to say that "two senior government officials have confirmed that a tax increase may be imminent."

The interesting part about this whole affair is that Mr. Manley, the Minister of Finance, refused yesterday to rule out tax increases to fund the government's Throne Speech promises.

Does the minister care to respond to Mr. Manley's comments?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, what I can say at this juncture is that we do not expect a budget until well into the next year. Obviously, there will be no new tax increases prior to that time. The Minister of Finance has been quite clear with respect to the commitments in the Speech from the Throne. He has indicated that departments must look within their own resources to fund those initiatives.

The area in question is the one I addressed yesterday, which is the issue of two reports that will be released, one by the Senate of Canada, sooner rather than later; and one by the Honourable Roy Romanow. I think most of us who have been following the work of the Senate committee and the royal commission have seen that health care costs may increase dramatically in this country if we are to continue our tradition of having the best public health care system in the world. When the reports are released, a determination will have to be made as to whether health care will be funded from present revenues or whether additional revenues will be needed. However, there is a long time between now and the point when those decisions will be made.

Senator Stratton: Can the minister reassure us again that every effort will be made within each department throughout government to cut spending to possibly avoid increases in taxes?

Senator Carstairs: Honourable senators, this is really an amazing question coming from the other side. This question comes from a group of individuals whose government left the people of Canada with more debt and larger deficits than ever before in the history of this country. This question is being asked of a government that has operated a deficit-free government year after year. Clearly, we have shown by example that we pay our own way.

Senator Stratton: Honourable senators, if I may, this is 2002. The Honourable Leader of the Government refers to another time. The role of the opposition is to ask legitimate questions. I should like an answer to my question.

Senator Carstairs: Honourable senators, with the greatest respect, I answered the question, and the honourable senator just did not like the answer.

SPEECH FROM THE THRONE—RECOGNITION OF WORK OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE

Hon. Lowell Murray: Honourable senators, the reference to health care reminds me that in the Speech from the Throne there was a direct reference to the coming report of the Romanow commission but no reference at all to the work of the Senate committee ably headed by Senator Kirby. What significance are we to read into this?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not think we are to read anything into it because I have been with the Honourable Minister of Health, Anne MacLellan, on three occasions this summer when she gave rave reviews to the work being done by the Senate committee. I know that her staff is waiting with some anticipation for the review of the Kirby committee, or the group that will be in place when our committees are formed.

TRANSPORT

MARINE ATLANTIC INCORPORATED—REPRESENTATION OF NEWFOUNDLAND AND LABRADOR ON BOARD OF DIRECTORS

Hon. Ethel Cochrane: Honourable senators, my question is to the Leader of the Government in the Senate on an issue of current relevance in my province. On its official Web site, Marine Atlantic is described as a "Canadian Federal Crown corporation that operates ferries across the Cabot Strait between the island of Newfoundland and mainland Canada, according to contracts in place with Transport Canada." Despite its mandate of service to Newfoundland and Labrador, not one person from that province has been appointed to its board of directors since 1999.

Recently, Transport Minister David Collenette appointed four new directors: three from Nova Scotia and one from New Brunswick. This is particularly baffling when one considers that Marine Atlantic does not even operate in New Brunswick.

In today's edition of the *St. John's Evening Telegram*, the President of Hospitality Newfoundland and Labrador called the appointments "an absolute slap in the face" for our province. The province has only three representatives on the board of directors, one of whom will see his term end in December.

Given that the ferry service is the province's lifeline and is constitutionally guaranteed, can the Leader of the Government in the Senate tell us if there are any plans to increase the province's representation on the board now?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can certainly understand why the honourable senator would be concerned about the fact that Newfoundland has only three representatives on the board. However, she has indicated one of those will retire. I will take strong representations to cabinet that when that person retires, they should look very carefully to replace the individual with a citizen of the province of Newfoundland and Labrador.

Senator Cochrane: The decisions of Marine Atlantic's board of directors have a tremendous impact on the economy of my province, particularly because it is an island, and in light of the problems we are having with Air Canada in regard to transportation. Come January, they will be pulling out of Stephenville altogether, leaving no connection between that part of the west coast of the island and Halifax, Nova Scotia.

In 1999, the provincial government released a report called "On Deck and Below: A Report on the Gulf Ferry Forum," in which it recommended that a majority of Marine Atlantic directors come from the province. I will read to you the direct quote from the report, which states:

Restructure the Board of Directors to reflect the five regions of Newfoundland and Labrador (Avalon, Eastern, Central, Western and Labrador), and ensure the Avalon and Western appointees are from the Placentia and Port aux Basques areas respectively. The Board should also include individuals who have breadth and depth of expertise and experience in shipping, trucking and tourism.

• (1440)

My question is for the Leader of the Government. I know she will look into this matter, but I need assurances that the interests of the people of my province are being adequately served when barely one-third of Marine Atlantic's board consists of representatives from Newfoundland and Labrador. Can the minister verify that those making the decisions have direct knowledge and understanding of the service's critical impact on the island?

Senator Carstairs: I thank the honourable senator for her question. I must tell her that I spent some time in Newfoundland and Labrador this summer. It really does become an issue when one visits there because one quickly realizes the importance of the ferries to the senator's beloved province. I can only assure her that I will bring her representations before the Senate today to the attention of the Minister of Transport.

[Senator Cochrane]

[Translation]

NEWFOUNDLAND AND LABRADOR

ROYAL COMMISSION ON RENEWING AND STRENGTHENING OUR PLACE IN CANADA

Hon. Pierre Claude Nolin: Honourable senators, before asking my question on Newfoundland, I would have preferred having more information on the commission that the Government of Canada is planning to set up to analyze, 50 years later, this province's place in the Canadian federation.

Since the subject of the previous question was Newfoundland, I would like to know, first, if the Leader of the Government in the Senate is familiar with the setting up of this commission. Second, does her government intend to participate, as a witness at the very least, if not as an observer, in this commission that is currently underway in the Province of Newfoundland and Labrador?

Third, what is the government's strategy when it comes to reassuring the residents of Newfoundland in response to their questioning about maintaining their place in the Canadian federation? I hasten to remind her that the Government of Quebec has sent observers who will be carefully noting the evidence given during this inquiry.

[English]

Hon. Sharon Carstairs (Leader of the Government): I thank the Honourable Senator Nolin for his question. Interestingly enough, although I certainly knew about the commission, I only read for the first time today an article about the work of the commission, which, as I think honourable senators know, has been established by the provincial government. It is an interesting exercise for the provincial government to ask the basic question: After 50 years, have we been well served by the Government of Canada? That is a question only Newfoundlanders can answer.

