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THE HONOURABLE LUCIE PÉPIN
SPEAKER *PRO TEMPORE*

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THE SENATE

Tuesday, October 22, 2002

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker *pro tempore*: Honourable senators, I wish to direct your attention to the presence in the gallery of members of the YWCA Canada's National Executive, who are in Ottawa as part of their Week Without Violence Against Women. They are guests of the Honourable Senator Mobina Jaffer.

[Translation]

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

[English]

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

JUSTICE

RACIAL PROFILING IN LAWS PASSED SINCE SEPTEMBER 11, 2001

Hon. Donald H. Oliver: Honourable senators, just as a controversy now swirls around the Metropolitan Toronto Police Department for allegedly treating Black people in a discriminatory fashion, it is time for us to look carefully at the laws that we have put in place since September 11, 2001, to determine if they have resulted in racial profiling and in condoning racial discrimination.

The Canadian Customs and Revenue Agency has begun the systematic collection of data on Canadian air travellers. This information, which is kept for six years, will detail all travel movements of Canadians who travel abroad.

George Radwanski, Canada's Privacy Commissioner, has stated that "the government has no business systematically recording and tracking where all law-abiding Canadians travel, with whom we travel, or how often we travel."

Passenger data, indiscriminately collected and stored, can be read and used by those who collect it in any way that they choose. For visible minorities, that prospect could be frightening.

It is my contention that senators must be ever vigilant to ensure that such powers given to a government agency do not allow it to become a basis for racial profiling. The words of Deputy Justice Minister Morris Rosenberg are of little comfort in this regard. At a recent conference of security and intelligence experts, Mr. Rosenberg indicated that he would not automatically rule out the technique of racial profiling to target individuals for extra scrutiny at border or airport security stops.

In the past 12 months, we have put legislation in place that could give authorities the belief that racial profiling is condoned, or even encouraged, by parliamentarians. Ms. Anvradha Bose, Executive Director of the National Organization of Immigrant and Visible Minority Women of Canada, spoke to the special committee studying Bill C-36 on anti-terrorism. She said: "Since September 11, we as visible minorities have gone from suspicion to outright accusation."

Honourable senators, we must ensure that, as these laws are implemented, racial profiling does not become one of the methods used in dealing with passengers when they travel within and outside of Canada. Not only is racial profiling morally indefensible, but it is also contrary to our Charter of Rights and Freedoms and our human rights legislation.

HABITAT FOR HUMANITY

Hon. Catherine S. Callbeck: Honourable senators, I am pleased to rise today to recognize the efforts of all who are involved around the world with the wonderful organization Habitat for Humanity.

Since 1976, Habitat for Humanity has built more than 125,000 houses in over 80 different countries. This is a great organization that does not discriminate according to race, religion or ethnic background and that makes affordable housing available to low-income people worldwide.

This past weekend, I was honoured to take part in an event in Charlottetown where the keys to three new homes were presented to three Island families. These families, if not for this fine organization, may not otherwise have been able to enjoy what so many of us take for granted.

The three homes — one single-family dwelling and one duplex — were the work of well over 200 dedicated volunteers, as well as the families themselves, who were on site almost every day during construction.

The benefits to the families who receive a Habitat for Humanity home are considerable and go well beyond the obvious luxury of a warm bed and a comfortable place in which to raise one's family. The lower mortgage payments allow more of a family's income to be spent on such things as food and education.

Habitat for Humanity is about realizing dreams, about fulfilling a lifetime's worth of ambition and, perhaps most important, about giving our children the best possible chance for success.

I am so proud of the work of Jim Wicks, Chairperson of Habitat for Humanity in the Queen's Region of Prince Edward Island, of his board of directors and of all the volunteers. I wish them all the best as they continue their good work.

[Translation]

FRANCOPHONIE SUMMIT, 2002

Hon. Gérald-A. Beaudoin: Honourable senators, the ninth conference of heads of state and governments of countries using French as a common language was held in Beirut this past October 18 through 20.

As we all know, Canada is active in two major world forums, the Commonwealth and the Francophonie.

• (1410)

Our involvement in these two forums is a reflection of how we are perceived throughout the world. These two forums give us two distinct venues for participating in the leading debates of the day. We are also a member of the G8.

The Prime Minister was, appropriately, the representative of our country at Beirut. There was provincial participation as well.

In the early 1970s, the Government of Canada, under Prime Minister Pierre Elliott Trudeau, had proposed having “participating government status” within the Agence intergouvernementale de la Francophonie. Quebec was awarded that status in 1971 and New Brunswick in 1977. The premiers of both these provinces were in attendance at Beirut.

In 1985, the Francophonie Summit was created on the instigation of Prime Minister Mulroney and French President François Mitterand. At these summits, Quebec and New Brunswick have participating government status.

I am delighted with this successful collaboration within the Canadian federation and want to draw attention to it.

[English]

VIOLENCE AGAINST WOMEN

Hon. Mobina S. B. Jaffer: Honourable senators, the YMCA has chosen this week to highlight violence and to unite Canadians against violence in our communities, especially violence that targets women. At least 51 per cent of all Canadian women have experienced some form of physical or sexual violence. This is unacceptable. Last year, more than 75,000 Canadians participated in over 150 activities organized by local YWCAs. I am pleased to inform honourable senators that the National Board of the YMCA joins us here in the chamber today.

The YMCA is the largest service organization for women in Canada. Violence against women is an obstacle to the achievement of equality, social progress and social stability. Not only does this violate women’s rights under the Canadian Charter of Rights and Freedoms, but it also impacts women’s ability to grow and develop into healthy, well-adjusted, contributing members of Canadian society.

Violence against women happens everywhere: at home, in schools and in the workplace. It can take many forms — emotional, psychological, sexual and physical — and it affects a woman’s sense of self, her self-confidence and self-esteem. A victim of violence is more likely to suffer from chronic health

problems, including depression, eating and anxiety disorders. She is more prone to hospitalization and suicide. Her experience makes it more difficult for her to maintain a job and enjoy financial security. In effect, it imprisons her in a vicious cycle.

Violence is a trauma that many suffer in silence. Aboriginal women and women of minority status are particularly vulnerable. To stop this violence in our society, we need to take action. We need to speak about violence in order to influence values and attitudes and change behaviour.

Honourable senators, the YMCA’s Week Without Violence reminds us all of the work that still remains with regard to violence against women.

[Translation]

THE LATE PROFESSOR HUBERT GUINDON

TRIBUTE

Hon. Roch Bolduc: Honourable senators, this country has lost one of its clearest thinking intellectuals. Hubert Guindon passed away last week. I met Hubert during my post-graduate studies in the United States in 1952. Born in Eastern Ontario, he had a degree in philosophy and was studying at the Department of Sociology of the University of Chicago at the time.

Hubert did not live like the rest of us: in the evening, he played bridge at International House, where we lived; he worked during the night and slept in late in the morning. I do not know if that was part of his non-conformist mentality, but he certainly was a great thinker and he had a keen sense of political and social observation.

He read everything, from Marx to Louis Irving Horowitz, in the best tradition of university studies. During the summer, he did fieldwork in empirical analysis, taking up the work of Léon Gérin in Saint-Denis de Kamouraska. He also led a team with Fernand Cadieux, who greatly influenced Pierre Elliott Trudeau.

Upon his return from Chicago, he taught at the Université de Montréal, where I was a lecturer in public administration. We pursued our discussions between periods at hockey games at the Forum until just recently. His students loved him because he was a born educator.

I do not think that Canada has produced another expert in social sciences who comes as close to C.W. Mills as he did. He covered the whole broad field of social organization and action at home. In 1963, he was the first person to point out that, with the nationalization of colleges and hospitals, Quebec’s bureaucracy was being revolutionized.

Hubert Guindon was skeptical about the future impact of these new adventures, as he always took with a grain of salt the moralizing statements made by the leaders of various social movements and groups with corporatist tendencies. He had harsh views on such institutions as the Church, the universities, Parliament and political parties, professions and unions.

Hubert left the Université de Montréal because of academic differences and moved on to Concordia University. He published mainly in English. A few years ago, a Toronto publishing firm reprinted some of his writings for academic journals. His speech to the Royal Society of Canada on seriousness and solemnity, entitled: "Du sérieux et du solennel," reflects his sharpness of mind and his sense of humour. These past years, he was putting the final touches on a book on the great Hannah Arendt. I hope that a colleague of his will be able to publish it.

Hubert was also a man of great charity who provided supportive care to dying AIDS patients until the end. He lived in the inner city of Saint-Henri, and all loved him. He was a modern-day St. Francis of Assisi from whom a battered Church, with which he had made peace, sought advice from time to time. In his retirement, at his country home, he baked bread and gave it to the Carmelites who lived nearby.

[English]

CANADA-UNITED STATES RELATIONS

Hon. Gerry St. Germain: Honourable senators, I rise to call your attention to what can only be described as a deplorable situation that has developed between Canada and the United States. Bilateral relations have reached a 20-year low, possibly an all-time low. Not since the Trudeau era has there been such contempt between our two nations. Prime Minister Mulroney repaired and rebuilt Canada's relations with its largest trading partner and its best friend, resulting in the best bilateral relationship in the last century. These relations gave us environmental agreements, international strength and security for our people, free trade and NAFTA. Certainly there were disputes, but mutually agreeable compromises were found.

Today, we find ourselves at odds with our American friends over the issues of softwood lumber, farm subsidies, environmental problems, and immigration and national security, to name but a few.

Where, not so many years ago, Canada was at an economic par with the U.S., today, Canadians have fallen behind their American friends and neighbours. A recent poll says 66 per cent of Canadians want closer economic and cultural ties with the U.S. to increase their standard of living. The survey showed that left-leaning members of the Liberal caucus, the New Democrats and the Nationalists are out of touch with Canadians. Eighty-seven per cent of Canadians believe Canada needs to look beyond its borders to survive economically. With the U.S. purchasing some 80 per cent of our GDP output, it should come as no surprise that fostering excellent relationships between the two nations will only lead to an even stronger economic climate here in Canada.

A J.P. Morgan study released last Friday shows that all the gains achieved through the free trade deal have been lost within the last two years. Only socialist Liberals and handout seekers are fearful of the Americans. Only those who do not want to compete on an equal footing and those who want a low dollar policy oppose stronger cross-border ties. Canadians want and deserve a better standard of living. Canadians want a government that is not afraid to stand tall and shoulder-to-shoulder with our American brothers and sisters.

Honourable senators, the only thing to fear is fear itself.

• (1420)

ROUTINE PROCEEDINGS

COMMITTEE OF SELECTION

THIRD REPORT OF COMMITTEE PRESENTED

Hon. Bill Rompkey, Chair of the Committee of Selection, presented the following report:

Tuesday, October 22, 2002

The Committee of Selection has the honour to present its

THIRD REPORT

Pursuant to Rule 85(1)(b) of the *Rules of the Senate*, your Committee submits herewith the list of Senators nominated by it to serve on the following committees:

STANDING COMMITTEE ON ABORIGINAL PEOPLES

The Honourable Senators Carney, Chalifoux, Christensen, Gill, Hubley, Johnson, Léger, Pearson, Sibbeston, St. Germain, Stratton and Tkachuk.

STANDING COMMITTEE ON AGRICULTURE AND FORESTRY

The Honourable Senators Chalifoux, Day, Fairbairn, Gustafson, Hubley, LaPierre, Lapointe, LeBreton, Moore, Oliver, Tkachuk and Wiebe.

STANDING COMMITTEE ON BANKING, TRADE AND COMMERCE

The Honourable Senators Angus, Fitzpatrick, Hervieux-Payette, Kelleher, Kolber, Kroft, Meighen, Poulin, Prud'homme, Setlakwe, Taylor and Tkachuk.

STANDING COMMITTEE ON ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

The Honourable Senators Baker, Banks, Buchanan, Christensen, Cochrane, Eyton, Finnerty, Kenny, Milne, Spivak, Taylor and Watt.

STANDING COMMITTEE ON FISHERIES

The Honourable Senators Adams, Baker, Cochrane, Comeau, Cook, Hubley, Johnson, Mahovlich, Moore, Phalen, Robertson and Watt.

STANDING COMMITTEE ON FOREIGN AFFAIRS

The Honourable Senators Andreychuk, Austin, Bolduc, Carney, Corbin, De Bané, Di Nino, Grafstein, Graham, Losier-Cool, Setlakwe and Stollery.

STANDING COMMITTEE ON HUMAN RIGHTS

The Honourable Senators Beaudoin, Jaffer, Ferretti Barth, Fraser, LaPierre, Maheu, Poy, Rivest and Rossiter.

STANDING COMMITTEE ON INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

The Honourable Senators Angus, Atkins, Austin, Bacon, Bryden, De Bané, Doody, Eyton, Gauthier, Gill, Jaffer, Kroft, Poulin, Robichaud and Stratton.

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

The Honourable Senators Andreychuk, Baker, Beaudoin, Bryden, Buchanan, Cools, Furey, Jaffer, Joyal, Nolin, Pearson and Smith.

STANDING JOINT COMMITTEE ON THE LIBRARY OF PARLIAMENT

The Honourable Senators Bolduc, Forrestall, Morin, Lapointe and Poy.

STANDING COMMITTEE ON NATIONAL FINANCE

The Honourable Senators Biron, Bolduc, Cools, Day, Doody, Eyton, Ferretti Barth, Finnerty, Furey, Gauthier, Mahovlich and Murray.

STANDING COMMITTEE ON NATIONAL SECURITY AND DEFENCE

The Honourable Senators Atkins, Banks, Cordy, Day, Forrestall, Kenny, Meighen, Smith and Wiebe.

STANDING COMMITTEE ON OFFICIAL LANGUAGES

The Honourable Senators Beaudoin, Comeau, Ferretti Barth, Gauthier, Keon, Lapointe, Léger, Losier-Cool and Maheu.

STANDING COMMITTEE ON RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

The Honourable Senators Andreychuk, Bacon, Di Nino, Grafstein, Joyal, Losier-Cool, Milne, Murray, Pépin, Pitfield, Robertson, Rompkey, Smith, Stratton and Wiebe.

STANDING JOINT COMMITTEE FOR THE SCRUTINY OF REGULATIONS

The Honourable Senators Biron, Hervieux-Payette, Hubley, Kelleher, Moore, Nolin and Phalen.

STANDING COMMITTEE ON TRANSPORT AND COMMUNICATIONS

The Honourable Senators Adams, Biron, Callbeck, Day, Eyton, Fraser, Graham, Gustafson, Johnson, LaPierre, Phalen and Spivak.

Pursuant to Rule 87, the Honourable Senator Carstairs, P.C. (or Robichaud, P.C.) and the Honourable Senator Lynch-Staunton (or Kinsella) are members *ex officio* of each select committee.

Respectfully submitted,

WILLIAM ROMPKEY
Chair

The Hon. the Speaker *pro tempore*: When shall this report be taken into consideration?

Hon. Marcel Prud'homme: At the next sitting.

Senator Rompkey: I believe all honourable senators know, we have been working on time constraints. The report will be circulated, and I hope we can discuss it later this day.

Senator Lynch-Staunton: Out of order.

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

Some Hon. Senators: No!

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

Hon. Sharon Carstairs (Leader of the Government): With the greatest respect, honourable senators, this is a procedural matter. If we do not get unanimous leave to deal with the report today, it is automatically put on the Order Paper for tomorrow. Therefore, no vote is required.

Some Hon. Senators: Hear, hear!

Report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[*Translation*]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

NOTICE OF MOTION TO ADOPT FOURTEENTH REPORT OF COMMITTEE PRESENTED IN FIRST SESSION OF THIRTY-SEVENTH PARLIAMENT

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that on Thursday next, October 24, 2002, I will move:

That the recommendations and proposed rules contained in the Fourteenth Report of the Standing Committee on Rules, Procedures and the Rights of Parliament presented to the Senate in the First Session of the 37th Parliament on June 11, 2002, be adopted, mainly:

1. a) Recommendation:

That the Senate adopt a procedure that would

(a) enable the Senate, following its approval of a report submitted by a select committee, to refer that report to the Government with a request for a comprehensive response within 150 calendar days;

(b) require the Leader of the Government in the Senate to either table the Government's response within the 150 day period or provide the Senate with an explanation; and

(c) deem the report and the comprehensive response to be referred upon tabling to the select committee for review, and provide that the select committee be deemed to have been referred the matter for consideration should the 150 day period lapse without a comprehensive response being received.

b) Proposed Rule:

That the *Rules of the Senate* be amended in rule 131,

(a) by renumbering rule 131 as 131(1); and

(b) by adding after subsection 131(1) the following:

“Request for Government response

(2) Where the Senate adopts either a resolution or a report from a select committee, other than the report on a bill, requesting the Government to provide a full and comprehensive response to the report, the Clerk of the Senate shall communicate the request to the Government Leader in the Senate who shall, within one hundred and fifty calendar days after the adoption of the report, either table the Government's response or give an explanation for not doing so in the Senate.

(3) Where the Senate adopts a resolution or a report under subsection (2), the report of the select committee and the response of the Government or the explanation of the Government Leader for the absence of a response are deemed to be referred to the select committee one hundred and fifty calendar days after the adoption of the report.”

2. a) Recommendation:

That the Senate adopt a rule based on Senator Gauthier's proposal relating to petitions, setting out the requirements as to their form and content, providing for a presentation procedure and providing that the subject matter of each public petition shall be referred to the appropriate standing committee, which shall consider it and, where it believes such action to be desirable, report back to the Senate with findings and recommendations.

b) Proposed Rule:

That the *Rules of the Senate* be amended by replacing rules 69 to 71 with the following:

“Presentation of petitions

69. (1) A Senator may present a petition to the Senate, including a petition for the passage of a private bill or for the redress of a grievance.

Senator's signature

(2) A Senator who presents a petition to the Senate must sign it as the sponsor, but the signature of the Senator is not an indication that the Senator agrees with the content of the petition.

Multiple sponsors

(3) More than one Senator may sponsor a petition.

Report attached

(4) A Senator who presents a petition for the purposes of rule 71 shall present it with the report of the Examiner of Petitions attached.

Content of petition

(5) A petition to the Senate must:

(a) be identified as a petition;

(b) be addressed to the Senate or to the Senate in Parliament assembled;

(c) respectfully request the Senate to do something that it is able to do;

(d) if it is the petition of one or more individuals, contain the original signatures of the petitioners, their names and correct addresses and the dates of their respective signatures; and

(e) if it is the petition of a corporation, be dated and duly authenticated and under the seal of the corporation.

Form of petition

(6) A petition to the Senate must:

(a) be in a form prescribed by the Committee on Rules, Procedures and the Rights of Parliament, on sheets of paper of standard or legal size;

(b) be an original, not a photocopy or facsimile;

(c) be legible, whether it is written, typewritten, printed or some combination of these;

(d) be free of extraneous matter in its text and of alterations; and

(e) reproduce on every sheet its identification as a petition to the Senate or to the Senate in Parliament assembled and the text of the request, if it consists of more than one sheet of signatures and addresses.

Examiner of Petitions

(7) The Director of Committees shall be the Examiner of Petitions.

Petition on behalf of public meeting

70. Petitions signed by persons purporting to represent public meetings shall be received only as the petitions of the persons who sign.

Public petitions

71. (1) In this rule, “public petition” means a petition to the Senate or the Senate in Parliament assembled by at least 25 persons, other than Senators and members of the House of Commons, that is filed for examination, presentation, referral and report under this rule.

Filing for examination

(2) A person may file a public petition with the Clerk of the Senate who shall, at the request of a Senator who proposes to sponsor it, refer it to the Examiner of Petitions for examination for compliance with rule 69.

Referral

(3) Where a Senator presents a public petition in the Senate with a report by the Examiner of Petitions attached advising that the petition is in compliance with rule 69, the petition, its subject-matter and the report shall be referred, without notice and without debate, to the appropriate standing committee.

Report

(4) The committee to which a public petition is referred under subsection (3) may report on its findings and recommendations, if any, to the Senate.”

3. a) Recommendation:

That, with the exception of clauses 26.1(8) to (11), the Senate adopt the substance of the October 16, 2000 motion of Senator Kinsella, seconded by Senator Forrestall, that would add a rule 26.1 to provide for the expeditious consideration of secession referendum questions or referendum results by Committee of the Whole, upon their being tabled in a provincial legislature or otherwise officially released.

b) Proposed Rule:

That the *Rules of the Senate* be amended, in rule 26,

(a) by adding the following before subsection (1):

“Constitutional business

(1) Constitutional Business: Orders of the Day for motions under rule 26.1(3).”

(b) by renumbering subsections (1) and (2) as (2) and (3) and all cross-references thereto accordingly; and

(c) by adding the following after rule 26:

“Question considered

26.1 (1) Immediately after the government of a province tables in its legislative assembly or otherwise officially releases the question that it intends to submit to its voters in a referendum relating to the proposed secession of the province from Canada, motions to refer that question to Committee of the Whole for consideration and report may be moved without leave at the next sitting of the Senate, and, if moved, must be considered and disposed of in priority to all other orders of the day.

Clear majority considered

(2) Immediately after the government of a province, following a referendum relating to the secession of that province from Canada, seeks to enter into negotiations on the terms of which that province might cease to be a part of Canada, motions to refer the subject of the clarity of the majority achieved in the referendum to Committee of the Whole for consideration and report may be moved without leave at the next sitting of the Senate, and, if moved, must be considered and disposed of in priority to all other Orders of the Day.

Order of business

(3) Notwithstanding rule 23(8), the Speaker shall call for motions under this rule as the first item of business after Question Period.

Priority

(4) Motions under this rule shall be considered and disposed of in the following order: a motion, if any, by the Government Leader; a motion, if any, by the Leader of the Opposition; a motion, if any, by the leader of a recognized third party in the Senate; motions, if any, by other Senators.

Deemed disposition

(5) Only one order of reference at a time may be made under subsection (1) or (2) and, as soon as an order of reference is adopted, with or without amendment, the remaining motions shall be dropped from the *Order Paper*.

Time

(6) Where the Senate adopts an order of reference under this rule, the Committee of the Whole shall report within fifteen calendar days after proceedings commenced in the Senate under subsection (1) or (2).

Transmission of findings

(7) When the Senate adopts a resolution in respect of a report presented pursuant to this rule, the Speaker of the Senate shall transmit copies of the resolution and of all proceedings held under this rule in the Senate and in the Committee of the Whole, including a complete copy of every representation made under this rule, to the Speaker of the House of Commons and to the Speakers of each provincial and territorial legislative assembly in Canada."

[English]

QUESTION PERIOD

NATIONAL DEFENCE

BUDGET CUTS TO RESERVE UNITS

Hon. J. Michael Forrestall: Honourable senators, my question is for the Leader of the Government in the Senate. Is the Leader of the Government able to confirm that all militia units have been told they are facing a 10 per cent budget cut?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator asks a question for which I cannot provide an answer. I have no knowledge whatsoever that the reserve units have been told that they are subject to a 10 per cent cut in their budget. I will, however, seek that information on the honourable senator's behalf.

While I am on my feet, I will answer two other questions that he has now asked twice and that I have not been able to answer.

With respect to the PPCLI heavy equipment that was brought from Afghanistan back to Canada, it is now in Vancouver and is waiting to be off-loaded from the ships there.

In terms of the honourable senator's question with respect to the 2RCR Battle Group, the group is undertaking collective training that will progressively bring it to a high level of readiness, in accordance with the army's previously approved readiness schedule.

It is a perfectly normal aspect of their training. The honourable senator is correct, there was some postponed parental leave. It was not cancelled, but postponed, and the men agreed to do that.

Senator Forrestall: It would be miraculous if you could postpone maternity leave.

I appreciate the minister was not in a position to answer my first question and will likely not be able to answer the first, and possibly the second, supplementary. However, I shall pose them

in the hope that she may include them. Will the minister find for us the reason for this budget cut? Is it to help defray the costs associated with Operation Apollo and to help fight the operation and maintenance deficit of the army, now valued at about \$175 million annually? Could the minister also tell the chamber if all Canadian Forces units are facing a 10 per cent budget cut to their individual unit budgets?

• (1430)

Senator Carstairs: As the honourable senator indicated in the preamble to his question, I am not able to provide that information except for one aspect of it, namely that Operation Apollo, which has a shortfall of funding of some \$400 million, will be funded by Supplementary Estimates. That would not fall into the category that the honourable senator has identified, but I will try to generate the information that he has requested with respect to the other expenditures.

Senator Forrestall: I express the hope, on behalf of a lot of Canadians, that the Supplementary Estimates will benefit those men and women who have to fly Sea King helicopters.

FOREIGN AFFAIRS

FRANCOPHONIE SUMMIT, 2002—COMMUNIQUÉ ENDORING SAUDI ARABIAN PROPOSAL OF LAND FOR PEACE

Hon. David Tkachuk: Honourable senators, my question is to the Leader of the Government. At the meeting of La Francophonie in Beirut, Canada signed the final communiqué that reportedly endorsed the land-for-peace agreement proposed by Saudi Arabia in March. Is the Saudi Arabian proposal for a solution to the Palestinian terrorist acts the policy of the Government of Canada?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I understood the preamble insofar as my honourable friend talked about the agreement of land for peace, but I am afraid I missed the second part of the question. Would he repeat that for me, please?

Senator Tkachuk: At the meeting of La Francophonie in Beirut, Canada signed the final communiqué along with all the other countries. That final communiqué reportedly endorsed the land-for-peace agreement proposed by Saudi Arabia in March. Is the Saudi Arabian proposal for a solution to the Palestinian terrorist acts the policy of the federal government?

Senator Carstairs: Honourable senators, first, I cannot tell the honourable senator whether the final communiqué included a sign-off on the land-for-peace agreement proposed by Saudi Arabia. I would have to investigate that communiqué before I could make any further statement on that issue.

Senator Tkachuk: Are we to assume, then, that the Leader of the Government in the Senate does not know the details of the final communiqué that was signed off by the Prime Minister on the weekend?

Senator Carstairs: I must tell the honourable senator that I have not read the final communiqué. To my knowledge, it has not appeared on my desk. Therefore, I cannot distinguish whether the so-called land-for-peace agreement was part of that communiqué.

FRANCOPHONIE SUMMIT, 2002—ATTENDANCE
OF LEADER OF HEZBOLLAH

Hon. David Tkachuk: Honourable senators, Sheikh Hassan Nasrallah, the so-called “spiritual leader” of the Hezbollah, a terrorist organization, attended La Francophonie. Did the Prime Minister know in advance that the sheikh was attending and did we raise any objections to his attendance?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, my understanding is that the Prime Minister did not know that he was attending, although I found it interesting that the person sitting next to the individual in question was, in fact, the American ambassador. In terms of the actual attendance at the meeting, my understanding is that the Prime Minister did not know that the sheikh was in attendance.

Senator Tkachuk: Honourable senators, I am a little confused. The minister knows who was sitting next to the terrorist leader of the Hezbollah, but she does not know what was in the communiqué that Mr. Chrétien signed last weekend as the Prime Minister of the country. My honourable friend is a cabinet minister and the Leader of the Government in the Senate. We know who sat next to the terrorist leader, yet we do not know what is in the agreement and we do not know what the Prime Minister signed off on.

How does my honourable friend know that the American ambassador sat next to the leader of the Hezbollah? The Honourable Senator LeBreton, who is sitting next to me, says that it is not true and that he did not sign the communiqué, but I do not know. I want to know whether the Government of Canada and the Minister of Foreign Affairs knew, in advance, that the sheikh would be attending the conference in Beirut, and did they protest his attendance?

Senator Carstairs: Honourable senators, it is my understanding that the Prime Minister did not know that this leader of the Hezbollah was in fact attending this conference. Whether others knew, I do not know. As to the actual appearance of the American ambassador, there was a picture in the newspaper and so it was relatively easy to get that information.

The communiqué that has been signed has not appeared on my desk; only newspapers appeared on my desk. Therefore, I cannot at this time tell my honourable friend what was in that communiqué. If it is of concern to the honourable senator, I am sure I could get copies of the communiqué and table them in the Senate.

RECOGNITION OF HEZBOLLAH AS
TERRORIST ORGANIZATION

Hon. David Tkachuk: Honourable senators, do the Leader of the Government in the Senate and the Government of Canada recognize the Hezbollah as a legitimate organization or do they see them as a terrorist organization?

Hon. Sharon Carstairs (Leader of the Government): The Hezbollah organization has many arms, many branches. The branch that provides humanitarian aid and the branch that

provides cultural support have not been declared by the United Kingdom as terrorist organizations. There are, however, aspects of the Hezbollah that have been so designated, although some countries have not yet gone through the formal process that we have in identifying certain organizations as terrorists at the highest level of legislation that is presently permitted to us.

[Translation]

Hon. Pierre De Bané: Does the Leader of the Government in the Senate recognize that one of the most consistent elements of Canada's foreign policy is to work against the exclusion of participants at international forums?

The Canadian government has been following this policy for years and one of the countries that benefited from it is Israel; we always fought to ensure that no one was excluded. Does the Leader of the Government in the Senate agree that Lebanon is a democratic country and that the Hezbollah is a party that got a number of members elected to the Lebanese Parliament?

The Canadian government has had contacts with this party, which sits in the Lebanese Parliament, for years. If the Canadian government were to follow the reasoning of my colleague, it should withdraw from all international organizations where it objects to the presence of one of the representatives.

[English]

Senator Carstairs: I thank the honourable senator for his question. As he has identified, Canada has had a history of discussion and dialogue — repartee, if you wish — the purpose of which is to find peace and security in a world order that values peace and security. Lebanon is indeed a democratic country. It might surprise honourable senators opposite to learn that in that democracy, 12 members of Parliament, elected by the people, are members of the Hezbollah political party.

The issue is very simple. The Government of Canada continues to dialogue. It condemns terrorist activities, no matter who perpetrates those terrorist activities.

JUSTICE

VISIBLE MINORITIES APPOINTED TO JUDGESHIIPS

Hon. Donald H. Oliver: Honourable senators, my question is to the Leader of the Government in the Senate. It deals with visible minority appointments to the superior courts of Canada. The minister is intimately aware of many gender parity issues that continue to plague Canada, and I know the minister is sensitive to the needs to have our major institutions more carefully reflect the mosaic of Canada.

Would the minister advise the number of visible minorities, as defined by federal government legislation, that have been appointed to the superior court bench since the Chrétien government took power in 1993? How many judges have been federally appointed from the province of Nova Scotia since 1993? How many of those appointments have been visible minorities? How many Black lawyers have been elevated to the Superior Courts of Canada since 1993? How many Black or visible minorities are now chief justices of any courts in Canada?

• (1440)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator asks an extraordinarily detailed question. Obviously, I will have to get back to him with an equally detailed answer, and I will do so at the earliest opportunity. He knows, however, that if one is to define oneself as a visible minority, it is a self-designation. Therefore, it may not be something that I can necessarily get him in absolute detail.

I can say that I personally was extremely delighted with the appointment of a member of the Aboriginal community to the court in Manitoba not too long ago. It was the first time that had occurred in my province, and for me, it was a giant step forward. Having spent a good deal of my life in Nova Scotia, I do understand where the honourable senator is coming from, and I will try to get the most detailed information for him.

THE ENVIRONMENT

2002 REPORT OF COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT— CLEANUP OF FEDERAL CONTAMINATED SITES

Hon. W. David Angus: Honourable senators, the Commissioner of the Environment and Sustainable Development, Johanne Gelin, published her 2002 report this morning. Chapter 2 of this six-chapter report is entitled: “The Legacy of Federal Contaminated Sites.” Honourable senators, what a sad and shocking legacy it is.

The exact number of contaminated sites is not known even by the Canadian government. The government owns sites contaminated by petroleum products, heavy metals and other toxic substances that gravely threaten human health and the welfare of our citizens.