To the best of my knowledge, it is not the intention of the federal government to make representation because it understands that the commission is seeking the opinions of Newfoundlanders. Whether individual MPs and senators from the Province of Newfoundland and Labrador will appear before that commission remains to be seen.

[Translation]

Senator Nolin: Honourable senators, am I to understand that the Government of Canada is not planning on participating, even if only to ensure the veracity of the facts that will be reported to the people of Newfoundland and Labrador?

The Leader of the Government in the Senate must be aware that similar commissions have taken place in Quebec and, unfortunately, during such hearings, there is often a great discrepancy between the facts and the perceptions that people have. I hope that, during these discussions, the Government of Canada will make an effort to ensure that the real truth comes to be told.

[English]

Senator Carstairs: Honourable senators, let us be very clear: This is a provincial royal commission, not a federal royal commission. I suggest to you that the Government of Canada would be hard pressed to interfere in the activities of a commission established by the Province of Newfoundland and Labrador. I do not think it would set a good precedent.

As to whether the Government of Canada will listen with interest, I am sure it is listening with great interest, as it would listen with interest to any study performed any place in this nation that is trying to seek out the opinions of citizens as to their role in this great country.

INTERNATIONAL TRADE

SOFTWOOD LUMBER AGREEMENT— DETAILS OF PROPOSED SUPPORT PACKAGE

Hon. Pat Carney: Honourable senators, my question is addressed to the Leader of the Government in the Senate. The minister responsible in the other place has indicated a softwood lumber package will be revealed shortly that will help those provinces and those Canadians severely affected by the 27 per cent duty that the Americans are applying to softwood lumber. This is a critical issue in British Columbia, where, of course, thousands of people are out of work, communities have had their tax rolls devastated, and some mills have indicated they will never reopen.

Could the Leader of the Government give us any current details about when this package might be released and what kind of elements it will contain?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I know that the honourable senator, having served in cabinet herself, would not want me to release information that I cannot and, therefore, I will not release it. The reality is that the Honourable Minister Pettigrew has indicated that a package will be forthcoming. I understand that Minister Dhaliwal will actually release it, but when that will take place and what it will contain, I am not at liberty to share at this time.

Senator Carney: Could I have the minister's undertaking to present the package to the Senate when it is available? I am not asking for cabinet details, but since there is so much cabinet material being released in the media these days, I thought she might wish to share it with her fellow senators when it becomes available.

Senator Carstairs: Honourable senators, I take my oath of secrecy extremely seriously. To the best of my knowledge, and certainly without my touching it, I have never leaked anything from cabinet and I do not intend to do so now or in the future. When it becomes a public document, it will be available on your desk.

INTRODUCTION OF NEW PAGES

The Hon. the Speaker: Honourable senators, before proceeding to Orders of the Day, I have a pleasant duty to perform.

[Translation]

I have the honour of introducing our new pages.

[English]

I would ask each page to raise his or her hand as I make the introductions.

Davy Coyle is from Winchester Springs, Ontario. He is in his second year of a double honours degree in political science and philosophy at the University of Ottawa.

Ashley Delaurier is from Tecumseh, Ontario. She is in her first year of a health sciences degree at the University of Ottawa.

Sarah Johnson is from Peterborough, Ontario. She is in her second year at the University of Ottawa, studying English literature.

[Translation]

Francis Poulin hails from Zenon Park, in Northeastern Saskatchewan. He is starting his fourth year at the University of Ottawa, where he is studying history and philosophy.

[English]

Megan Reid is from Leamington, Ontario. She is beginning her first year of studies toward a health sciences degree at the University of Ottawa.

Finally, Alexandria Spiess is a native of Ottawa. She is currently in her second year of the humanities program at Carleton University, with concentration in English literature.

Welcome to the Senate.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Before Orders of the Day, it is appropriate to deal with points of order. I believe there is one.

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO CONTINUE STUDY ON STATE OF HEALTH CARE SYSTEM—POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, earlier in the proceedings today, under Notices of Motions, an attempt was made to have introduced a notice of motion to provide that the Standing Senate Committee on Social Affairs, Science and Technology, be authorized to do something. Given that the committee does not yet exist, although we on this side hope that it will exist very soon and are being as assiduous as possible to see that it is convened as soon as possible, hopefully, early next week, the rules are very clear.

• (1450)

The rules are very clear, *inter alia*, rule 4(e)(i) that speaks to motions states:

(i) “Motion” means a proposal made by a Senator that the Senate or a committee thereof do something...

Obviously, we cannot authorize a non-existing entity to do something or refrain from doing something. You can never multiply zero by any number and achieve anything but zero. We would not want the argument put forth that, because something has appeared on the Order Paper, or that, indeed, a conditional undertaking is in the rules, it would somehow mandate and force the Senate to adopt the motion or to assume that we are voting in a certain way on a motion. We think it is out of order and should be ruled so by the Chair.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the notice of motion which was given today clearly was meant to alert us to a future activity of a committee not yet formed.

I should note, Your Honour, and I would certainly welcome a ruling on this issue, that we have done this in the past. Not only have we done it in the past, we have actually referred bills to committees that have not yet been formed. Therefore, it would seem to me that it would be appropriate to allow the notice of motion to remain, but it clearly could not be moved as a motion, in my view, until the committee is formed.

The Hon. the Speaker: Do any other senators wish to comment on this point of order?

It seems fairly straightforward and clear, but out of an abundance of caution, I will take it under consideration and give honourable senators a ruling as soon as possible.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

COMMENCEMENT OF SITTINGS ON WEDNESDAYS AND THURSDAYS—MOTION ADOPTED

Hon. Fernand Robichaud (Deputy Leader of the Government) pursuant to notice of October 2, 2002, moved:

That, for the duration of the current session, when the Senate sits on a Wednesday or Thursday, it do sit at 1:30 p.m., and that rule 5(1)(a) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

[Senator Kinsella]

[English]

COMMITTEE OF SELECTION

MOTION FOR APPOINTMENT ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Rompkey, P.C.:

That, pursuant to rule 85(1), the Honourable Senators Bacon, De Bané, Fairbairn, Kinsella, Kolber, LeBreton, Rompkey, Stratton and Tkachuk be appointed a Committee of Selection to nominate (a) a Senator to preside as Speaker *pro tempore* and (b) the Senators to serve on the several select committees during the present Session; and to report with all convenient speed the names of the Senators so nominated.—(*Honourable Senator Kinsella*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to participate in the debate on this motion because I gave an undertaking to the house yesterday that I would do so today. As all honourable senators know, at the beginning of a session, the Senate strikes a Committee of Selection, and that committee carries out the functions set out in the motion. That is done within a historical context, and that involves discussion between the government, the official opposition and other senators in this place.