The commissioner found, honourable senators, that the federal government still does not know the following: how many of the sites are contaminated, the full extent of the risk to human health in the environment and the likely cost of cleaning up and managing these sites. Furthermore, the government does not have a ranking of the worst sites by order of risk, does not provide the long-term stable funding needed to manage the problem effectively and, most important, does not have the firm central commitment, leadership and action plan essential to the timely cleanup or management of high risk contaminated sites under its control.

Honourable senators, the health threat is very real. There is a real danger of water contamination in sites in every region of our country. The health of our most vulnerable citizens — our children, our disabled and our elders — is at risk.

Honourable senators, my question is to the Leader of the Government in the Senate. Canadians must have immediate assurance that the government will allocate more funding to clean up every last contaminated site in this nation. Do we have such an assurance from the government?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator raises a report that was tabled this morning by the Commissioner of the Environment and Sustainable Development, and it is not good news for Canada. He is absolutely correct. The good news that was there was limited in

nature. There was some indication that we have done a little better than we were doing in 1996, and there was more information, a little more money and some prospect for a little improvement. However, the reality is that if we do not take a major step in this way, the problems will continue, and they will explode and become worse than they are today.

Honourable senators, I have no disagreement with Senator Angus, and, on behalf of both of us, I will bring his representation before the cabinet because this report shows us that we have a great deal more to do.

Senator Angus: Honourable senators, I thank the minister for that candid response and the indication that she will carry the message to the powers that be at the centre. A poll undertaken by Environics in October 2001 showed that 84 per cent of Canadians felt that cleaning up communities affected by this kind of toxic waste and contamination is extremely important, and 78 per cent felt it was even more important than cutting personal income taxes — for corporate taxes, it was 91 per cent. Imagine that, honourable senators.

The report of the commissioner says that it is far easier and less costly — up to 40 per cent less expensive in the case of ground water supply contamination, according to an estimate by the U.S. Environmental Protection Agency — to prevent environmental damage than to try to correct it after contamination occurs. Pollution prevention is extremely important, as the minister clearly agrees.

What, then, is the plan of the government to prevent future contamination of this nature and, of course, to contain and clean up the current contamination?

Senator Carstairs: Honourable senators, I do not know if I can go so far as to say to the Honourable Finance Minister that Honourable Senator Angus recommends there should be no cuts to either personal or corporate taxes but that all that money should be used to support the environment. I have perhaps taken a little liberty with what the honourable senator had to say, so I will not put those words in his mouth.

However, some things of a positive nature have happened, and some of them have taken place since the audit was done. For example, in 2002, just this year, the Treasury Board issued policy guidelines on how to estimate the cost and liabilities of federal contaminated sites because we do not actually know what those costs will be, and we need to have at least a reasonable figure as to what it will be. Also in 2002, the Treasury Board publicly released an inventory of federal contaminated sites that includes an assessment of the risk posed by these sites. That is the first time that has happened.

I would agree that there has been at least a little bit of, though not enough, progress, and we seem to be moving in the right direction.

Hon. Marcel Prud'homme: On a supplementary question, while the minister is doing all this research and providing all the answers, would she kindly determine how many of these sites existed between 1984 and 1993?

Senator Carstairs: Honourable senators, I think it is safe to say that all of the sites that we are referring to have existed for a long time. Frankly, I do not consider that an excuse for us not to act. The action must be ongoing. This is the legacy we are leaving to our children, grandchildren and, hopefully, great grandchildren, and they should not be left entirely to deal with the issue.

VETERANS AFFAIRS

COURT CASE AGAINST GOVERNMENT BY DISABLED VETERANS

Hon. Michael A. Meighen: Honourable senators, my question is for the Leader of the Government in the Senate. As she well knows, last week the Supreme Court of Canada agreed to hear an appeal of a class action lawsuit against the government brought on behalf of roughly 10,000 disabled veterans who had been declared incompetent to manage their own affairs. They are suing for the unpaid interest on money the government had held in trust for them over the decades. The amount that could be owed to the veterans is thought to be between \$3 billion and \$5 billion.

Honourable senators, this case could have been settled years ago. However, by fighting it, the government has callously deprived veterans of their own money and further driven up the cost, to taxpayers, of compensation. It is estimated another \$2 million a week in interest is continuing to accrue in a case where two lower courts have already ruled against the government.

Could the leader tell us why the government did not settle this suit when it had the chance? Will it now do the honourable thing and pay the veterans back before more of them die without receiving a cent of their own money?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, clearly the government does not take the position that there is a valid claim. That is why the case is going further in court, and, because it is in court, he knows I can make no further comment.

THE ENVIRONMENT

RATIFICATION OF KYOTO PROTOCOL

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate. The Prime Minister has said that he would consult Parliament before ratifying the Kyoto Protocol, and then, a few weeks ago, he said he would ratify it before Christmas. The provinces have clearly indicated they need to review the facts, the government's plan and the cost implications before they could be party to it. Ratifying the Kyoto Protocol could possibly present the greatest negative impact on Western Canada in recent times.

Can the minister tell the Senate when the government will release its plan, and will the government seek unanimous support from each of the provinces before ratifying Kyoto?

• (1450)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the federal, provincial and territorial ministers were to have met yesterday with respect to the Kyoto accord. That meeting has been postponed for one week. The meeting will be held next Monday, at which time the government will present a plan to the provinces in the hope that the provinces will enter into dialogue with respect to that plan and make available to the federal government their suggestions for how Kyoto targets can be met.

Regarding the announcement by the government that there will be a ratification vote, it will be held in both chambers. The government has indicated that they would like that vote to take place prior to Christmas. However, as the honourable senator knows, Parliament frequently has its own timetable. I can assure the honourable senator that the ratification will take place in the House of Commons and the Senate of Canada.

As to the comment that unanimous approval of all the provinces is required before ratifying the Kyoto accord, quite frankly that is not the case, as it is an international treaty.

Senator St. Germain: Honourable senators, I have a supplementary question.

It may be an international treaty, but the senator from Manitoba, the Leader of the Government in the Senate, knows of the negative impact and divisiveness of the National Energy Policy. Once again, it appears that there is a high degree of insensitivity to the needs of the West.

Take a look at parks. The government wishes to turn the entire western part of Canada and the North into parks without taking into consideration the economic needs of these regions. The largest block of the vote comes from Eastern Canada.

Here again the Leader of the Government in the Senate is saying the government does not need unanimous support. Does the government not feel that this type of initiative requires unanimous support to prevent the divisiveness and the separatist mentality from feeding on it, an attitude that has been created in the West by Central Canadian decisions?

Senator Carstairs: Honourable senators, I will go back and canvass a few of the issues that the honourable senator has spoken of.

First, I come from a western province where the government supports the ratification of the Kyoto Protocol 100 per cent.

Interestingly, at the time of the origination of the National Energy Program, I happened to be in transition from the province of Alberta to the province of Manitoba and considered myself to be a full-fledged Western Canadian. I supported the National Energy Program, because when I compared it with the new oil, old oil policy south of the border, particularly in the State of Texas, it was apparent Albertans were at an advantage compared to their American brotherhood.

Senator St. Germain: Honourable senators, it is the same senator who now sits in the Senate who during the Meech Lake debate said this chamber should be abolished or destroyed.

How does the Leader of the Government in the Senate now justify the argument that because she supported the National Energy Program these divisions do not exist and are being fed by these types of initiatives where unanimous support is not sought?

Senator Carstairs: Honourable senators, to be very clear on my position on the Senate, and we will rewrite history here, because at no point did I ever, in any fora, talk about the abolition of this chamber. It would be very hard for me to have done so with a father who sat here for 25 years. He would have gotten out of his grave to let me know definitely that my views were erroneous on that particular issue.

If the honourable senator is asking me whether I have supported the initiatives for a more equal, elected and effective Senate, yes, I have supported those initiatives, and still do.

Hon. Leonard J. Gustafson: Honourable senators, is there a danger that Canada may sign an agreement like we did in the GATT, when Canada gave away certain rights and went on to keep its part of the agreement whereas the rest of the countries did not? Agriculture has suffered ever since. We moved in a positive way according to the agreement, but the rest of the countries did not. Is there any safeguard in this area?

Senator Carstairs: Honourable senators, we know that the Americans have indicated that they will not support the Kyoto Protocol. On the other hand, we know that all of the European Union countries are in agreement with the Kyoto Protocol, as are a number of other nations throughout the world.

The step we must take is one that is in the best interests of Canada. I believe that what is in the best interests of Canada is signing the Kyoto Protocol.

In signing the Kyoto Protocol, there may be some minor downsides. However, there will be terrific upsides, including, I hope, the recognition that we need a higher percentage of ethanol in our gasoline tanks throughout this country.

FOREIGN AFFAIRS

FRANCOPHONIE SUMMIT, 2002— ATTENDANCE OF LEADER OF HEZBOLLAH

Hon. Laurier L. LaPierre: Honourable senators, I wish to ask a supplementary question regarding the matter of the Francophonie conference.

Honourable senators, I do not want anyone to have the impression that the Prime Minister of my country consorts with terrorists; I do not want that to happen. Therefore, my question to the Leader of the Government in the Senate is: Did the government know that the particular leader of the Hezbollah in question was not invited by the secretariat of la Francophonie itself but by the President of the sovereign country of Lebanon? He only attended, if memory serves me right, the first session, the opening session, sitting next to the American ambassador and the bishop of the Maronite Orthodox Church of Lebanon.

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for that information, which reconfirms what I indicated earlier; that is, that the Prime Minister did not know he had been invited and did not know that he was in the room.

In fact, he went on to say, in comments to the media, that he does not always like everything that people have to say and that probably people do not like everything that he has to say. However, I should hope that Canada will continue to engage in dialogue.

UNITED STATES DEPORTATION OF CANADIAN CITIZEN TO SYRIA

Hon. Marcel Prud'homme: Honourable senators, I am sure we would all agree with the statement made earlier by Senator Oliver.

As you know, new U.S. laws permit border officials to pluck Canadian citizens born in Syria, Iraq, Iran, Libya, Sudan, Saudi Arabia, Yemen and Pakistan from border crossings and force them to submit to fingerprinting, photographing and filling out a form detailing their travel plans. Canada has protested very strongly because it penalizes certain Canadians.

My question is: Are there any new developments respecting the Canadian citizen whose whereabouts are more or less known? I will be in touch with the Syrian government this afternoon. Is there any development? I think, if it were someone of another origin or another religion, Canada would be in an uproar, and the press would be in uproar, as would both Houses.

Until it is proven otherwise, this man is a Canadian citizen who, as the Canadian government said, went through all security tests before he became a Canadian citizen. I wonder if the leader has the latest news about this very dangerous precedent of deporting someone because he happened to land in the United States?

If there were a place he should have been deported to, it is Canada, where he is from.

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator has indicated, Mr. Maher Arar has been identified by the Syrian government as someone who is in Syria. He has not been in Syria, according to them, throughout this whole period of time. He was apparently in Jordan for a time but is now in Syria.

Unfortunately, the situation is that he is not only a Canadian citizen; he is also a Syrian citizen. The United States should have taken his travel document, identified him as a Canadian citizen and, if they were going to deport him anywhere, deported him to Canada. We do not have the same authority with respect to Syria because they can choose to treat him as a Syrian citizen rather than as a Canadian citizen. The Canadian government has made representation to Syria, and we hope that Mr. Arar will be allowed to return to Canada because, although he still maintains his citizenship in Syria, he makes his home in Canada.

• (1500)

POINT OF ORDER

Hon. Laurier L. LaPierre: Honourable senators, I rise with a certain amount of sadness to deplore a situation in this chamber that is discriminatory to some of us, if not many of us, who are finger-challenged. Many people in this august group use that little BlackBerry, blueberry, raspberry, or whatever it is called. They play with it and they get all the information they want. Those of us suffering from arthritis in our hands cannot hold a BlackBerry, a blueberry or a raspberry. The end result is that we are discriminated against because we cannot bring our computers into the chamber. The computers used by the parliamentary reporters and by Senator Gauthier do not make any noise. Most modern computers on the planet do not make any noise.

The time has come for Her Honour to take us out of the 12th century and bring us into the 21st century by allowing laptop computers to be used in this chamber, like all the civilized legislatures on Planet Earth.

Hon. Marcel Prud'homme: First, honourable senators, let me congratulate the Honourable Senator Pépin on her appointment as Speaker *pro tempore*.

Second, I would ask Senator LaPierre to make the necessary motion to send this important point of order to the Standing Committee on Rules, Procedures and the Rights of Parliament for review.

[Translation]

The Hon. the Speaker *pro tempore*: Honourable senators, I thank you for raising this issue, but I think that we must now move on to the Orders of the Day.

[English]

ORDERS OF THE DAY

SPECIES AT RISK BILL

SECOND READING

Hon. Tommy Banks moved the second reading of Bill C-5, respecting the protection of wildlife species at risk in Canada.

He said: Honourable senators, I am proud once again to reintroduce to you the grand old lady of legislation, SARA, the Species at Risk Act.

When considering this proposed legislation, we must remember that there is now overwhelming support for national legislation to protect endangered species. Canadians do not want species to become extinct because of human activity. This proposed legislation would be familiar to most of us. It has been nine years in the making. It is the product of the most remarkably

thorough consultation and study and re-examination and amendment. It has been a cumulative process of negotiations and agreements. I am proud to present this legislation to honourable senators. This bill takes into account the different approaches and the various needs of those who have a stake in species protection. Much time has been spent in finding the right balance and the best practices to make Bill C-5 efficient and fair.

The proposed legislation now has a very broad base of support in Canada. It is supported by provincial and territorial governments, municipal governments, Aboriginal peoples, non-governmental organizations, farmers, ranchers, fishermen, representatives of industry and many other interested Canadians.

I hope honourable senators will allow me to summarize briefly four of the most important points of the species at risk bill. First, the bill is only one component of an overall strategy for the protection of species at risk. That strategy depends upon an effective federal-provincial-territorial working relationship under the umbrella of the accord for the protection of species at risk.

Last month, Canada's wildlife ministers all met in a successful meeting in Halifax to discuss their progress on this issue. The accord for the protection of species at risk has fostered a number of provincial and territorial actions to protect species, many of them rooted in law. The proposed legislation is the Government of Canada's response to its own obligations under that accord. We cannot and should not and must not demand less of ourselves than we do of our provincial and territorial partners.

Second, protecting habitat is crucially important in the preservation of species. By encouraging landowners rather than forcing landowners to follow voluntary conservation measures, we can safeguard threatened habitat. These measures are both formal and informal, and they are all stewardship agreements involving governments and volunteer organizations, and business and industry.

Many Canadians are involved in stewardship to protect our precious species and to preserve our diverse habitats. Canada must sustain its rich store of ecosystems. Stewardship is its own element through the habitat stewardship program. Stewardship is part of the federal-provincial-territorial accord. It is the essence of this bill that is before us, which I hope will become law.

Third, the proposed legislation assures a rigorous, independent and scientific process to assess species. This is a process that will operate at arm's length from the government. It will create the mechanisms and the powers to do something about those assessments by determining plans to help the species recover.

Fourth, this bill deals with the issue of compensation. As many honourable senators would agree, anyone who is treated unfairly or in any way made to suffer a loss from the extraordinary impact of critical habitat should be compensated in a fair and reasonable way. Work has already begun on general regulations for compensation, and more specific regulations will be developed over the next few years. These regulations will be built on practical experience gained in implementing the stewardship of the species at risk bill.

This proposed legislation complements actions already underway. It is a truly pan-Canadian approach because it emphasizes cooperation through conservation actions and incentives and stewardships. It proposes stronger measures to protect critical habitat. It proposes independent, scientific assessment of species. It proposes appropriate compensation measures.

It is time, honourable senators, for this legislation to proceed. I hope that all honourable senators will agree that Bill C-5 should be referred to the Standing Senate Committee on Energy, the Environment and Natural Resources for its consideration. The committee's expertise in carefully considering this proposed legislation is an essential step in finally bringing effective protection to the species at risk in our country. It is time to put this legislation to work on the ground where it can actually make a difference and begin to do what it is supposed to do. I commend it to the attention of honourable senators.

• (1510)

Hon. Mira Spivak: Honourable senators, I am pleased to speak on Bill C-5, the Species at Risk Act. To echo the words of Senator Banks, I would say, "Here we go again." I would thank Senator Banks for his cogent remarks. I am sure he will not be surprised if I differ slightly from his interpretation of this bill.

More than 10 years ago, Prime Minister Brian Mulroney began the process for Canada and for the world. At the Earth Summit in Rio, he stood up for the global convention on biodiversity — the convention to stem the tide of species loss. He stood up to U.S. opposition to that treaty. The first leader of an industrialized nation to pledge support, he influenced undecided nations, such as Great Britain and Germany, to support the treaty.

In June 1992, Prime Minister Mulroney delivered the Biodiversity Convention. Six months later, Canada became the first industrialized nation to ratify that convention. On December 29, 1993, it entered into force. Since then, it has required — and this is important — Canada to legislate the protection of endangered species.

The present government has spoken of its commitment to protection. It was a Red Book promise. However, between the thought and the action, as T.S. Eliot has said, falls the shadow. In October 1996, the government introduced Bill C-65, the Canada Endangered Species Protection Act, which died at committee stage in the other place when an election was called. In April 2000, the government introduced Bill C-33, the Species at Risk Act. That bill died too, when an election was called. The government introduced Bill C-5, the Species at Risk Act, in February 2001, and then, last month, it prorogued Parliament. Now we have Bill C-5, a reinstatement of version three, with some of the laudable amendments of the House of Commons Environment Committee.

Ten years and four bills — that lends a new meaning to the phrase "better late than never."

From another perspective, 10 years is a blink in time. Consider the span of time for species to evolve and flourish. A decade has no meaning. Consider the extinction of a species. Ten years means nothing. When the last individual of a species dies, another earth must evolve before that species can live again. We have lost and cannot recover the passenger pigeon, or the blue walleye that lived in Ontario waters, or Dawson's caribou, the woodland caribou of British Columbia.

In another respect, 10 years means a great deal. As the government introduced its bills and allowed them to lapse, two species of fish in British Columbia were declared extinct. In Canada we have recorded 11 extinct species since the mid-19th century. Two of them vanished in 1999. We have 402 species in various risk categories, including the blue whale, which is the largest animal ever to have lived on the planet. In May it was placed on the COSEWIC endangered list, which means that it is facing imminent extirpation or extinction.

Frogs are one good example. Two years ago, a team of scientists led by Jeff Houlihan of the University of Ottawa analyzed data gathered in 37 countries. They found that amphibian numbers overall have been falling for decades at a rate of 2 per cent a year. Canada has seen a 60 per cent reduction in the range of the leopard frog, and its complete disappearance from British Columbia.

The prime reason is the destruction of habitat. The "H" in the acronym HIPPO, which is shorthand for what we are doing to the natural world, stands for habitat destruction, "I" for importing invasive species, "P" for pollution, a second "P" for the swelling human population, and "O" for overharvesting — something we certainly know about in our coastal waters.

Why should we care? I cannot say it any better than Edward Wilson, the eminent Harvard biologist and Pulitzer Prize winner. In his book, *The Diversity of Life*, he wrote:

What difference does it make if some species are extinguished, if even half of all the species on earth disappear? Let me count the ways. New sources of scientific information will be lost. Vast potential biological wealth will be destroyed. Still undeveloped medicines, crops, pharmaceuticals, timber, fibres, pulp, soil restoring vegetation, petroleum substitutes, and other products and services will never come to light.

The diversity of life is an insurance policy for our future, providing us with the means to adapt to climate change and other environmental problems. Do we really want to take the risk of cancelling that insurance?

Last summer I read Edward Wilson's book, *The Future of Life*, and I highly recommend it. Among other things, it gives us an understanding of how dependent we are on the gifts and surprises of the natural world. They include antibiotics, anti-malarial drugs, aesthetics, analgesics, blood thinners, blood-clotting agents, cardiac stimulants and regulators, immunosuppressive agents, anti-cancer drugs, fever suppressants — you get the picture.

Some 40 per cent of all prescription drugs are extracted from plants, from micro-organisms or animals. Therefore, why on earth would we want to destroy a species that may be the source that we need in years ahead? The fact of the matter is that scientists know something about the 71,000 species reported to occur in Canada. They also estimate that roughly the same number remain undescribed or unreported by science. Our country is home to almost one fifth of the world's wilderness. It has one quarter of the world's wetlands, one fifth of its fresh water and one tenth of all its forests. To save the few dozen species that we know are in danger and those that are threatened on the face of it would seem the least that we could do.

Edward Wilson writes:

The strength of each country's conservation ethic is measured by the wisdom and effectiveness of its legislation in protecting biological diversity.

The wisdom and effectiveness are what we are here to examine today, and to judge the wisdom of this bill. If we get it wrong, it will not be effective. If we get it wrong, future generations may not be so benevolent in judging us. This brings me to the substance of the bill.

Honourable senators have heard once, and no doubt will hear several times, that this bill is the best legislation that the government could possibly design. Nine years and all the consultation sessions, et cetera, have led to the drafting of this bill. Perhaps we should not change a comma. Perhaps the bill's nickname, SARA, likens it to an old lady and is deserving of our due deference.

We have two options: We can pretend that is the case. We can pretend that the bill has been forged with great intelligence and great compromise and therefore should not be amended, or we can look at the reality that this is not the bill that our colleagues on the House of Commons Environment Committee wrestled long and hard to make workable. It is not the bill that they recommended. It is not the bill that 1,300 scientists say is needed to give effective protection to Canada's species at risk. It is not the bill that landowners want. It is the bill that the government was prepared to give us, tempered with the fear of a revolt in its ranks if it did not admit to a compromise.

It is, by any measure, a timid bill, but it does not begin to flex the muscle — it could be a first step — that the federal government could legally exercise to protect species at risk.

Before I speak of the bill's deficiency, in my humble opinion, I want to acknowledge its positive points. Among them is the fact that it does legally establish, as Senator Banks has said, COSEWIC, the Committee on the Status of Endangered Wildlife in Canada, which makes the scientific assessment of the status of species. It does require the minister to consult on COSEWIC appointments with such respective scientific bodies as the Royal Society of Canada. It does not, as the scientists have requested, require that at least half of COSEWIC's members come from outside government to ensure that body's political independence.

The bill also establishes a national Aboriginal Council on Species at Risk, to provide advice and add wisdom to the process. That, again, is a very good move. However, in each of the key elements of endangered species legislation — listing, scope, habitat protection and compensation — this bill is timid.

Consider the first element: listing. The bill confirms COSEWIC for assessments of species, then gives over to cabinet the power to list them as extirpated, endangered, threatened or of special concern, and it gives to the Governor in Council the power to ignore the science-based evidence altogether. It is a formula for political meddling in the logical conclusion of a scientific exercise.

An endangered fox is no less endangered because cabinet does not want it listed. However, in the eyes of the world, or in the eyes of those who know little about our system, we may be seen to be doing a fine job of keeping our lists short.

A more rational regime would clearly separate science and politics. Scientists, through COSEWIC, would list the species and cabinet would decide what action, if any, it would take to protect them. Economic and political considerations would not be ignored. They would be clearly delineated.

Senator Banks has said that most of the provinces and territories have introduced or amended their legislation as a result of signing on to the national Accord for the Protection of Species. However, what are the practical applications of their laws? As of last April, the provincial record was appallingly consistent. Political discretion on listing is available everywhere except Nova Scotia. When left to political discretion, only one third of the species listed by COSEWIC were on provincial lists, leaving 67 per cent of the COSEWIC-listed species in those jurisdictions with no legal protection, no access to funding and no research or recovery planning.

• (1520)

Listing is the cornerstone of the endangered species legislation. I, and many others, believe it should be science based. The Commons committee gave us a compromise — the "reverse onus" option on listing in which a species listed on COSEWIC would become part of a legal list within six months, unless cabinet determined otherwise. The government, under threat of a caucus revolt, agreed to lengthen the time frame to nine months. When cabinet makes that decision, the minister must set out the reason in a statement in the public registry. It is not the best approach, but it is a compromise with which most people can live.

It is important to note that some 233 species already listed by COSEWIC will automatically be listed upon proclamation of this bill, and then the decision will be up to cabinet to reverse, if they so choose.

The scope of the bill is the second element found wanting. The government would have us believe that this bill would protect endangered species wherever they live in Canada, whether on federal lands or in a provincial park. The minister has said so repeatedly, so he must believe it to be true. However, on looking at the precise wording of the bill with respect to killing or harming

an endangered species or destroying its residence under clause 34, this bill does not apply. Clause 34 includes the words, "... to lands in a province that are not federal lands unless an order is made ..." by the Governor in Council. It is called the "safety net approach," an approach that the Progressive Conservative party championed. Let the provinces do their job. If they are not doing it, string out the federal safety net. However, this bill does not ensure that the safety net will ever be unwound.

The government introduced Bill C-5 in the last session of Parliament with language that gives the Governor in Council the discretion to act or not to act in provincial or territorial lands. The Commons committee amended that "may" to "shall" and even left some wiggle room. Cabinet would only be required to invoke federal law if, in the opinion of the minister, it was required. The government found even that unacceptable.

Thus, in this bill, we are left with two distinct classes of species at risk. We have those that, by chance, make their way to federal lands — about 5 per cent of our country outside the territories. By law, they and their dens and nests are protected if they are near a post office, an airport, a military base, a Coast Guard station or a national park. Then we have all the others whose life and residence may or may not be protected by cabinet order, unless they are aquatic species or protected under the Migratory Birds Convention Act. That is what is in this bill.

I can only think that, when the minister wrote, "the government will be obliged to order prohibitions to protect them," he was thinking of the government's moral obligation. This bill imposes no legal obligation on the government to do anything off federal land for any species on the verge of extinction, unless it lives in water or is protected by the Migratory Birds Convention Act, nor does the bill have any specific provision for such transboundary species as the grizzly bear, the woodland caribou or the swift fox.

Constitutional experts say that the government has the power to protect cross-border species and their habitat. The power arises under both section 132 of the Constitution Act, 1867 and the peace, order and good government power under section 91 of the Constitution. An earlier rendition of the bill, Bill C-65, even made a stab at this. Given that between 80 and 90 per cent of all species at risk in Canada cross our border with the United States, this lack of protection is the most obvious loophole.

Three years ago, 12 U.S. senators wrote to President Clinton, prior to his Canadian visit, urging him to ask our Prime Minister to ensure that any new bill contain habitat protection of U.S.-Canada shared species and all lands. They must be disappointed. However, perhaps we in this chamber can fix this significant hole in the legislation — and I am smiling.

The third element, habitat protection, is such an essential element of species protection that it deserves its own debate entirely. Canada's eminent ecologist, Dr. David Schindler, put it this way:

Species protection without habitat protection is nearly always a complete scientific impossibility. Suggesting otherwise is the equivalent of maintaining that the earth is flat.

For a time, the last edition of Bill C-5 had no mandatory protection of critical habitat, even on federal land. An endangered species' residence was protected, and that was all. It is rather like saying to people that they can stay in their homes, but that we will destroy their gardens, their offices, their schools, their roads and their shopping centres. The Commons committee fought hard to correct this major flaw, and we now have a bill that defends the critical habitat of species on federal land or of aquatic species. Elsewhere, it is discretionary. Is that good enough?

I have a very specific example that I should like to share with honourable senators today, and I hope to raise it with the minister and his officials when they appear before the committee. It arises in my home province of Manitoba, which is also the home province of the Leader of the Government in the Senate.

On the edge of the Ontario border is Nopiming Provincial Park, a very special area of towering pines and woodland caribou. Some 60 per cent of the park is also licensed for logging to Tembec, a multinational corporation based in Quebec. Yes, Manitoba allows companies to log our provincial parks. In May 2000, the Manitoba government's Woodland Caribou Conservation Strategy listed the Nopiming caribou herd as high risk. The main threat to its survival was described as "timber harvesting operations and increases in other activities." The Manitoba government banned all hunting and told campers they could not pitch their tents in areas where the caribou raised their young. A provincial plan recommends protecting two thirds of the caribou concentration zones in the park. However, clear-cutting, which is a clear destruction of habitat, is still allowed. In May of this year, COSEWIC again examined and listed the woodland caribou in Manitoba's boreal forest as a threatened species, meaning that it is likely to become endangered if the threatening conditions are not reversed.

Before we pass this bill, I should like the minister to clearly tell us how it will protect the Nopiming caribou. As I read it, once this bill is proclaimed, cabinet could end all hunting, which the Manitoba government has already done. Cabinet could exercise its discretionary powers to protect the caribou's residence — a pointless move. Caribou cannot survive without mature forests for habitat and mature lichens for food. To protect habitat within the park, there must be a recovery strategy to identify it and an action plan to act on that strategy. According to clause 42, the minister has two years to develop any recovery strategy. For action plans, the Commons committee wanted to give the minister another two years, but that did not happen. There is now no timeline. The minister could take five years, 10 years, or even 20 years to develop any recovery strategy. Even more critically, critical habitat protection in a provincial park is possible only by cabinet order, at cabinet's discretion. A cabinet order requires the minister's recommendation, and it expires after five years.

One saving grace in this bill is that, once critical habitat is identified, either in a recovery strategy or an action plan, the minister must publicly report every 180 days on the steps being taken to protect it. How many such reports will we read on the Nopiming caribou?

I certainly respect the government's desire, as Senator Banks has described it, to support the Canadian constitutional structure and to develop strong working relationships with the provinces. However, we need to know exactly how this bill will operate when faced with a provincial government that has a long history of habitat destruction in its park system — my own province. How will it deal with a government that is so committed to that approach that it is now proposing to extend logging roads in the region and has removed a 138-square-kilometre portion of Atikaki Wilderness Park. "Atikaki," in Saulteaux-Ojibway, means "caribou country."

We need to know, because if this bill will do nothing, or if this or future governments lack the will to exercise their discretionary powers, then we would be very unwise to sanction it. It will clearly be an ineffectual act.

On compensation, in principle, Bill C-5 takes a step in the right direction. It recognizes that landowners should not bear the sole burden of the economic costs of species protection.

• (1530)

We do not know, however, what the rules will be, and we may not know before we vote on this bill. The preferable course for us, and especially for landowners, would be to see those regulations presented to our committee. I sincerely hope the minister will allow us to examine them.

In closing, I wish to remind all senators that this chamber has already spoken on some of the critical aspects of this bill. In June 1999, we adopted the report of the Subcommittee on Boreal Forest of the Standing Senate Committee on Agriculture and Forestry. In that report, we said that Canada needs strong endangered species legislation that recognizes the importance of preserving the habitat on which endangered species depend for their survival. The Senate committee recommended that the federal government "must use its existing Constitutional authority regarding," among other things, "endangered species."

I think this bill falls short of those recommendations. Thus, we have a choice — we can hear witnesses, debate sound amendments and then pass the bill without a comma changed because that is the wish of the government, the majority in this chamber. We can also look at the bill a little more critically. We all know the situation in the other place with respect to this bill. The question we have to ask ourselves is: What is the situation in the Senate? Are we about to engage in a pro forma exercise, or will we do what Canadians of goodwill expect of us?

Faced with a bill that is flawed, though not fatally, can we set aside partisanship and work together to improve it? I sincerely hope that members opposite will use the time we have on this bill to do the latter.

Senator Banks: Honourable senators, will the Honourable Senator Spivak answer a question?

Senator Spivak: Of course.

[Senator Spivak]

Senator Banks: I was glad to hear the senator refer to how well the government responded to the wishes of Parliament, how well it works and how responsive this government is to the wishes of Parliament. I was also glad to hear the honourable senator recount the fact that the government is, in fact, governing and it is the government that makes decisions with respect to matters such as the rights of provinces. I was glad to hear the honourable senator acknowledge that there are such rights. Part of the business of the Senate is to ensure that the rights of provinces are protected.

The senator asked how the government will deal with a situation in which a province is recalcitrant. It is the intent of the bill and of the government that the coercion should be by carrots rather than by sticks. However, the senator has asked how the government will deal with the situation and said that it would require a great deal of "will." My comment is that it is difficult to put will into legislation. However, I share all the other hopes expressed by the honourable senator.