It is my understanding those discussions have been taking place, and that a number of areas of agreement have been identified. For example, I believe that there is agreement on the principle that Her Majesty's official opposition, which is composed of the senators who are members of the Progressive Conservative Party of Canada in our Westminster system of parties, will have one-third of the membership on all of the committees. Therefore, on a 15-person committee, not less than one-third would be members of the Progressive Conservative Party. The same ratio would apply to 12-person committees and three-person committees.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): For greater certainty, I would formally move, seconded by Senator Stratton:

That the motion be amended by adding after the last paragraph:

That the Committee of Selection shall nominate Senators to select committees on the basis of the principle that Progressive Conservative Senators have a minimum of one-third of the memberships of a select committee.

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

Some Hon. Senators: No.

Some Hon. Senators: Agreed.

[Translation]

POINT OF ORDER

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I agree with my colleague when he says that, generally, when committees are being appointed, there are discussions between the members of the government and the opposition. There is an agreement along the lines of the amendment by the honourable senator. This motion in amendment is not in order because it involves a change to the rules. Rule 85(1) clearly states:

At the commencement of each session, a Committee of Selection consisting of nine Senators shall be appointed whose duties shall be to nominate:

- (a) a Senator to preside as Speaker *pro tempore*; and
- (b) the Senators to serve on the several select committees.

A reading of the following subsections indicates that there is no mention of the representation of the different parties or of certain proportions.

Since this motion indirectly proposes a change to the rules and this requires notice to the house, I consider this amendment not to be in order.

Honourable senators, changing the rules to reflect the current proportions of government, opposition and independent senators would be binding on senators in future, should these proportions change. The rule as written is a wise one. It makes no reference to the proportion of senators from one party or another and leaves it up to the Committee of Selection to select and recommend to the Senate the number of senators from both parties and the number of independents to serve on the select Senate committees.

• (1500)

[English]

The Hon. the Speaker: To clarify, honourable senators, we started out with an amendment. We are now on a point of order as to whether the amendment is in order. I will hear comments from honourable senators on the point of order.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, rule 85(1) is clear as to the duty of the Committee of Selection. Rule 85(1) provides that the Committee of Selection “shall be appointed whose duties shall be to nominate.”

In its work of making nominations, there is a long tradition in this place that advice is received by the committee and brought forward. If honourable senators examine the records of proceedings from any Committee of Selection meeting for the 12 years that I have been honoured to be a member of this house, they provide explicit evidence that principles and instructions are brought forward and discussed in committee. Thus, what I have proposed in the amendment simply articulates what has been a long-standing practice in this place.

It is critical to understand what the rule states. The committee will make nominations. The committee does not dream up those nominations. It receives advice and it discusses that advice when it meets. It is incumbent upon His Honour to examine the proceedings of a few of the Committee of Selection meetings in the past, which will, in my judgment, demonstrate clearly to His Honour that that is the practice. therefore, the motion I have made is consistent with that practice and is very much in order.

Hon. Anne C. Cools: Honourable senators, we are labouring under a discussion here in the absence of what should be important and pertinent information.

I believe I heard the Deputy Leader of the Government say that there have been ongoing discussions between the government and the opposition and that there is agreement on something that sounds like Senator Kinsella’s amendment. Was I wrong on that? If there were ongoing discussions, it would be helpful, since honourable senators are being asked to consider this amendment and to vote on it, to have more insight as to what is happening. Would the deputy leader clarify? Perhaps I was wrong or misunderstood.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for that question. It has been agreed between the two sides that the Conservative representation on all committees would be one third. In those committees with a membership of 12, this would be an 8-4 split, and a 10-5 split in the two large committees of 15 members.

It has been further agreed that we would consider the requests of independent members to be part of our split so that they might serve on one committee of their choice.

However, we have before us a motion that flies in the face of rule 58(1)(f). That rule requires two days’ notice for an instruction to a committee. This is what the motion proposed by Honourable Senator Kinsella would do; it would instruct a committee. That would require two days’ notice. The government has had no notice on that matter.

This matter is further complicated, honourable senators, by the fact that there is another problem before us at the present time. Rule 85(2) clearly states that the Committee of Selection must report a recommendation for the Speaker *pro tempore* no later than the fifth sitting day.

This is the fourth sitting day. It is essential that we pass this motion today in order that the Committee of Selection can meet and report back to this chamber by the fifth day, which is Tuesday. If we sit tomorrow, it would be tomorrow. If we sat on Monday, it would be Monday. However, I should think most honourable senators would prefer a normal sitting schedule. Thus, we will report back on Tuesday. In order to do that, the Committee of Selection must meet before it can report. That report must be on the next sitting day of the Senate.

I would suggest, honourable senators, that this entire motion is out of order.

Senator Kinsella: Honourable senators, with respect to the last matter that has been raised by the Leader of the Government in the Senate, a little reflection on what has been attempted to be argued would clearly demonstrate that, if that were the intent of the rules, the Senate would have a rule stating that a Committee of Selection would be appointed. That does not require any decision of the Senate.

The principal motion before this chamber is to strike this committee, which requires a vote in this house. If that is trumped by what I believe is a conditional rule, namely 85(2) which states that the Committee of Selection must meet within five sitting days and report on a Speaker *pro tempore*, that is an example of the subordinate clause driving the main clause. The main clause is the establishment of the committee. If the Senate had intended it to be the other way around, we would not have to vote.

If rule 85(2) is to be interpreted the way the Leader of the Government suggests, then a vote is completely redundant and has no meaning. Of course, that is not the situation.

In terms of rule 85(2), there is a *condictio sine qua non*, which is the establishment of the Committee of Selection. One cannot establish that the Senate must establish this committee because there is a subsidiary or contingent clause that is requiring the committee, once established, to do something. There is a certain *reductio ad absurdum* in that argument.

Furthermore, honourable senators, one cannot multiply something by zero and get something. There is no committee; therefore, rule 85(2) has no application until the Senate has established the committee.

Senator Cools: Honourable senators, many of us are at a striking disadvantage because much of the debate seems to be following on discussions that have been going on privately between the leaders. The time is rapidly coming when more of those discussions will have to include the rest of the Senate. I am always concerned that the context of negotiations and the fact of negotiations themselves often have the effect of shutting out the majority of senators from the consideration of important and pressing matters.

• (1510)

I have listened to the debate. As I look at the motion to constitute the Committee of Selection, the five-day action will only be called into force or existence on the passage of the motion. A motion can have absolutely no effect until it has been passed. In point of fact, this motion has not been adopted. Therefore, it is not an order of this place. There must first be a notice of motion, which is then followed by a motion. Only when the motion is adopted here does it have the force of the agreement of the entire

chamber. At the point of its adoption it becomes an order of the Senate, at which time the motion is in force. Thus, it is not quite accurate or fair to put it in those terms. That is the first point I should like to make.