Does the senator agree that it would be appropriate to get on with this matter as quickly as possible and to refer the bill to committee as quickly as possible so that it is not derailed by a prorogation of Parliament for a fourth time?

Senator Spivak: Honourable senators, I think the bill should be referred to committee as quickly as possible. I wonder if the senator knows something that those on this side do not know about future prorogations. How many can there be in one Parliament?

In response to the honourable senator's question concerning the provinces, environmental protection is a shared jurisdiction. It is obvious to anyone with any common sense that if the habitat in a provincial park is completely destroyed, there will no longer be any caribou. That is an urgent crisis.

It seems to me that, perhaps, this bill has hamstrung the cabinet in some ways. Hopefully, we will be able to discuss that issue in committee.

When the subcommittee examined questions concerning the boreal forest, we travelled to the northern part of Quebec, where we heard from trappers who could not speak English. They spoke to us through an interpreter and described how a logging company had clear-cut everything around their little logging cabins. Thus, they could no longer hunt because there were no wild animals. I said, "That's terrible, but why did you not move somewhere else?" They responded by saying, "We cannot because for thousands of years every bit of space has been apportioned."

I hope this issue will be discussed in committee in terms of what powers the federal government will really have under this bill to correct what I think is a perfectly terrible thing that is happening in my own province. I am not even looking at any of the other provinces.

Senator Banks: Will the senator agree that absent the bill becoming law there is nothing the government can do given that it has the will to do it and that we need this bill in order for there to be a hammer?

Senator Spivak: I do not agree with that. I would ask in reply: If the government cannot do anything in this bill, are we further ahead?

Hon. Gerry St. Germain: Honourable senators, I know that Senator Spivak is an avid supporter of immigration, which is an honourable direction for any country. However, any country that has exceedingly high populations has virtually destroyed its habitat.

My other point is that the policy in Canada is to encourage new people coming to this country to settle in the hinterlands. I have been an avid outdoors person and hunter most of my life. I see habitats disappearing and wildlife being put in jeopardy. It is not being put in jeopardy by hunters or native trapping but by the incursion of people. People destroy everything. What they have not destroyed remains to be seen.

I am not saying that we in any way, shape or form should become anti-immigration. Look at countries like India and China where the incursions of man have virtually destroyed every ounce of habitat that exists. How can we sit here and say that we want more people to inhabit the hinterlands while still protecting the environment?

Senator Spivak: Obviously, honourable senators, that is a rhetorical question. The reason is that if we do not protect the earth, we will not have an economy or a proper place in which people can live. Much of the literature points out that there is a balance to be sought between where people should live and what we should protect. It is obvious that if we do not use our common sense, we will not survive.

I do not think the honourable senator's question is a real one. Either we want to survive or we do not want to survive. Frankly, Canada is a huge country. It seems to me there is lots of room for immigration. It is also one of the last countries in the world with real wilderness, a treasure which not only is essential to our survival but is also an economic treasure. People will want to see wilderness when they no longer have it in their own countries, which is regrettable.

• (1540)

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

Hon. Senators: Question!

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Banks, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

[Translation]

PEST CONTROL PRODUCTS BILL

SECOND READING—DEBATE ADJOURNED

Hon. Yves Morin moved the second reading of Bill C-8, to protect human health and safety and the environment by regulating products used for the control of pests.

He said: Honourable senators, I have the honour of presenting Bill C-8 on pest control products. This bill is sponsored by the Minister of Health, and it replaces the act passed in 1969. This bill was passed by the House of Commons on June 13, 2002. It is the result of years of work, not only by the Pest Management Regulatory Agency, but also by groups of Canadians whose interests are divergent and sometimes even conflicting.

In Canada, about 90 per cent of all pesticides are used by the agricultural industry, to help ensure that Canadians and people around the world get food at an acceptable cost. However, a number of these products pose a rather high risk to the environment and particularly to human health. This explains the conflicts and tensions that may exist.

[English]

Regulation of pesticides in Canada is an area of shared jurisdiction. The assessment and the approval of pesticides is under federal jurisdiction, while the sale, use and disposal of pesticides is under provincial jurisdiction. The objective of Bill C-8 is to enhance health and environmental protection, make the system more transparent and strengthen the post-regulation controls of pesticides.

Bill C-8 prohibits pesticides from being imported, from being sold and from being used, unless they have been registered by the minister. Once they are registered, their use is very carefully controlled in accordance with detailed instructions.

Under Bill C-8, registration of pesticides is the application of a science-based approach. A new product will be approved or accepted only if there is reasonable certainty that there is no harm to human health, to future generations and to the environment under the conditions under which a pesticide has been approved.

The registration must also consider possible exposure from multiple sources, such as food, water, home and school, and it must also consider exposure from pesticides that act in the same way. This is called cumulative risk.

Finally, registration must take into account the specific conditions of certain populations, such as pregnant women, children, farmers and their families.

Protection of health and the environment under Bill C-8 will also be assured by registering only pesticides that are more efficient than those already in use and by expediting evaluation of pesticides that are considered to be of lower risk.

Post-registration assessment of a pesticide will be carried out at regular intervals. This review, in addition, may be performed if there is some mention of side effects, after information is received from governments here or abroad or, finally, after requests from even a single citizen.

The enforcement of the proposed legislation will be strengthened by giving more powers to inspectors and by higher penalties, up to \$1 million in fines and up to six months of imprisonment.

Bill C-8 will make the registration of pesticides far more transparent by involving the public at all levels of decision-making, by rendering the register available for study by any Canadian citizen and, finally, by establishing an advisory council that will assist the minister in discharging her duties under the act.

[Translation]

Honourable senators, Bill C-8 is a piece of legislation on pest control product regulation that places Canada on the cutting edge as far as health and environmental protection are concerned. At the same time, it gives Canadian agriculture the leeway it needs to fulfill its important role on the world level. This regulatory process is particularly transparent and involves Canadians at every step of decision-making. This is why I urge you, honourable senators, in the best interests of everyone, to support this bill so that it can become law as quickly as possible.

[English]

Hon. Brenda M. Robertson: Will the honourable senator take a question?

Senator Morin: With pleasure.

Senator Robertson: To which department does this pesticide bill report?

Senator Morin: It reports to the Department of Health. There is now a pesticide management regulatory agency that is an agency within the Department of Health, under the responsibility of the Minister of Health. The agency has the responsibility of assessing and regulating pesticides.

On motion of Senator Kinsella, debate adjourned.

• (1550)

[Translation]

CRIMINAL CODE FIREARMS ACT

BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

The Hon. Mobina S. B. Jaffer moved the second reading of Bill C-10, to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act.

She said: I am very pleased to have the opportunity today to rise at the second reading stage of Bill C-10, to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act. This bill affords me the first opportunity to sponsor a bill in

this house, and I thank all my colleagues, Senator Fraser in particular, for their support.

[English]

The provisions in this bill were initially presented to Parliament in December 1999 as part of an omnibus bill. The provisions regarding animal cruelty and firearms were split from the rest of the omnibus bill in 2001 and are the only two subjects of this bill.

Honourable senators, allow me first to discuss the animal cruelty provisions of Bill C-10, which represent the first major reform in more than 50 years and the first reform since the animal cruelty provisions were created in 1892 to set out the offences in a comprehensive, integrated whole.

[Translation]

As you are aware, the changes proposed here are a reflection of the debate on society's use of animals. This is a debate that has gone on for decades. There are, however, some who confuse that broad debate with the goals and objectives of Bill C-10. It is extremely important to clarify this: Bill C-10 does not in any way change the status of animals before the law.

[English]

The amendments proposed in Bill C-10 have two basic objectives: first, to increase the maximum penalties available for cruelty offences; and second, to modernize the law and to rid it of its complexities and anachronisms.

I should like to take a few moments to explain the rationale for these changes. The rationale for increasing the penalties available for intentional cruelty and criminal neglect is very straightforward. The way in which society traditionally recognizes the seriousness of a particular conduct is through a specifically prescribed penalty for that conduct. Canadians have made it clear that the animal cruelty penalty provisions no longer reflect the way that society views these crimes. In addition, scientific research increasingly shows a link between animal cruelty and violence toward humans, particularly in the context of domestic violence. Scientific literature suggests an association between a pattern of cruelty to animals in childhood or adolescence and a pattern of dangerous and recurrent aggression against people at a later age.

One American study noted that "while most animal abusers will not commit sensational murders, serial killers almost invariably have histories of animal abuse earlier in their lives." Many notorious serial killers, including Alberto DeSalvo, the Boston Strangler, had a history of animal abuse that started in his youth.

The research confirms that animal cruelty is a crime of violence and illustrates why characterization of animal abuse as a property offence is misleading and inappropriate.

[Translation]

Bill C-10 significantly increases the sentence for intentional cruelty by creating a hybrid offence and by increasing the maximum sentence to five years for a criminal indictment and to 18 months for a summary conviction.

[Senator Morin]

This greater flexibility in sentencing allows the Crown to ask for a sentence appropriate to the circumstances and sends a message to judges, the prosecution and members of the public that acts of cruelty towards animals are acts of violence.

A strong majority of Canadians have clearly said that they want those who are guilty of cruelty to animals to be punished more severely.

[English]

Honourable senators, Bill C-10 extends from two years to life the maximum duration for an order prohibiting an offender from owning or having custody of an animal. Bill C-10 also permits the court to order that a convicted offender must repay to a person or to an organization the costs associated with caring for an animal that has been abused by the offender. This will allow humane societies to recoup some of the costs involved in treating and caring for the animal. It will also provide an additional means by which offenders may be held responsible for their actions as part of their sentence.

A second rationale for the amendments to the animal cruelty provisions in Bill C-10 is to update and modernize the law. This involves ridding the law of anachronisms that add confusion rather than clarity to the law. One example of an anachronism in the law is that distinctions are made between different types of animals. For example, one section deals only with cattle, while another section deals with dogs, birds or animals kept for a lawful purpose. It is time to modernize and clarify the animal cruelty offences.

The second aspect of this modernization of the law is to correct a loophole. At the present time, a person who kills an animal in a brutal or savage way, but with a legitimate excuse, cannot be accused of cruelty. The only limitation is whether they cause the animal unnecessary pain, suffering or injury. Bill C-10 will create a new offence of intentionally killing an animal in a brutal or savage way, regardless of whether the animal suffers. The following are actual examples of this kind of conduct: attaching an animal to a railroad track, attaching an explosive to an animal, or putting an animal in a microwave oven.

Honourable senators, in the course of the public debate about this bill, we have all heard questions as to whether any further changes are necessary to the animal cruelty provisions of this bill. I should like to comment on these issues.

It has been the law in Canada since 1892 that no one is exempt from obeying the minimum standard imposed by the criminal law. All persons who deal with animals, whether they are pet owners, farmers, researchers or trappers, have a legal obligation to deal with animals in a humane way. Doctors and hockey players are not exempt from the law of assault. Similarly, industry and pet owners are not exempt from animal cruelty provisions.

The humane treatment of animals is not a crime. In fact, the leading case on animal cruelty recognizes that animals may be

used for purposes that cause them pain. The issue is not whether pain was caused but whether avoidable pain was caused. I believe that the vast majority of farmers, researchers and others are humane and do not violate the law.

[Translation]

I believe that it is also important to live up to the expectations of Canadians that all those who take care of animals must continue to meet minimum standards of behaviour set out in criminal law.

[English]

In fact, the Criminal Lawyers' Association testified before the House of Commons Standing Committee on Justice and Human Rights that it was the view of their members that the animal cruelty provisions did not change any of the defences available to accused persons. I hope this provides reassurance to those people who are fearful that changes to the law may mean that something is being lost.

• (1600)

Honourable senators, I would be remiss in my remarks today if I did not address two criticisms of the bill that I expect may be discussed in this chamber. Some critics of Bill C-10 suggest that unless defences are written into the offence provisions themselves, farmers, researchers and trappers will be dragged into court by animal rights activists. I note three things in this regard. First, as I mentioned earlier, humane practices are not an offence. Second, recent amendments to the Criminal Code will offer strong protections against private individuals using the courts for non-judicial purposes. Third, even though not required as a matter of law, an amendment was made to the bill by the committee in the other place to clarify that any and all common-law defences apply specifically to proceedings regarding animal cruelty.

A second criticism discussed in the other place is that the law needs to reflect the fact that animals may be used for lawful purposes. I am not sure that that suggestion is terribly helpful, because the courts are very clear about this concept.

[Translation]

Honourable senators may be interested to learn that my husband and I used to be poultry farmers. In fact, my father owned a large poultry farm. As a result, I am familiar with the practices involved in farm operations.

I know that people who make their living through animals may fear that the new provisions will threaten their activities or may expose them to new types of legal proceedings. I hope that the discussions that will take place in the weeks to come, in this chamber and in the standing committee, will help dispel some of these fears.

That said, I would like to comment on the second part of the bill, the amendments to the Firearms Act.

In 1995, Parliament adopted Bill C-68, thereby creating a broad program to ensure safety with respect to firearms. We are now proposing amendments that will allow for the streamlining of the administration of the firearms program.

These proposed changes are in response to extensive consultations with program partners and stakeholders, including the policing community and gun owners. The bill will improve efficiency in the administration of the program without affecting the provisions of the program dealing with safety.

It is a win-win proposition. Gun owners get the changes they asked for, and the Canadian public gets a program that is less expensive to administer, while not overlooking the public safety considerations that are important to Canadians.

[English]

These administrative changes simplify processes and requirements. As an example, pre-processing of visitors bringing guns into Canada will also make processing at the border more efficient. The bill will improve the day-to-day administration of the firearms program by ensuring more direct accountability. This will be achieved by consolidating operational authority for the program under a Canadian firearms commissioner who will report directly to the Minister of Justice.

Statistics tell the story of why it was necessary to establish more safety standards for firearm use. Each year in this country, there are on average more than 1,000 firearm-related deaths, and a greater number of Canadians are hospitalized each year because of firearm-related injuries. Furthermore, among industrialized countries, Canada has the fifth highest firearm death rate for children under 15.

[Translation]

The overall homicide rate in Canada is at its lowest level since 1967. We know that firearms homicides rank first. Everyone here today — in fact, everyone in Canada — wants real action to be taken to reduce the criminal use of firearms.

The Canadian firearms program is another means to keep firearms out of the hands of those who should not own firearms. Let us examine the rates of domestic homicides across the country. When I was the president of the YWCA, much of my work focussed on eliminating violence against women and family violence. I hope that all honourable senators support this bill. We know that female domestic homicide victims are primarily shot with firearms. From 1979 to 1998, 40 per cent of these were firearms homicide victims.

A vast majority of domestic homicides are committed with rifles and shotguns. Statistics for 1998 show that, in 63 per cent of firearms domestic homicides committed in Canada, the weapon used was a rifle or a shotgun. Another 21 per cent of these victims were shot with a sawed off rifle or shotgun.

This is why any practical approach to domestic violence must include proactive action regarding shotguns and rifles.

[English]

Honourable senators, let me give you a brief update on licensing. The implementation on the firearms program is wrapping up, that is, the licensing of firearms owners and the

registration of their firearms. Licensing and registration of firearms help to keep firearms from those who should not have them and encourage safe and responsible gun use.

The law requires that all firearm owners have a firearms licence. While the vast majority of firearm owners are safe and responsible, all applicants for firearm licences are screened to ensure that there is no risk to public safety. Owners are also subject to continuous screening after they receive their licence. This helps to keep firearms from those who pose a risk to themselves or others.

[Translation]

Since December 1, 1998, more than 7,000 permits have been either denied or revoked by public security authorities. This figure is 50 times the total number that were revoked in the last five years of the previous firearm control system.

As I already mentioned, there is a key component in the issuance of permits that helps reduce the number of domestic homicides involving the use of a firearm. Indeed, the act provides that, before issuing a permit, the current or previous spouses of the applicant must be informed, that is those who are living or who have lived with the applicant in the previous two years.

Moreover, spouses and members of the applicant's family, as well as other people concerned, can contact the Canadian Firearms Centre to voice their concerns. To this day, 26,000 calls have been made to report offences or express concerns regarding the owner or potential owner of a firearm.

• (1610)

[English]

Canadians continue to show overwhelming support for the firearms program. Seventy-six per cent favour a national firearm registry, according to a recent poll. The law enforcement community also remains steadfast in its support of this program because of its essential crime-fighting tools.

Although the firearms program is still being implemented, it is a national investment in public safety that is already paying safety dividends. The amendments to the Firearms Act included in Bill C-10 will help to ensure that the key public safety goals of the Firearms Act are met while ensuring that the administration of the program is more efficient, effective and client friendly.

Ten, twenty or thirty years from now, when we look back on the inauguration of this important program, we will all take pride that Canada was a world leader in this essential public safety field.

Hon. David Tkachuk: Honourable senators, I have a series of questions. I am somewhat confused. Does the concept of an animal capable of feeling pain include fish?

[Senator Jaffer]

Senator Jaffer: Honourable senators, because this is the first time the honourable senator has asked me a question, I am not sure if he is pulling my leg or if he is serious.

The definition of “animal” is set out in the bill. I am sure the honourable senator is very capable of deciphering for himself what it means. According to the language of the bill:

“animal” means a vertebrate, other than a human being, and any other animal that has the capacity to feel pain.

Senator Tkachuk: That includes fish.

Senator Jaffer: It does.

Senator Tkachuk: Who will decide what is avoidable pain?

Senator Jaffer: As the honourable senator very well knows, the way our process works is that if there is a question of cruelty to animals, that question is first submitted to the police and then the prosecutor who then decide whether to pursue the issue. Ultimately, the courts of our country decide.

Senator Tkachuk: I will not pursue this subject. I am sure the committee will get into the question of a person fishing, being reported, and then having to prove in court that the animal did not suffer avoidable pain.

I wish to obtain the views of the honourable senator on this subject, as she is the sponsor of this bill. I was intrigued by the honourable senator's reference to serial killers. Is it the position of the government that passing this bill will prevent serial killers from becoming serial killers? In my opinion, if someone grows up to be a serial killer, he or she may beat up on a few cats and dogs as practice along the way. I do not see this as a way to prevent a serial killer from developing into one. Is it the government's position that they will use the fact that some person or some kid is cruel to an animal as a way to predict future serial killers?

Senator Jaffer: Honourable senators, the minister will speak before the committee, and that is the best time for Senator Tkachuk to ask that question.

Senator Tkachuk: Senator Jaffer is the one giving the speech, honourable senators. That is a question she should have asked the minister, since she has the speech in front of her. For example, “What does this mean? Is this your position?” Since she was the one to say it, she must know what it means. I want it explained, as I do not understand the reference.

Senator Jaffer: With the greatest of respect, honourable senators, if Senator Tkachuk had asked for my position, I would have stated my position. However, he asked for the position of the government, and I felt that the best person to answer that question would be the minister and not myself.

Some Hon. Senators: Hear, hear!

Senator Tkachuk: Let me rephrase the question. What is the honourable senator's position on that subject?

Senator Jaffer: My position is that children learn violence from many sources. If they start learning violence by abusing animals, that is a first step. It has been made clear in many polls that Canadians do not want children to learn violence at any stage. It

is my position that animal cruelty is one way that children learn how to commit violence, and it is up to us as a society to protect animals.

Some Hon. Senators: Hear, hear!

Senator Tkachuk: The honourable senator mentioned in her reference to the Firearms Act that Canada had the fifth highest rate of firearms death in children. How many children die from firearm accidents and how many die from murder?

Senator Cools: By mothers.

Senator Jaffer: I would ask the honourable senator to clarify what he means by “accident” and by “murder.” I do not follow his question.

Senator Tkachuk: The honourable senator stated that we have the fifth highest fatality rate of children by firearms. I wish to know how many of them are deaths caused by someone else pulling the trigger on purpose to kill a child and how many are caused by accidents, such as two children playing or self-inflicted wounds.

Senator Jaffer: I wish to inform the senator that I do not have the answer. I will attempt to get the answer. However, I am sure that the honourable senator, who is very conversant with the committee process, will raise the question with the appropriate witnesses.

Hon. Gerry St. Germain: In the ranching and farming community, roping and branding animals have been part of the tradition of this country since the time of our original settlers. There has been a huge hue and cry by people who claim they are animal lovers or activists. Why are we not responding to the radical behaviour of these groups, some of which will never be satisfied? Some have gone so far as to declare themselves vegetarians because they feel that anything done to an animal contravenes the civility of dealing with animals. How are we to deal with these groups? The organizers of the Calgary Stampede have already faced challenges from these groups, and I think the government is exacerbating a situation that is part of the history of this country, at least for those of us in the West.

• (1620)

Senator Jaffer: Honourable senator, I hear two questions. First, what standards are presently in place and, second, how will we ensure that farmers are not penalized for their present practices?

I would point out that the bill specifically gives a definition of the word “negligently.” For the purposes of this bill, “negligently” means “departing markedly from the standard of care that a reasonable person would use.” I would respectfully suggest to the honourable senator that the people who prosecute would have to show that the actions departed markedly from that standard of care.

As for the second question, with the greatest of respect, many situations are being discussed around the country as to the treatment of animals. What the honourable senator set out is not covered in the bill. The bill is very clear about humane practices being carried out. What the honourable senator speaks about is outside of this proposed legislation.

Hon. Joan Fraser: Honourable senators, first, I would thank Senator Jaffer for giving an enormous portion of her speech in French. That is an inspiration.

Some Hon. Senators: Hear, hear!

Senator Fraser: I was particularly struck by Senator Jaffer's interesting statement that her family were poultry farmers. I do not know how many other lawyers in this chamber whose families were poultry farmers. Does the honourable senator think that there is anything in this bill that would have impeded her family's ability to carry on that business?

Senator Jaffer: I would thank Senator Fraser for her kind remarks. I would just say that I am still working on my French. If I made any mistakes in pronunciation, I hope you will all be patient with me.

As for being a poultry farmer's daughter, my husband and family are some of the larger poultry farmers in the lower Fraser Valley. I can tell you in all confidence and honesty today that there is nothing in this bill that would impede the work that my family does in farming.

Hon. Anne C. Cools: Honourable senators, I may be wrong, but I believe I heard Senator Jaffer say that statistics indicate that 63 per cent of domestic homicides are committed with firearms.

Senator Jaffer: I did not hear the honourable senator's question. Would she please repeat it?

Senator Cools: Certainly. I thought I heard the honourable senator say, but I am not certain as I am quite some distance away, that 63 per cent of domestic homicides were committed with firearms.

Senator Jaffer: Honourable senators, I am not sure if that is what I said. With His honour's permission, I would suggest that I answer the question after Senator Stratton has spoken.

Senator Cools: His Honour does not have the authority to waive the rules in that manner. I am putting a question to the honourable senator right now. However, if she does do not want to answer, I understand.

Senator Jaffer: It is not that I do not want to answer; I wish to check my notes.

Senator Cools: I appreciate that. The honourable senator wants to be accurate.

In the honourable senator's speech she spoke about women, domestic violence and domestic homicide rates. My question is about the rates of domestic homicides. How do rates of domestic homicide by firearms compare to rates of domestic homicide by stabbing, by blunt instruments and by bare hands?

Senator Jaffer: That is a significant question. As the honourable senator and I are both members of the Standing Senate

Committee on Legal and Constitutional Affairs, I would suggest that she put that question to our witnesses, as they will be better able to respond.

Senator Cools: I appreciate that the honourable senator is aware that we sit on the same committee. However, I was seeking a response for the benefit of this chamber. To me, a response to a question in a Senate committee is not a substitute for a response to a question in this chamber.

I want it to be clear because so much of this government's policy on firearms was supposed to have been driven by the whole notion of violence against women. I am prepared to say, quite strongly, that it is a falsely framed issue and that violence against women has never been a true factor in firearms questions. If any honourable senator were to look at the data on homicides, he or she would quickly see that the numbers for killings, for example, by methods of strangulation by bare hands are greater. More people are killed by bare hands and by knives than by firearms. I am always curious to note that this government singles out firearms rather than, for example, knives. For that matter, thousands of people are killed in this country by cars on a daily basis. I have never heard any preoccupation with that.

On the question of domestic homicide, this is an important question and we should know the answer.

Senator Jaffer: I have now found my answer with respect to the figure of 63 per cent. Senator Tkachuk has refreshed my memory. I said that 63 per cent of family violence was perpetrated with the use of long guns.

Senator Cools: I am right. That is what I did hear, namely, 63 per cent involved long guns. Where did that number come from? What is the absolute number? Does that 63 per cent comprise 10 people or 20 people? From where does the number come and what is the absolute number? What does it represent?

Senator Jaffer: In order to make myself clear, honourable senators, of the deaths by guns, 63 per cent are by long guns. That is what my statistics indicate.

Senator Cools: Is the source of those statistics Statistics Canada? The honourable senator has merely repeated the number she gave us before.

Senator Jaffer: I believe that number comes from Statistics Canada, but I will confirm that and let the honourable senator know.

Hon. Willie Adams: Honourable senators, I wish to ask a question. How will hunters and the killing of animals be part of Bill C-10? Those hunters are shooting animals. I know that they sometimes do have shooting accidents, but has nothing to do with cruelty to animals.

• (1630)

Senator Jaffer: I may not have understood the honourable senator. Is he asking where there is cruelty to animals when there is hunting by guns? I may have not understood the question.

Senator Adams: The honourable senator has put down the percentage of people killed in hunting accidents. What has that to do with cruelty to animals? Earlier she mentioned people killed in hunting accidents. Maybe a gun went off and the bullet hit someone, but what has that to do with Bill C-10?

Senator Jaffer: Honourable senators, the bill that I am sponsoring has two parts. One part is with respect to cruelty to animals, and the other part is with respect to firearms. There are two separate parts to this bill, and perhaps that is where the confusion lies.

Senator Adams: Why do we have to amend the act in Bill C-10? Is it because the original Bill C-68 does not work?

Senator Jaffer: Honourable senators, it has been a few years since the Firearms Act was passed. This bill modernizes the description of firearms, providing that there is no forfeiture of goods and providing that an authorization licence or registration certificate for firearms be reworked or amended. It makes it easier, as I stated in my speech, for people to be processed. That is what this bill is doing.

Senator Adams: The honourable senator mentioned trapping. Bill C-10 does not mention anything about trapping. It just mentions cruelty to animals. We have people who have to live and feed their families. They have been affected for so many years. I believe 20 years ago Green Peace stopped everyone from hunting and trapping and so forth. You mentioned trapping earlier as well. What has that to do with cruelty to animals?

Senator Jaffer: Honourable senators, I may be mistaken, but I do not remember saying a great deal about trapping. However, I did say that this bill does not outlaw humane practices. The practices that have gone on so far will continue. This bill will cover only something beyond what is reasonable practice.

Hon. Terry Stratton: Honourable senators, as a result of this bill, I believe the stampedes of the country will be in trouble in the future, for example, the Calgary Stampede, the Morris Stampede and the Swan River Stampede. I can just see it happening now with the passage of this bill.

Honourable senators, I am pleased to rise to speak to Bill C-10, which amends the Criminal Code to deal with cruelty to animals and the Firearms Act. As stated earlier, this bill is part of the original Bill C-15, which was an omnibus bill that included provisions to deal with sexual exploitation of children. The bill was divided in two and became Bills C-15A and C-15B. Bill C-15B died on the Order Paper on prorogation. It is now back before us today as Bill C-10.

This bill aims to prevent cruelty to animals, and the debate has been contentious, as has been seen today. Let me give you the perspective of those in the area of wildlife. I have here a letter sent by Dick Reeves, Executive Director of the Wildlife Information Network of Manitoba. I should like to quote what he says about Bill C-15B, now Bill C-10, because it is the essence of the concerns of some of those on the other side of this bill:

We applaud the federal government's concern regarding animal welfare and encourage reasonable and responsible efforts to deal effectively with animal welfare issues. However, without more precise wording to protect animal use industries such as farming, hunting, fishing, trapping,

and medical research, C-15B is creating an environment ripe for hundreds of potential legal prosecutions and challenges by animal-rights groups and organizations down the road. Unfortunately, Bill C-15B is neither reasonable nor responsible in its approach to this issue.

That is the other side. I do not see where that has been proven to be untrue today.

He goes on to say the following:

At a minimum, the legislation needs to be re-worked to ensure that, in no uncertain terms, traditional and lawful uses of wildlife that are set out under provincial wildlife legislation and angling laws shall not come to be viewed as cruel and inhumane treatment of animals. Further, the legislation should not create the opportunity for lawsuits from animal rights extremist organizations bent on winning through the courts changes in animal use practices that they cannot find support for in the court of public opinion.

That passage states the issue clearly.

Bill C-10 also deals with amendments to the Firearms Act and the Criminal Code. Honourable senators, these amendments have been described as being merely technical amendments. The bill will create the position of Commissioner of Firearms. I wonder who and what level will get that job. That individual will hold office at the pleasure of the government, and cabinet will determine the salary. I will guarantee you it is at least \$150,000 a year.

The commissioner will be in charge of the whole application of the Firearms Act, but his duties will be delegated by the Minister of Justice. In other words, the commissioner will be just a toady. He will do exactly as the Minister of Justice says.

However, clause 52 of the bill amends section 97 of the Firearms Act to authorize the Governor in Council, the Justice Minister or the provincial minister to exempt employees of some businesses from certain provisions of the Firearms Act for up to one year. The minister could also exempt any non-resident from application of the act.

This new power could be used when an American police officer, such as a sky marshal, is travelling on a commercial flight and finds himself temporarily in Canada. The bill does not provide for the minister or Governor in Council to name these exemptions, and there are no provisions for the government to report on how many exemptions have been granted over a period of time.

The part that I find abhorrent is that the cost of the firearms registry has been climbing since its inception in 1996. The registration costs were originally projected to be \$85 million for the period 1996-2003. Registration fees were to recover the cost of implementing the system so that the total cost to the taxpayer was \$5 million. That was the projected cost given to us by Minister Rock in committee. He said to us that it would be no more than that.

Senator Oliver: Is it more than that now?

Senator Stratton: In November 2001, Treasury Board official Richard Neville told the Senate Committee on National Finance that the costs are now eight times the minister's original projection of \$85 million, now reaching almost \$700 million and projected to go close to \$1 billion. That is absolutely reprehensible. That is immoral, if nothing else.

Most of the new technical amendments will be contained in regulations that Parliament has yet to see. Canadians do not know if the new technical amendments to the Firearms Act as a result of this bill and the subsequent regulations will reduce or, at least, contain the climbing costs and administration problems of the firearms registry.

• (1640)

How can you proceed to make technical changes when you do not have your costs under control? The government has no more credibility with this bill than it had with Bill C-68, because it has not demonstrated to us at any time or in any place that the costs will not increase. You cannot tell us the costs will not increase. They will increase, and the honourable senator knows that.

Honourable senators will study this bill in committee and, no doubt, questions will arise. I will be delighted to have the minister appear before the committee.

Senator St. Germain: Honourable senators, Senator Jaffer made an excellent presentation while trying to defend the indefensible. It was impossible. They sent her on a "mission impossible," and they sent her without helicopters or tanks. Senator Jaffer is a victim. The government should be ashamed of themselves for doing that to a great woman from British Columbia. Have you no pride, no shame?

Is the honourable senator aware that the costs will escalate from over \$700 million to \$1 billion?

Honourable senators, I applied for a PAL, a Possession and Acquisition Licence that allows a person to hold an unrestricted firearm, as well as a restricted firearm. I would just state that I have never owned a restricted firearm, but I wanted to apply for the best licence available to me. However, I have received a letter from the firearms organization in New Brunswick stating that they wanted to revoke my licence. When I contacted that organization by phone, I was put on hold and told that the normal waiting time for someone to respond to my call was 64 minutes. Honourable senators, that is the situation with a government expenditure of \$700 million plus. You have to wait for 64 minutes before someone will answer the phone after you make contact with them by dialing about 10,000 little numbers on the dial pad. Is the honourable senator aware of that? That fact should certainly be on the record.