Second, Senator Kinsella's motion in amendment is asking the Committee of Selection to bear in mind certain principles and maxims as it is in operation. It has not ordered the committee to do a particular thing, to act in a particular way, or to have a particular result. Therefore, it seems to me that Senator Kinsella's motion in amendment is in order and is not an instruction to a committee, because asking a committee to conform to well-known principles of governance, in particular parliamentary governance, can hardly be considered an instruction. As a matter of fact, one would hope that most committees would conform to and abide by a set of principles. To that extent, I do not see that it is an instruction.

It seems to me that the motion in amendment is fairly consistent with the text of the parent motion. The real question that must be asked in this point of order has to do with the Leader of the Government having just told honourable senators that all of this is agreed to.

What I do not understand, Your Honour, and perhaps someone could elucidate, is why this chamber is being asked to second-guess an agreement in the absence of the government itself bringing forward an agreement in the form of a motion to that effect. The crux of the matter is that there is an agreement between the government and the opposition that we are being asked to support. If this agreement seeks to be in force, then it should be in the form of a motion from the government. The real crux of the matter is that we are being asked here to consider and to vote on something about which we are told an agreement exists.

Hon. Tommy Banks: Honourable senators, I am sure, will appreciate that this is all very confusing to me. I am sure Your Honour will be considering the question. However, there is another aspect to the question which I hope Your Honour will address.

If I understand Senator Kinsella correctly, and please correct me if I do not, his argument was that rule 85(2) is subservient to rule 85(1). Rule 85(1) states:

At the commencement of each session, a Committee of Selection consisting of nine Senators shall be appointed whose duties shall be to nominate:

It does not state "within a few days of the commencement of a session"; it states, "At the commencement of each session..." I would like Your Honour to tell us, perhaps parenthetically in your ruling, what that means. I take it to mean when we begin to sit.

Senator Kinsella: Honourable senators, I was asked by Senator Banks to comment on the point that he has raised. I believe that the term "commencement" does not mean the first sitting day; it means "at the beginning." A session can go on for a couple of hundred days. However, there is the practicality of it — usually it is done within the first couple of weeks.

[Senator Carstairs]

For example, if honourable senators refer to the *Debates of the Senate* for November 17, 1999, they will see that it took eight days to come forward with a nomination for the Speaker *pro tempore*. We did not do it in five days; it took eight days. On other occasions it was not done within the five days. For example, there was one case when the Committee of Selection presented a report after five sitting days in which it stated, "Within these five sitting days we have met, and we are reporting, but we are afraid that we cannot report on a nomination for the position of Speaker *pro tempore*." In other words, the committee came in with a report following their interpretation of what those five days meant, but they made no substantive nomination as to who was their candidate for Speaker *pro tempore*.

If they are able to do that, then I argue, *mutatis mutandis*, that that dependent rule cannot trump the original one. If the committee, as it has done in the past, says, "Here is a report but we have no nomination," then that proves we need not have the nomination of the Speaker *pro tempore* within those five days.

On that point, and in parentheses, if we get beyond the point of order, Your Honour might find a willingness to deal this afternoon with the nomination of the Speaker *pro tempore* and, hopefully, there will be unanimous agreement on it. There is no necessary linkage in terms of the nomination of the Speaker *pro tempore* and the appointment of the Committee of Selection.

As far as I can understand, there is agreement as to the senator whom we all believe should take up the position of Speaker *pro tempore*. Even on that point, I refer His Honour to rule 11. Rule 11 provides that any senator may occupy the Chair. Rule 11 provides that if the Speaker is not available, the Speaker *pro tempore* will take the Speaker's place. However, should the Speaker *pro tempore* also be not available, then rule 11 provides that any other senator may occupy the place of the Speaker. The point is that not having an individual senator nominated and not having a nomination of a senator who is accepted by the Senate to serve in the position of Speaker *pro tempore* will not impede the good working of the Senate. In terms of the full context of the rules taken as a whole, nothing is lost. No injury or harm is done if, indeed, one could put a substantive argument to the fullness of meaning of rule 85(2), which is being attempted.

• (1520)

Finally, I will say this and say no more, unless provoked: There is no penalty. What is the penalty if we do not follow rule 85(2)? There is none.

Senator Carstairs: Honourable senators, we should first set the facts straight in this situation. The general practice in the Committee of Selection is that it sits immediately following the Speech from the Throne. The membership of the committee is provided and the agreement is taken. There is no formal vote. Normally, the motion is put in this chamber when His Honour assumes the Chair. There has only been one occasion under these rules — and these rules, I should indicate, are 1991 rules which, interestingly enough, were the opposite side's rules for this chamber. Those rules were not questioned in 1993.

Senator Cools: Change them.

Senator Carstairs: At that point, the Leader of the Opposition had just been replaced. In that situation, the report recommended five Liberals and four Conservatives. The Leader of the Opposition objected to that split because the other side had the majority, and so we adjourned the debate. The report was amended the next day as to names and it was then approved.

In terms of the reference the honourable senator makes with respect to the report that was eight days late, that was not quite what occurred. Rule 85(2) states:

The Committee of Selection shall, within the first five sitting days of each session, present a separate report to the Senate in respect of its nomination...

That is exactly what the committee did. They reported back in respect of the nomination and told the chamber they wished to sit again. However, they did report back. We are now in danger of not being able to report back because we have not established the Committee of Selection. I would suggest that this is paramount to our activities. The very fact that rule 85(1) refers to "commencement of each session" indicates that the committee must meet very early on because rule 85(2) states that the committee must report back within five sitting days. We are now in the critical situation of being in day four. We must report back. I believe any motion that has been made on the other side is out of order.

Senator Banks: Honourable senators, I believe the leader has answered my question, but in those instances to which Senator Kinsella referred that went longer than eight days, I suspect that the committee might not have reported within five days, but that the committee — and I would ask to check on this — was empanelled within the first day of sitting of the Senate.

That is my argument. The committee, notwithstanding when it reports, ought to be empanelled on the first day because the rule says "at the commencement."

The Hon. the Speaker: Honourable senators, I should like to wind up quickly. Senators have observed that this is a fairly urgent matter given what has been said.

Hon. Marcel Prud'homme: Honourable senators, to be blunt, we are in somewhat of a deadlock and so we will need cooperation. At the beginning of every session a motion is made to appoint the Committee of Selection.

His Honour may remember that once, right in front of the Canadian public, I made some comments at the opening of a session. The Governor General had just left the chamber. All the guests were still seated, and I spoke on the motion to appoint the Committee of Selection. I said "no," and I made a speech. At the beginning of the next session, I was supposed to speak, but it was my mistake and I accept mistakes. I did not speak then and I did not speak this time.

Honourable senators, I do not mind being corrected because there are 50 new senators. We will be corrected together and we will learn together. However, a motion is debatable. Today, for instance, I could propose a motion in amendment to exchange senator X with senator Y. That would be an acceptable amendment. No one can deny that. I have the necessary seconder for such a motion, but they may not necessarily come from this side. However, I do not want to be an annoyance in my older age.

I could go on and on. During the days of the flag debate, for example, Mr. Pearson was recognized instead of Mr. Diefenbaker. The old timers will remember that that motion was debatable and was voted on at five minutes to 12:00. We won and Mr. Pearson had the floor. We could have said that the motion was amendable because a motion is debatable.

If this motion to appoint the Committee of Selection is not passed, nothing can be done. If something can be done, then I will bow with all the new senators and say that I learned something new today. This motion is always introduced at the beginning of a session and could have been debated on Monday in front of the audience who had attended the Throne Speech. However, debate was adjourned to the following day. We said “tomorrow.” In the old days I would always say “tomorrow.” I do not want to make the kind of passionate intervention that I did years ago because I am unable to do so, but we will need cooperation. Perhaps the weekend will help us all to reflect.

I do not hide the fact that I am a senior parliamentarian. It is well known that I want to be a member of the Standing Senate Committee on Foreign Affairs. Well, I will give up that wish. I have indicated that fact privately, but not in writing. I would be willing now to sit on a committee that is being proposed — I say it officially today — but I think that we will have to work together. This is not a house of commoners. There is an opposition. I do not consider myself in opposition. There is a government. The opposition must recognize that the government is the government, but the government must recognize that the Senate functions well when the opposition — not me — cooperates so that we can harmoniously establish respected committees chaired by the likes of Senator Kirby, Senator Carstairs and Senator Nolin. However, we cannot have that cooperation if we do not put a little more water into our discussion so that we nominate chairmen and deputy chairmen.

We all hear so many rumours. I learned of one that even involved me. That is really “depasser la réalité.”

Honourable senators, I do not know if I have made a contribution today, but perhaps the weekend will be helpful for reflection. The sooner we can start working together, the sooner we will show the House of Commons that the Senate is still an important institution in this country.

[Senator Prud'homme]

The Hon. the Speaker: Honourable senators, as has been observed in the interventions, this is an important point of order. It relates to whether we return to the main motion, whether the amendment is out of order or whether we continue with the amendment if it is in order, and we should deal with it expeditiously. I believe I can assist by making a ruling today, but I should like a few minutes to compose the ruling. Thus, I would ask honourable senators for leave to suspend the sitting for no more than 15 minutes to the call of the Chair and that there be a five-minute bell before the sitting resumes. May I have that permission, honourable senators?

Hon. Senators: Agreed.

The sitting of the Senate was suspended.

• (1550)

The sitting of the Senate was resumed.

SPEAKER'S RULING

The Hon. the Speaker: I should like to thank honourable senators for their assistance by way of interventions on the point of order, and I am now prepared to give a ruling.

The question was whether an amendment moved by Senator Kinsella is in order. I will begin by reading the motion in amendment of Senator Kinsella, seconded by Senator Stratton:

That the motion be amended by adding after the last paragraph:

That the Committee of Selection shall nominate Senators to select committees on the basis of the principle that Progressive Conservative Senators have a minimum of one-third of the membership of select committees.

As to the question of whether that amendment is in order, I refer honourable senators to *Beauchesne's Parliamentary Rules & Forms*, 6th edition, at page 176, paragraph 579, which deals with inadmissible amendments. I will read this paragraph in that I rule it is the only one relevant to this question. The first part of the paragraph states:

An amendment setting forth a proposition dealing with a matter which is foreign to the proposition involved in the main motion is not relevant and cannot be moved.

I find that the proposition contained in Senator Kinsella's amendment is not foreign to the main motion.

The second part of the paragraph states:

An amendment may not raise a new question which can only be considered as a distinct motion after proper notice.

I rule that Senator Kinsella's amendment does not raise such a new question. Accordingly, I find that this amendment is not an instruction such as a new order of reference.

Rule 85(1) provides the Selection Committee with the order of reference. The amendment in question merely expands the order of reference. Accordingly, I find the amendment to be in order.

Some Hon. Senators: Question!

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

Hon. Senators: Question!

The Hon. the Speaker: So as to put it properly, we are now on the question.

Hon. Marcel Prud'homme: If each committee were to have 12 members and we were to vote yes to this amendment, there would be four Conservatives and eight on the government side. If the government wanted to put some independents on a committee, they would be bound by this amendment and could not make an agreement with the official opposition. That would be quite embarrassing for an independent senator. Senator St. Germain has asked me to say a few words on this matter on his behalf.

An independent senator who wished to sit on a committee would have to be taken out of the eight by way of an agreement between the two parties, who may say, "Well, in this case we will give you one, but in the other case we will not give you one."

As for the five independent senators, I know I can speak for Senator St. Germain, but I cannot vouch for the other three. One has exercised to keep his right to be on committees, but not to officially sit on committees. As for the other two, I did not have enough consultation to speak on their behalf. We know very clearly what will take place if we vote for the amendment. It has a lot of merit. Two new senators came to me and said, "Keep talking. We are learning by reading and listening."

I repeat again humbly, if I am out of order or if I am wrong, I do not mind to be told, "go to lunch." I will, if you pay.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I listened carefully to what Senator Prud'homme said. Earlier in the session, I did indicate that the split would be eight to four and that we were prepared to accommodate independent members from our group of eight.

Senator Prud'homme: I hope I will be one of them.

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

Hon. Senators: Question!

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: I will put the question.

Will those honourable senators in favour of the motion in amendment please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Under our rules, there will be a one-hour bell, unless there is agreement between the whips for a shorter bell.

Hon. Bill Rompkey: Perhaps we could agree on a short bell of 15 minutes or half an hour.

Hon. Terry Stratton: We are deferring the vote to the next sitting of the Senate.

Senator Carstairs: No.

Senator Rompkey: I would argue that no vote can be deferred from today. If a vote is deferred from today, we are in abrogation of rule 85(2). Any vote that is put must be put today.

I also remind senators that there are other events taking place on the weekend in Western Canada to which senators have committed themselves, and it is a very important matter for these senators. I just mention that in passing because people do have commitments and social commitments that are very important.

With regard to the vote, I think it must be done today. I would prefer a half-hour bell, but I am in the hands of the chamber.

The Hon. the Speaker: The rules are fairly straightforward in this regard. I draw the attention of honourable senators to rule 67(1), which states:

After a standing vote has been requested, pursuant to rule 65(3), on a motion which is debatable in accordance with rule 62(1), either Whip may request that the standing vote be deferred as provided below.