Passage of this bill will have an impact upon many of us, although not so much on myself in light of the fact that I am a Metis who no longer lives off the land. However, many Metis do live off the land, as did their ancestors.

As an aside, I have heard that they are attacking the Metis again on CBC tonight.

Is the honourable senator aware of the waiting period I have described and the inefficiency that has been bred into that organization?

Senator Stratton: Honourable senators, that is just another example of the classic inefficiency of the system. No, I was not aware of that. I find it incredible that a caller is put on hold for 64 minutes.

I will relate a tale. I applied for a Possession Only Licence. It took 10 months to get it. I sent my application in and they returned it stating that I had omitted to enclose the cheque. When I sent the cheque in, there was another excuse. I went through this process six or eight times before I received my Possession Only Licence. It took 10 months. I was in a bit of a panic because my deadline was approaching. This is just another classic example — and there are thousands of them out there — of the inefficiencies of the system. I hope that answers the question.

Hon. Serge Joyal: Honourable senators, I did not intend to rise today to speak to Bill C-10. However, considering that the Senate will likely refer the bill to the Standing Senate Committee on Legal and Constitutional Affairs, I believe it is appropriate to share with you some concerns I have with this bill.

I will limit my comments to the first part of the bill which deals with cruelty to animals.

During our recess, I tried to understand what we were being asked to do regarding this bill. I will start by expressing my concerns over the issue of the definitions contained in the bill. As was raised by Senator Tkachuk, the definitions contained in a bill are always very important. That is particularly so in this instance because one must bear in mind that the Criminal Code contains no definition of the word "animal."

This bill does define what is considered to be an animal. As Senator Jaffer has said, an animal is a vertebrate. If I remember from my zoology classes when I was in college, a vertebrate is essentially an animal with a nervous system. I see Senator Keon. He will understand the subtlety of what "a nervous system," means.

The question that this raised in my mind was: How do other systems that are comparable with our common law system define the term "animals"? I found out that the Protection of Animals Act in the U.K. has defined an animal to be any domestic or captive animal. Then they define what is a domestic or captive animal.

If you reflect for a moment on what that means, you will no doubt conclude that a domestic or captive animal is an animal that is under the control of a human being. This bill does not specify that. This bill states that animal means a vertebrate — living on its own. This is consistent with another provision of the bill that amends the Criminal Code to remove animals from the status of property in the code.

The Criminal Code deals with two classifications of offences: crimes against a person and crimes against property. Animals are classified as property. With passage of this bill we will create another class that is not human and that is no longer property, it is animal. That classification will stand on its own. That is why the definition of animal in this bill is a vertebrate, in other words, something living that is not human and not a static good.

The problem is that we are proposing to do with the passage of this bill something that is not unique but quite special. We are amending the Criminal Code in such a way that we are creating a new class of objects of offence. In other words, if you now do something, as the honourable senator has said, negligently harmful to an animal, you may be charged with a certain offence, and that offence carries a penalty of incarceration of from six months to five years.

What are the offences in the Criminal Code that are the object of a five-year maximum sentence?

• (1650)

I have looked in the code and I cite an example; causing fire through negligence. That is a very serious offence. Assault on a person is susceptible to a five-year sentence. Our Criminal Code must be coherent.

What is the most serious offence against a person and what is the maximum sentence? What is the maximum sentence for an offence of damage to property? All the minor offences are a gradation under the maximum.

What we are doing here is creating a new class in the Criminal Code, and we are establishing a five-year penalty as a maximum. We must look at the two other categories. To receive the maximum sentence for a crime against property or a crime against a person, what act must we commit? The philosophy of sentencing in the code must be coherent, so much so that the Minister of Justice said last month in the *Ottawa Citizen* that he intended to launch a major overhaul of the Criminal Code. Among the issues that he wanted to review in the overhauling of the code is irrational penalties, because through the years, this Parliament, the Senate and the other place, has changed the Criminal Code. We have increased some sentences, redefined crimes and created new crimes. We have to look at the impact of all those changes and ask ourselves if our sentencing system is coherent.

Honourable senators know very well that some Canadians think that a seven-year prison sentence for the possession of marijuana is outrageous and should be revised. A Senate committee reviewed that issue and came forward with a proposal that seems to be more in line with today's situation. Sentencing is a major element of the Criminal Code that needs to be revised.

When I look at the sentencing provisions of animal cruelty legislation in New Zealand, Australia and the U.K., none of those countries have adopted five years as a maximum sentence for animal cruelty offences.

Logic is key to a system like ours, a common law system. How do we define the principles of sentencing so that we maintain coherence in the Criminal Code? We do not want to create a more serious sentence for one type of deed and a less serious sentence for something that is even more serious than this offence. Logic must play a role here.

According to the Minister of Justice and Don Stewart, Professor of Criminal Law at Queen's University who recently published an article on this subject, this is a very serious issue. I understand that there is a lobby to protect animals. I think that the minister in the other place was quite candid when he said that this bill is the result of a strong lobby. We know that it is an effective lobby. It is very vocal and very visible. It is in the newspapers almost daily. I think it is our responsibility as legislators to be very consequential when we amend the Criminal Code.

Senator Milne and the Standing Senate Committee on Legal and Constitutional Affairs have questioned the sentencing aspect and suggested that it be revised at a point in time in our work and that we should try to re-establish the equilibrium within the Criminal Code.

Honourable senators, I am not against this bill, but I want to share with you that it does much more than just increase the maximum sentence. It changes something fundamental in the Criminal Code. This is an important aspect for our Aboriginal colleagues because there have been practices on the farm or in the forest with respect to animals that we have known about for a long time. This country was settled and colonized by European people who hunted. That is what drew Europeans to Canada. This is an important part of our tradition, our way of doing things. It is important that at the committee level we have ample opportunity to revise those points. I think they are very serious, and I wish to commend Senator Jaffer for bringing this to our attention today.

Honourable senators, even though there is a desire to pass Bill C-10 quickly, we must be sure of what we are doing and the implications that this bill may have on our legal system.

Senator Cools: Honourable senators, Senator Joyal has raised very interesting points, and I would like to take the opportunity to look at this bill. I move adjournment of the debate.

Hon. John G. Bryden: Would Senator Joyal accept a question?

Senator Joyal: Yes.

Senator Kinsella: A motion to adjourn debate has been made.

Senator Cools: I had risen to move the adjournment. After I said that, Her Honour then rose and called upon Senator Bryden. I am quite prepared to defer to Senator Bryden.

Senator Bryden: I understand that we have created a new area, neither property, nor human. It is vertebrate — in between. The honourable senator is concerned that the maximum penalty for cruelty to a vertebrate would be a maximum of five years, which applies to some rather significant offences within the Criminal Code.

The honourable senator indicated that for the negligent burning of a building, the penalty could be five years. Could someone get five years for theft of \$1 million? As regards cruelty to a vertebrate, there may very well be times in which a five-year sentence would be appropriate. If someone keeps a vertebrate alive for days and weeks for the sole purpose of slowly peeling the hide off that animal while it is still alive, I do not see why that person would not warrant a five-year penalty as compared to someone who steals money or property in excess of whatever the number is. We have created a new category, but to use the amount of the penalty as a reason of concern is an issue. I would ask the honourable senator to comment.

In Britain, the definition of “animal” in the Animal Rights Act is an animal that is captive or under the control of a human. I wonder if that is for the sole purpose of protecting the foxhunt.

• (1700)

Senator Joyal: To the second question, the honourable senator has the answer. The United Kingdom is sensitive to the regulation of traditional hunting these days. It is well known in this chamber that there is a great concern among the British people about fox hunting and that the Parliament of Great Britain has been called upon to legislate on this matter. The issue will certainly not die with this bill.

On the first question of the honourable senator, my concern is that the maximum penalty will now be five years, whereas in most common-law countries the maximum is two to three years. I can understand that we might want to stiffen penalties. Perhaps in the last five or ten years there has been a significant increase in animal cruelty, I do not know. We will hear from the minister and officers of the department and other witnesses. Perhaps this has become an endemic problem within Canada and we have suddenly discovered it and want it immediately stopped. I do not know if that is the case. Sometimes a situation will arise about which we are not aware and then we will share the information.

The penalty increase is so important in comparison to what it was before that there must be extraordinary reasons. Again, compared to other countries with a common-law tradition, none seem to have set five years as the maximum penalty. That is my first preoccupation.

My second preoccupation is that if we are to determine the maximum penalty, it must be coherent in the system. As the honourable senator knows, there are principles in law that determine the definition of sentencing. Those principles do not seem to be obvious from a reading of the bill as it stands now. That is why I have raised those concerns.

[Translation]

The Hon. the Speaker *pro tempore*: Honourable senators, I regret to inform you that, pursuant to rule 37, the Honourable Senator Joyal's time is up. Does Senator Joyal wish to ask for more time?

[Senator Bryden]

Senator Joyal: Yes.

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

Hon. Senators: Agreed.

[English]

Senator Cools: I have a question.

The Hon. the Speaker *pro tempore*: Senator Joyal, are you asking for leave to continue?

Senator Joyal: I would ask leave to respond to questions.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, as I often have to do, even though this is not something I particularly enjoy, I am prepared to give Senator Joyal the time necessary to conclude his reply to the last question put to him.

[English]

The Speaker *pro tempore*: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Joyal: I wish to thank honourable senators for their indulgence.

Since we are creating a sentence that is very serious in comparison with what it was before, I should like to use this opportunity at the Standing Senate Committee on Legal and Constitutional Affairs to share with the Minister of Justice and the officers of the department those principles that define sentencing. The Minister of Justice, in his own remarks at the end of September, pinpointed that sentencing is a major problem with the present Criminal Code.

I believe that the members of the Legal and Constitutional Affairs Committee, such as the Honourable Senator Milne, almost came to the conclusion in the previous session that we need a special study of the elements of our Criminal Code. We were overburdened with work so we did not do that. However, the problem remains present in our minds, especially with a bill that creates something totally new in terms of category and increased sentences.

Senator Cools: The honourable senator has put an interesting phenomenon before the chamber, and I believe it should be explored.

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

[Translation]

Senator Robichaud: Honourable senators, we have reached an impasse. I agree to give my consent for two questions, namely those of the Honourable Senator Cools and of the Honourable Senator St. Germain.

[English]

Senator Cools: My question is in respect of the new category that is being created in the Criminal Code. The two categories are crimes against property and crimes against the person. All things human are not persons. Unborn babies, for example, are not persons.

I summoned a copy of the Criminal Code to look at the crime of infanticide, which as senators know is a woman's crime. A man cannot be charged with infanticide. It is a crime that traditionally carries small penalties when such a charge is laid and prosecuted. Section 233 of the Criminal Code gives us the definition of infanticide. It tells us clearly that:

A female person commits infanticide when by a wilful act or omission she causes the death of her newly-born child...

I refer honourable senators to section 237, which is the penalty section. I believe Senator Joyal is quite right in his reasoning about this sentencing phenomenon. The punishment for infanticide is laid out in section 237, which states:

Every female person who commits infanticide is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

Therefore, Senator Joyal is telling us that somehow or other animals are acquiring a status higher than babies. That is quite interesting to me. We will have to examine this matter.

Since we have a new category of creature, which is not a person or property, this new thing, are the unborn animals now?

Senator Joyal: Honourable senators, I will not dare to provide the honourable senator with a possible answer because it is a most delicate issue. At this stage of our debate, which is second reading, I believe it is appropriate to raise the concerns I have. Honourable senators will realize how serious those concerns are. I thank the honourable senator for identifying the penalty for infanticide as being a five-year maximum sentence because it demonstrates the seriousness of imposing a maximum sentence for animal cruelty.

I thank the honourable senator for her question because the issue she raises will certainly be discussed with the officers of the Department of Justice.

Senator St. Germain: Senator Joyal is concerned about defining the sentencing, which is a concern. The big concern out there, however, is how to define "cruelty." It is such a subjective matter.

I listened carefully to what Senator Joyal said because it was well said. He said that lobby groups like animal rights groups are driving this agenda. They are forcing the government to do something, not because there is an indication of a greater amount of cruelty to animals, but because these groups appear to have become better funded and more vociferous.

• (1710)

This subjective aspect of what is cruelty is, to me, a greater concern than the sentence. A sentence of a year or six months is devastating to a farmer, a rancher, an Aboriginal, a hunter or whoever it might be. The honourable senator's profession and his work with the Criminal Code possibly dictate in his mind that the

question of time is important. However, some of us live in the practical world of cattle ranching, hunting and trapping.

The honourable senator has presented this new dimension with regard to the Criminal Code, and we have crimes against the person or property. Does the honourable senator not think that this becomes the real complexity of how you define "cruelty" in dealing with these vertebrates?

Senator Joyal: I will try to respond quickly, as I know the deputy leader has other pressing items on the agenda.

The honourable senator raises two elements: One is the definition of cruelty, and the other is the matter of "willingly." It must be a conscious act of the person. Let us talk about cruelty.

My parents did not have the opportunity to have a pig farm, but my father was involved in the grocery business. When I was a child, he took me to a farm where they were slaughtering pigs. The pigs were knocked on the head, and then taken to a hook and suspended. The pig was then opened and prepared for blood letting. The blood must be warm to prepare certain kinds of products. Sometimes, the pig recovered because he was not hit strongly enough. Where is cruelty and wilfully there? This is a clear case where it is not easy to define or draw the line.

In all fairness, and I do not wish to scare honourable senators with the farming issues of this bill, this is an important issue in Bill C-10. We must understand exactly what we mean by "cruelty" when added to "wilfully."

As Senator Jaffer has said, this departs from the traditional practice and how it has evolved through the years. We must hear witnesses. Humbly, I am not an expert. I am simply trying to understand the legislation referred to us.

The concern of the honourable senator is that there might be a vocal lobby that fights to obtain stiffer penalties for animal cruelty. The farmers are well represented in our country, and they would be welcome to come before the committee to express their concerns, as would any other group in Western Canada, in order that we might understand all of the implications of this legislation.

It does seem to be well intentioned. We must commend the minister and the honourable senator for this legislation, but there are real implications for Canadians who are involved in farming and recreation, as well as in the protection of animals, which is a sound and honest objective to pursue in a society that behaves in a civilized manner.

On motion of Senator Cools, debate adjourned.

COMMITTEE OF SELECTION

THIRD REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Senate Committee of Selection, presented in the Senate earlier this day.

Hon. Bill Rompkey: Honourable senators, I move the adoption of this report standing in my name.

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

[Translation]

Hon. Marcel Prud'homme: Honourable senators, earlier today I withheld agreement because I was not expecting a full report to be tabled at 2 p.m.

I understand the explanations provided by my former House of Commons colleague, Senator Rompkey, to the effect that there could not be a meeting before 1:30 p.m. and that no contact was possible. However, I would not like to hold up the discussions that are currently underway, given your desire to set up the parliamentary committees as soon as possible.

Senator St. Germain and I have held consultations. We have some concerns about the way we are being made use of in this era of reform. Paul Martin referred yesterday to a major parliamentary reform, and here we are in the Senate settling for a pure and simple yes without commenting on the formation of certain committees.

Having consulted Senator Stratton, I felt I ought not to unduly delay what could be accomplished tomorrow. As I have been appointed to the Standing Committee on Banking and Commerce, you can well imagine the revolution that is in the offing.

[English]

What a revolution has come, with Marcel Prud'homme on the Banking Committee. I do not want to make Senator Kolber cry. He came to me and said, "Why do you not give your consent today?" I do not want to irritate someone who may be my future chairman. I am a reformist and have always been a reformist. I do not know if he is to be the chairman, but I would imagine that he has already been chosen as chairman of the Banking Committee. It would be starting my relationship on that committee, for the few days or weeks or months or years that I may be stuck there, having to relearn a completely new field of activity. It is very dangerous. I hear that many people are interested in that debate.

Honourable senators are aware that I am now coming soon to my fortieth year in Parliament. I came to federal politics, not provincial politics, where I was supposed to go. In 1960, I was a Liberal candidate in Montreal-Laurier. At the request of Mr. Jean Lesage, I gave my seat to Mr. René Lévesque. My first approach to politics was to go provincial, but my inclination or study was federal politics. I never shy away from saying to anyone, "If you want to come into federal politics, you must have international preoccupations. You need international preoccupation, international comprehension and international sensitivities."