Accordingly, it is a vote that can be deferred.

POINT OF ORDER

Hon. Sharon Carstairs (Leader of the Government): Your Honour, with the greatest respect, we also have rule 85(2), which provides that we must have a vote on this motion. The motion requires the Committee of Selection to report. We can only form the Committee of Selection if we have a vote today. It appears to me that rule 85(2) takes precedence over rule 67 in this particular case.

The Hon. the Speaker: I think we are on another point of order, honourable senators, as to whether we must vote today or not and whether Senator Carstairs' point is correct. I will hear comments on that point of order.

Senator Carstairs: Honourable senators, the point of order is that we have a motion before us to form the Committee of Selection pursuant to rules 85(1) and 85(2). Rule 85(2) states that this committee must report within five sitting days. We already have had four sitting days. If we defer this vote until the next sitting day, we will have violated our rule. I would argue that we cannot violate the rule by using one rule to violate another rule. That is what would occur.

• (1600)

The debate today has been about the need to have the vote on the Committee of Selection. We accepted the Speaker's ruling and we chose not to appeal it because we do not think that would have been in the best interests of the Senate. However, we thought it was clearly understood by everyone in this chamber that the issue today is about choosing the Selection Committee. That must be done to enable the Selection Committee to report back to this chamber no later than the fifth sitting day of this session.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, if one accepts the argument of the Leader of the Government it would mean that the Selection Committee could be chosen at five minutes to midnight on the fifth day and would have to report to this place within five minutes. The rule is contradictory. Honourable senators, rule 85(1) states: "At the commencement of each session — What is the definition of "commencement?" It is not necessarily the first day, but it is "a beginning." In French, it is "le début." A session lasts perhaps one or two years, but what is the beginning — the commencement — of a session? Is it the first week or is it the second week? The beginning of a session is certainly more than five days.

Hon. Bill Rompkey: Is it the first month or the first year? How far would you suggest?

Senator Lynch-Staunton: There is a beginning, a middle and an end in each session.

Senator Rompkey: How far into the session would you define as "the beginning"?

Senator Lynch-Staunton: We are currently in the first week of the second session of the 37th Parliament and we are still at the beginning of the session — at the commencement of the session. We are only in its fourth day. You cannot impose a deadline on a non-existent entity. You must create the committee first and then the five-day deadline would be in effect. Otherwise, the Senate could skewer the workings of the committee by deliberately waiting until literally the last minute to create the committee and impose on it a decision that would take more than five minutes.

Senator Bolduc: It is obvious!

Senator Lynch-Staunton: My argument is this: The five-day rule does not apply. Perhaps His Honour will have to rule on that in due course. However, I will take advantage of this point of order to expand on the immediate argument. Let us assume that the five-day rule is currently in force. Let us not accept it but let us

assume it. It only applies to the choice of the Speaker *pro tempore* and does not apply to memberships on our standing committees. The five-day rule applies to one key individual. We are quite prepared to waive the rule today and, notwithstanding rule 85, to accept a motion from the government side for their candidate for Speaker *pro tempore* and to vote on that matter this afternoon. In that way, the argument over the five-day rule will be behind us. That is a goodwill gesture and I am certain there will be no argument over the choice of the government. The people that they have selected are more than acceptable to us and we would be more than enthusiastic about their selection.

Hon. Senators: Hear, hear!

Senator Lynch-Staunton: Let us put that matter behind us. Returning to the argument of Senator Carstairs, the five-day rule cannot be applied now because the entity to which it applies has yet to be created.

Senator Bolduc: It is obvious!

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I understand the Leader of the Opposition when he says that we cannot apply something to an entity that does not exist.

Rule 85 of the Senate provides, that at the commencement of each session, a committee of selection shall be appointed to present a report to the Senate. I find it hard to accept the argument that the words "at the commencement" can mean "for a long time," since rule 85(2) reads as follows:

The Committee of Selection shall, within the first five sitting days of each session, present a...report to the Senate...

It is clear that this rule exists to ensure that the Committee of Selection is appointed, otherwise it cannot report. Following that; the Senate can, at the earliest opportunity, begin the proceedings it should undertake as a chamber of Parliament that is part of the legislative process.

If we use the argument that the expression "at the commencement" may mean two weeks or a month, anyone can prevent this chamber from operating the way it should. If the *Rules of the Senate of Canada* said "a few days", that would leave room for interpretation, but they clearly say "within the first five sitting days".

We are not suggesting that the committee must submit the names of the members of all the committees within the first five days. Of course, this should be done at the earliest opportunity, as was done in the past. It is only recently that the opposition was given the option to adjourn the debate on this motion.

The Committee of Selection should be appointed to report on the fifth day, and we are now in the fourth day. If we agree to defer a vote, we will not fulfil the obligations spelled out in the

Rules of the Senate of Canada. If the rules are to be used only when it is convenient, we have a problem, because suspending them would set a dangerous precedent. We can do anything with the unanimous consent of this chamber.

I find it hard to understand why we would act so as to violate a rule that was agreed to by this chamber.

[English]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Senator Carstairs raised the point of order before us. The rules provide that the right of the whip of the opposition to defer a vote can be trumped by rule 85(2).

Honourable senators, even if one accepted that there is no basis of logic, in my view there is a reason to accept the view that rule 85(2) can trump rule 85(1). That would trump the rule that gives the right to the opposition whip and, by extension, to the government whip as well, because we have not arrived at the point of five sitting days. Rule 85(2) states: "The Committee of Selection shall, within the first five sitting days..."

We are at the fourth sitting day. There is no way, even with the greatest of creativity and imagination, that you can anticipate what will happen on the fifth day so as to abrogate the rights that the *Rules of the Senate* have established. There have been many occasions when the Selection Committee has been appointed on a given day and has sat, reported to the house and had its report adopted on that same day. There is no way that the point of order by the Honourable Leader of the Government in the Senate is sustainable.

• (1610)

Hon. Anne C. Cools: Honourable senators, rules 85(1) and (2) seem to be the rules that are currently bedevilling us. It seems crystal clear to me that rule 85(2) can only come into effect once a Committee of Selection has been constituted; in other words, a motion to that effect has been voted on and carried in this chamber. If that does not happen, then there is no need to make reference to rule 85(2). Therefore, it seems to me that honourable senators have to come back to the present reality and ask themselves: "What is a committee?"

It seems to me that a committee is not a substitute for the Senate; neither is a committee an alter ego of the Senate. A committee is a subgroup of the Senate, appointed and constituted for the sole purpose of giving the Senate some assistance — not for thinking for the Senate, not for deciding for the Senate, but for giving the Senate some assistance. All the authorities will tell you that. The great authority on committees was Sir Reginald Palgrave. He would tell you that the function of committees is to assist the Senate. It seems to me that if a committee is in a position or not in a position to offer assistance, the Senate has many other able vehicles at its disposal. The Senate, after all, is the master of itself.

Therefore, there is no need to waive rule 85(2), as someone was suggesting. We would not be breaking any rule if the Senate just did what it knows how to do, which is act as an independent chamber in command of its own proceedings, in command of its own abilities, and in command of its own self.

The only problem I can see is that the Senate wants to act in the matter of making a determination in its wisdom and judgment as to the person who will best act as the speaker *pro tempore*. It seems obvious to me that that is the will of the Senate because the Senate has chosen, up to this moment, not to allow rule 85(2) to be actuated. Therefore, the only solution that is possible in this circumstance is for a motion to be put before this chamber recommending or nominating or suggesting the favourite candidate for the position of Speaker *pro tempore*. At that point, the Senate will be able to make a judgment in its wisdom.

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, I thank you for your input on the question of order raised by Senator Carstairs.

I would remind honourable senators of where we are in the proceedings. We are at a point in a division just prior to the bells ringing to call in the senators. In the course of a discussion on whether the bell be one hour, it was put by the opposition whip, as the rules provide, that the vote be deferred to the next sitting day, at 5:30, which gave rise to Senator Carstairs' point of order which is that, because of the provisions of rules 85(1) and (2), there can be no deferral of the vote because we are so close to the fifth day — we are on the fourth day — and therefore, I should not look to those procedural rules, but only to rule 85.

By way of a ruling, I would not be able to consider that until the question is ripe; that is, until the Senate is on the fifth day, because that would interfere with matters for which the Senate, itself, is responsible for and that the rules provide are engaged by the Senate and senators until such time as that question might arise. I do not rule on that question. It is not timely to rule on it until we are faced with it.

The next sitting day could be tomorrow, if the vote is deferred to tomorrow and taken tomorrow. If the government whip uses the rules, it could be deferred to the next sitting day, which could be tomorrow or the next sitting day next week. Rules, with which you are all familiar, provide for the deferral of votes.

My ruling is that it is not timely to rule on the point of order because we are not at the fifth day. We are now at the point of calling in the senators. I will once again look to the floor to see whether there is an agreement on the bell. If there is no agreement, there will be a one-hour bell.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with all due respect to His Honour, I appeal his ruling on the question raised by the Leader of the Government in the Senate.

[English]

The Hon. the Speaker: I take it that there is to be a vote on the ruling I have just given. Is that correct, Senator Robichaud?

This is a question to the Senate chamber with respect to an appeal of the ruling of the speaker.

Hon. John Lynch-Staunton (Leader of the Opposition): I will speak to a point of order. It is a bit late to appeal His Honour's ruling. A vote was called. The yeas and nays were taken. The honourable senator rose and reminded us that the rules provide for an hour's bell. Senator Stratton then asked to defer the vote. Senator Rompkey objected. Senator Robichaud and Senator Carstairs picked up the argument. This chamber has already indicated that it wants a vote on the issue. Your Honour had actually called the vote. Your Honour's decision cannot be overruled by the testiness of the leadership opposite.

Hon. Sharon Carstairs (Leader of the Government): With the greatest respect, honourable senators have no objections to having a vote on the motion of Senator Kinsella. What we are objecting to is having a deferral of that vote, which would then put us in the fifth day, which would, in fact, be in violation of our rules. It is that simple.

Senator Lynch-Staunton: The rules allow the vote to be deferred. That is the rule honourable senators are working with now; we are not working with His Honour's ruling. Honourable senators are discussing how to handle the vote. Senator Stratton, by the rights given to him in the *Rules of the Senate*, has asked for deferral of the vote. Now honourable senators are awaiting Senator Rompkey's response following His Honour's ruling that we should proceed.

The Hon. the Speaker: Honourable senators, in effect, have a point of order within a point of order, and I will hear senators on it.

Hon. Bill Rompkey: Our position is clear, Your Honour, as outlined by the leader: Rule 85(2) is very clear.

Senator Lynch-Staunton: His Honour has already ruled on that.

Senator Rompkey: If honourable senators defer the vote until later than today, they are in abrogation of rule 85(2). The committee will not be able to meet in time to submit a report within five days. Our position is that the vote must be taken, and it must be taken today.

• (1620)

Hon. Marcel Prud'homme: Honourable senators, with all due respect, you have made a decision. To the best of my recollection, we never continue a debate on a decision that has been taken by calling a vote. I am sorry if it displeases the chamber, but debate is not allowed after the question has been put. It would be quite a change for me, after 39 years in Parliament, to entertain debate while we are having a discussion solely about when we would like to vote.

The Hon. the Speaker: Senator Prud'homme, I can perhaps clarify for you. We are not debating the amendment or the main motion. We are on a point of order raised by Senator Carstairs. I have given a ruling. I was about to take my chair when Senator Robichaud rose to challenge the ruling. Another question came up after that challenge, as to whether the challenge is timely. We are dealing with the timeliness issue now. Senator Kenny wanted to speak.

[The Hon. the Speaker]

Hon. Colin Kenny: Honourable senators, with respect, a challenge is not debatable. Everything that has been going on is inappropriate. When there is a challenge, you move to vote on the challenge. There is no debate. The rules are very clear.

The Hon. the Speaker: You are quite right, Senator Kenny. We are not debating that issue. We are discussing whether or not Senator Robichaud rose in a timely manner to challenge the Speaker's ruling. I think it might be useful for me to read the relevant rule referred to me by the Table, which provides:

Except in accordance with...Rule 37(5), all decisions of the Speaker shall be subject to appeal to the Senate, and such an appeal shall be decided forthwith, without debate.

The question then is: Do I accept the challenge? I believe that it is incumbent upon the Chair to be as generous as possible in terms of allowing senators to speak and allowing senators to use the *Rules of the Senate*. Accordingly, I rule that the challenge can be made. I will proceed now to take the vote, which is non-debatable, on the challenge to the Speaker's ruling. I will summarize here because I do not have a record. The ruling was that the decision as to whether rule 85 or other rules of the Senate prevail was not timely because we are not on the fifth day, as referred to in rule 85.

Honourable senators, the question is whether the ruling of the Speaker is sustained. Will those honourable senators in favour of the ruling please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the ruling please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. It will be a one-hour bell.

• (1720)

Speaker's ruling negated on the following division:

YEAS
THE HONOURABLE SENATORS

Atkins
Beaudoin
Cools
Keon
Kinsella
LeBreton
Lynch-Staunton

Murray
Oliver
Prud'homme
Sibbeston
Stratton
Taylor—13

NAYS
THE HONOURABLE SENATORS

Bacon	Jaffer
Baker	Kenny
Banks	Kolber
Biron	LaPierre
Carstairs	Lapointe
Cook	Léger
Corbin	Maheu
Cordy	Mahovlich
De Bané	Milne
Fitzpatrick	Pearson
Fraser	Phalen
Furey	Poulin
Gauthier	Robichaud
Gill	Rompkey
Graham	Setlakwe
Hervieux-Payette	Stollery
Hubley	Wiebe—34

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Honourable senators, my ruling was that it is not timely to rule on the point of order because we are not on the fifth day. That is Senator Carstairs' point of order on the prevalence of rule 85 over other rules. The consequence of this appeal is that it is timely and that it is as if it is in effect the fifth day, and the question of whether rule 85(2) is now in play is something on which I must now rule.

I had considered the possibility of the ruling that I made not being sustained, and I should be able to make that next ruling in a very few minutes. Although I could make it from the Chair, I would be grateful for the indulgence of honourable senators for another 10 or 15 minutes, with a five-minute bell to call the chamber back.

Honourable senators, do I have your leave to do so?

Hon. Senators: Agreed.

The sitting of the Senate was suspended.

• (1750)

The sitting of the Senate was resumed.

[*Translation*]

Senator Robichaud: Honourable senators, I respectfully ask His Honour not to give the ruling he was about to give. We have reached an agreement that would make it possible to appoint the Committee of Selection, which would present its report on the fifth day, Tuesday, October 8, 2002, in respect of its nomination of a senator to preside as Speaker *pro tempore*. The Committee of Selection would also report on the Standing Senate Committee on Social Affairs, Science and Technology.

The Committee of Selection would therefore present its report on these two items and would have the time to meet, at its members' discretion, to discuss and later reach an agreement on the other committees.

We would like to ask His Honour to again put the question on the amendment moved by the Honourable Senator Kinsella, which we can dispose of. We agree with this amendment. We could then move on to the main question, which is the motion about appointing the Committee of Selection.

[*English*]

The Hon. the Speaker: Before you rise, Senator Kinsella, I would draw to your attention, honourable senators, that it is almost six o'clock. Is it your wish not to see the clock?

Hon. Senators: Agreed.

[*Translation*]

Senator Kinsella: Honourable senators, I would like to confirm our common agreement, as was described by the Deputy Leader of the Government, Senator Robichaud. We are in full agreement.

[*English*]

Senator Prud'homme: I would like to be sure that, if we agree with these two fine senators representing the government and opposition, that would terminate the debate on the formation of the committee and on the names of those who have been proposed by the government. For the record, I would note that Senator Carstairs is indicating her agreement.

I understand that the motion now to be put by His Honour dealing with the one third, split in committee membership, et cetera, is clear.

I also understand that Senator Carstairs is of the opinion that, if there are to be independent senators appointed to committees, their numbers will be deducted from the allocated number of Liberal senators. The Liberal senators will still have a majority on committees. I do not understand why some people seem so nervous. There will still be a Liberal majority, including the chair. Even if the chair chooses to take a neutral stance, the Liberals will still have a majority. I am sure that will be clear to Senator St. Germain.

With respect to the comment that there has been so much hanky-panky — and I do not know if it is very nice to use that phrase in English — I hope that the other commitments that were made verbally or otherwise will also be met. I suppose that civility has returned. As an old man, I want to say that I am glad to see, at the end of the day, democracy at its best and that civility has been restored.

The Hon. the Speaker: Thank you, honourable senators.

It has been communicated to the chair by the Deputy Leader of the Government and the Deputy Leader of the Opposition, with respect to the ruling, that I cannot answer questions, Senator Prud'homme, but if I could comment in passing on your intervention, I believe there was a general understanding of what you outlined.

Is the house now ready to return to the motion in amendment of Senator Kinsella and to the motion of Senator Robichaud, seconded by Senator Rompkey, striking the Committee of Selection?

• (1800)

Hon. Anne C. Cools: Honourable senators, may I be permitted a question of clarification? The leader or the deputy leader could perhaps assist.

I understood the deputy leader to ask Your Honour not to give the ruling. Is that permissible? I am under the impression that that ruling was supposed to be brought on because of a wish or an order of the entire house. How can it be that you can suspend, postpone or abandon giving a ruling at the request of one senator?

The Hon. the Speaker: I do not find anything out of order in the request of the deputy leaders. It can be considered that the ruling is deferred, and I so consider it. It may be that we will return to it, or that we will not return to it. Am I correct? I look to the deputy leaders.

I have been asked to put to the house this request for leave that we return to the motion in amendment of Senator Kinsella and to Senator Robichaud's motion striking the Committee of Selection. Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: I will then put the question on the motion in amendment of Senator Kinsella, which I will read again to remind honourable senators.

It was moved by Honourable Senator Kinsella, seconded by the Honourable Senator Stratton:

That the motion be amended by adding, after the last paragraph:

That the Committee of Selection shall nominate Senators to select committees on the basis of the principle that Progressive Conservative Senators have a minimum of one-third of the memberships of a select committee.

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

Motion agreed to.

The Hon. the Speaker: We now return to the main motion. Are you ready for the question, honourable senators?

Hon. Senators: Question!

The Hon. the Speaker: It was moved by Honourable Senator Robichaud, seconded by —

Senator Prud'homme: Dispense.

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

Motion agreed to, as amended.

NATIONAL SECURITY AND DEFENCE

REPORT ENTITLED "CANADIAN SECURITY AND MILITARY PREPAREDNESS"—GOVERNMENT RESPONSE—MOTION—DEBATE ADJOURNED

Hon. Colin Kenny, pursuant to notice of October 2, 2002, moved:

That, within three sitting days of the adoption of this motion, the Leader of the Government shall provide the Senate with a comprehensive government response to the report of the Standing Committee on National Security and Defence entitled *Canadian Security and Military Preparedness*, tabled on February 28, 2002.

On motion of Senator Murray, debate adjourned.

[Translation]

ADJOURNMENT

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

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

That, when the Senate adjourns today, it do stand adjourned until Tuesday next, October 8, 2002, at 2 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, October 8, 2002, at 2 p.m.

**THE SENATE OF CANADA
PROGRESS OF LEGISLATION**

(2nd Session, 37th Parliament)

Thursday, October 3, 2002

**GOVERNMENT BILLS
(SENATE)**

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02							

**GOVERNMENT BILLS
(HOUSE OF COMMONS)**

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
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COMMONS PUBLIC BILLS

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
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SENATE PUBLIC BILLS

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02							
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02							
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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