• (1720)

I was good enough for Pierre Elliott Trudeau to be protected by him in the House of Commons where I was elected not only Chairman of the Foreign Affairs Committee but Chairman of the National Defence Committee — for over 10 years!

From the day I arrived at university, I was involved in foreign affairs. I was involved in the Vietnam question. There was a book printed in the United States which stated that I was used by Mr. Trudeau to change the law in Canada. That is another debate.

I was involved in the Czechoslovak revolution by helping people come to Canada. I burned in effigy Orville Faubus of Arkansas for his anti-Black policies. That was while I was attending the University of Ottawa.

My international preoccupation has always been there. I dare say here — and I regret to have to say it — that I am deprived from better serving my country by being a member of the Standing Senate Committee on Foreign Affairs. I was told in no uncertain terms why. It is because there is a veto by some lobby that I should not be on the Foreign Affairs Committee. I will not stand forever and ever. I know some senator will say, "Well, it is going to be the same thing, and then he will go away. He will bark but not bite. He is a nice boy." I am part of a club. This is the best club in the world. Here, we can choose from among the best to give the best of what we can to bring a little bit of sanity into foreign affairs.

It is with sadness that I see how uninterested the Foreign Affairs Committee is at the moment by not seeing fit to even have a briefing on what is going on in the world. I am not asking for a briefing on Africa, even though it is very important. Africa cannot put the world in danger at the moment. I am not asking for a briefing on Latin America, even though it is very important for the French Canadians of Quebec.

This Foreign Affairs Committee is probably the only one in the Western world that saw fit not to have any opinion, any meeting, any briefing or any session on what may be a world war. Honourable senators should not think that I will shy away from speaking up and trying to offer a little bit of my expertise and knowledge. I do so in order that these young people who are pages today may not be sent to fight for us, the old people, because we have lacked openness in regard to what is going on in the world of today.

My first choice has always been foreign affairs. I always say that I am in federal politics because I have international preoccupations and international sensitivities to understand.

I am not a one-question man — Middle East, Middle East, Middle East. There are other great questions. Surely that is an important issue, but no one wants to attack or touch it.

Honourable senators, most of you are new to this place. I did not want to speak about that today because one of the senators I could name happened to go through a difficult time today. Because of that, I will abstain from giving his name.

In 1982, 1983 and 1984, there was a debate here in the Senate on the Middle East. Read the report. See what happened to all the senators who were members of that committee at that time. They were accused! How dare we accuse Senator Hicks from Nova Scotia of being an anti-Semite! He raised money for Jewish causes in Canada. How dare we accuse Senator Van Roggen. He was a fine gentleman and chairman of the Senate Foreign Affairs Committee. There are only two witnesses left — one is Senator Murray who, hopefully, will participate eventually in the debate. Just because I happen to have opinions that may not be welcome in some circles, in particular financial or fundraising circles, I am deprived from giving expertise on the only thing I know — world affairs!

I will tell honourable senators one thing about the recent trip to Lebanon. Do you think I need a two-day trip after having had difficulties with my heart? Do you think I need a trip of two days? I can afford to go. I can pay to go. I do not need to be nominated. I can go wherever I want, and I will. I do not need to be appointed by whips or otherwise. I could have been helpful. I know every single member there in Lebanon. Do honourable senators not think that this is something I could have offered my Prime Minister? I know not only political leaders but every single religious leader in Lebanon. I know all of them and I have visited them. Do honourable senators think this man does not have anything to offer to Canada?

Why is there this secret cabal? No one would dare stand up here in the Senate and give the real truth as to why I cannot better serve my country by being nominated a member of a committee on which I think I have something to offer. That is okay. My name has been put on the membership list of the Banking Committee. I will have to adjust. I do not know what I will do. I will go to school. I will learn. There are very interesting characters on that committee. They do not know what is coming to hound them. I may not share all their opinions on the very interesting topics they will face. Do not take that as a joke. Who knows, I may need some expertise.

[Translation]

I could ask the former member for Gouin, Yves Michaud, to be my assistant when the committee examines the banking issue. Incidentally, I am kidding. I think the way the members of the committee were appointed is unfortunate. I did not choose them. I see Senator Andreychuk near me. I notice that she is not on the list for the Human Rights Committee, and yet, she has done excellent work on this committee. This may have been her choice.

We are here to talk a bit about reform. Perhaps some day we could have more say in how committee members are appointed.

Her Honour has always been recognized as a progressive woman in Quebec. She may quietly believe that the time has come for committee members to choose their own chair and vice-chair. There may be recommendations. What is with this story of secret cabal and scheming? I prefer things to be out in the open, even if it means receiving hundreds of insulting letters.

So, I am happy to go even further, thanks to the sound advice of senior Senate officials like Mr. O'Brien, Mr. Armitage, and Mr. Bélisle, by raising a debate on this issue. For this reason, after consideration and in response to the requests of Senators

Rompkey and Robichaud as well as amicable consultations with Senator Stratton, I would not oppose that they organize themselves today. There are other ways to fight this.

[English]

Hon. Gerry St. Germain: Honourable senators, like Senator Prud'homme, I, too, am somewhat concerned about the process that is being utilized. As the honourable senator mentioned, so many people are speaking out about parliamentary reform and members of Parliament in the House of Commons being more significant and not being so-called nobodies when they are 50 yards off the Hill or even when they are on the Hill. I believe the object of the work we do as senators is not to be obstacles in the way of progress.

• (1730)

When honourable senators are asked to become a committee member, they are given a choice of Committee "A" and Committee "B" and that is it. That is not really a choice. One is told where to go. Generally, one is placed in a situation where possibly people do not want to sit on a particular committee.

I appreciate the fact that there has been a change and that an attempt has been made to accommodate those of us who sit as independents. However, I think a little more fairness has to be brought into the process with the utilization of expertise, as Senator Prud'homme pointed out. When we look through this place, we see that there is much talent and knowledge and many skills that can be applied in the proper places. What danger would this man be if he sat on the Foreign Affairs Committee? He has one vote as an independent. He has no ability to overturn a government decision.

I think I can speak for my colleague on my left when I say that if some semblance of fairness is not brought into the system, we will do everything we can under the rules and regulations to make this place a little fairer.

It is possibly not unfairness that is driving the agenda. I believe the agenda is being driven by the PMO, as Paul Martin said. It is perhaps time we changed things a little. We may have to force such change by utilizing the rules and regulations of the Senate.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Could I ask Senator St. Germain a question?

Senator St. Germain: Yes.

Senator Kinsella: Rule 85 provides for changes of members on committees to be made according to a certain procedure. It provides that changes can be made:

- (a) with respect to Government members, by the Leader of the Government in the Senate or any Senator named by that leader; and
- (b) with respect to Opposition members, by the Leader of the Opposition in the Senate or any Senator named by that leader.

Honourable senators, if a change were to be made affecting the honourable senator, what is his understanding, as an independent senator, as to who would have the authority to make that change?

Senator St. Germain: Honourable senators, in the case of independents, I think such a change should be a decision of both the government and the opposition, until another process is established. I believe it is the government side that decided in the final stages of the last session that independents would be allowed to sit on committees. If it is the government that has made that decision — and I compliment them for it — then under the present rules and regulations, until the rules are changed possibly to mirror more what happens in the House of Commons, the decision would have to rest with the government.

Hon. John Lynch-Staunton (Leader of the Opposition): I am glad the Leader of the Government has come into the chamber.

All senators are named to committees on the recommendation of the Committee of Selection, with approval of the full chamber. There are provisions for government members and opposition members to be replaced by their own whips or leader, or whomever the leader designates. In the case of an independent senator, because he or she is named on recommendation of the Committee of Selection, I would advance a notion that only the Committee of Selection can recommend a substitution or replacement to the full chamber.

Senator St. Germain: I would have no objection to that because the government holds the majority on the Selection Committee. I would presume that it would revert indirectly back to the government to make the decision.

Senator Kinsella: If that is the situation, because the rules are silent on that point, is there a danger that an independent senator would be under any pressure or intimidation to not argue a point of view because the fear would be that the majority would simply come in and move a recommendation from the Selection Committee to remove that independent senator from the given committee? Would the honourable senator have that fear?

Senator St. Germain: Perhaps I am fearless, but I am not fearful of that because I do not think we are that significant in the overall picture of things. We sit as independents; everything we do is individual. I reflect more of what the official opposition thinks than I do what the Liberal side thinks, but I would not be fearful of being under Senators Rompkey, Robichaud or Carstairs. I would think that the degree of fairness would be proportionate to the degree of the importance of my role as an independent senator.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not have the advantage of having participated in the whole debate, but I did hear Senator Lynch-Staunton's reply or intervention, whatever it might have been. I think it would be appropriate to put some remarks on the record.

I am delighted that there are independent senators who have given us their choices and will now serve as full members, as in the last session of Parliament. I think there are some extraordinary circumstances, however, which we may not like to contemplate necessarily. For example, if an independent senator were appointed to a committee and died in office, causing a vacancy on that committee, or if an independent senator indicated to me, to Senator Lynch-Staunton or to the chamber as a whole that he

or she no longer wanted to serve on that committee, then it would seem to me appropriate to fill that position. However, like Senator Lynch-Staunton, I think the only way that that position could be filled, having now been granted to an independent senator, would be to call a meeting of the Selection Committee and have it determine and report a decision to this chamber.

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

Hon. Senators: Question!

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

Hon. Senators: Agreed.

Motion agreed to and report adopted.

• (1740)

COPYRIGHT ACT

BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

Hon. Joseph A. Day moved the second reading of Bill C-11, to amend the Copyright Act.

He said: Honourable senators, I am pleased to speak at second reading of Bill C-11, to amend the Copyright Act. This proposed legislation deals with the interrelationship between the Broadcast Act, as administered by the Canadian Radio-television and Telecommunications Commission, CRTC, and the Copyright Act. The bill also deals with the issue of the Internet and with the issue of the compulsory licence provisions under the Copyright Act.

In the Speech from the Throne, the government committed to revise Canadian copyright rules to ensure that Canada has a progressive regime that supports increased investment in knowledge and cultural works. This proposed legislation is consistent with that commitment, but it is only one small step in what I anticipate will be significant amendments to the copyright legislation to deal with current activities. We heard the Honourable Senator LaPierre talk about raspberries, blueberries and different types of organizational devices. The digital revolution is upon us and it is important that the legislation reflects those changes.

[*Translation*]

Modern copyright legislation is essential to the survival of Canadian authors and artists, as well as of the cultural industries in which they operate. The Minister of Canadian Heritage has said repeatedly that we need more Canadian voices to tell more Canadian stories.

[*English*]

However, our creators and our cultural industries must be able to operate within a marketplace that is based on clear and predictable rules. Intellectual property is important to the broadcasting industry, as it is in other areas of cultural pursuit.

It is doubly important if we are to foster innovation and success by Canadians in the new economy. The government's approach to copyright is a measured one that takes into account both the right of creators to know that their efforts will be rewarded and Canadians' need to have access to a variety of Canadian content in a variety of formats. I repeat: Canadians need to have access to a variety of Canadian content in a variety of formats.

Honourable senators will recall the discussion we had before prorogation in relation to the concentration and convergence of media. I am hopeful that one of the standing Senate committees will deal with that important issue.

The government's recognition of the crucial importance of copyright is reflected in the copyright reform process that was launched in June 2001. The report, entitled "Supporting Culture and Innovation: Report on the Provisions and Operations of the Copyright Act," was tabled in this chamber on October 3 and extends an invitation to Parliament to participate in the review process in respect of copyright.

[Translation]

This process recognized that one of the priorities to be addressed was a provision of the existing legislation that did not keep pace with today's rapid technological changes.

[English]

Honourable senators, compulsory licence provisions, which appear in section 31 of the Copyright Act, permit cable companies, direct-to-home satellite companies and others to retransmit over-the-air television — television and radio signals in the air-waves — to their subscribers. Under this compulsory licence, retransmission may take place without obtaining the direct approval of the owners of copyright — the rights holders — as long as the transmitters pay a royalty, which is fixed by the Copyright Board, and comply with other statutory conditions.

The original intent was a good public policy to ensure that all Canadians, no matter where they live, would continue to have access to a broad range of over-the-air television and radio signals, while also ensuring that rights holders would be treated in a fair and equitable manner. That provision came about in 1989.

Honourable senators, in one sense that is not long ago but, technologically speaking, it was another era — the pre-Internet era. Retransmission in that era ended in 1999, after just 10 short years, when a Toronto company began sending Canadian and American television signals over the Internet. That company claimed that it too had the benefit and could apply for a compulsory licence and, therefore, did not require the permission of the copyright holders in what they were retransmitting over the Internet. Rights holders disagreed and the ensuing litigation was suspended only when the company agreed to terminate its service.

Subsequently, a Montreal-based company announced its intention to begin transmitting television signals over the Internet. Its request to the Copyright Board for an Internet specific royalty tariff was withdrawn only last year when this proposed legislation was presented in the other place.

The claim that the compulsory licence under the Copyright Act covers Internet-based retransmission is a matter of great concern for the rights of copyright holders. Of particular concern is the global reach of the Internet and the World Wide Web. Unrestricted retransmission of programming over the Internet would undermine the territory-specific arrangements that come with a compulsory licence. This could badly impair the ability of Canadian film and television producers to fully take advantage of their negotiated rights in foreign markets. However, the government heard from other quarters that the licence must remain applicable and adaptable to technological change. We must deal with the Internet.

The government recognizes that confusion surrounding the scope of the application of the compulsory licence was not desirable and that section 31 of the Copyright Act needed to be clarified. A thorough consultation paper and process ensued to fully explore these issues and to provide all Canadians with an opportunity to make their views known. There were over 40 submissions and the views were considered. Bill C-11 is largely a reflection of those points of view.

[Translation]

At the hearings of the House of Commons Standing Committee on Canadian Heritage, copyright holders expressed concerns about this bill not being clear enough.

[English]

Amendments were raised in the other place to clarify that this proposed legislation ensured that Internet-based retransmitters, which operated under the CRTC's specific non-media exemption order, could not benefit from the compulsory licence — section 31 of the Copyright Act. On the other hand, systems such as cable distributors and systems comparable to cable systems, such as direct-to-home satellite transmissions, would continue to benefit from the compulsory licence. In addition, parliamentarians in the other place wanted to ensure that no retransmitter would be able to reap the benefits from the transmission of other people's programs by inserting their own advertising, such as the banner ads that we see on the Internet, alongside the program. Thus, they strengthened the language in the bill to ensure that the signal would be retransmitted without alteration. This, of course, does not preclude technological changes, such as digitizing the work, and it does not mean it will not be transmitted along with a third party's advertising.

Honourable senators, with these amendments, Bill C-11 received all-party support in the House of Commons. Furthermore, the government has asked the CRTC to seek comments from the public and to report in respect of the broadcasting regulatory framework for persons who retransmit, via the Internet, the signals of over-the-air television and radio programming.

Indeed, as the Internet evolves, it may be appropriate for the CRTC to revisit its 1999 decision to not regulate the Internet. If and when the Internet is used for the purpose of broadcasting, it must be subjected to conditions that will help to further Canadian public policy objectives.

• (1750)

[Translation]

This bill ensures the transparency and predictability of the retransmission marketplace. It removes the uncertainty that has plagued rights holders and retransmitters over the past three years. It maintains and strengthens the protection afforded rights holders, protections which would be undermined without the legislation.

[English]

The bill maintains and strengthens the protection afforded rights holders, protection that without this legislation would be at risk of being undermined. I expect that honourable senators will agree to refer this bill to the Standing Senate Committee on Social Affairs, Science and Technology for detailed consideration. I urge your support at this time at second reading.

Hon. Donald H. Oliver: Honourable senators, I commend Senator Day on the excellence of his exposition. There was one aspect of this bill that he did not deal with, and that is the regulations that will play an important part once the bill is passed.

Too often we are faced with what we have begun to call framework legislation, that is, legislation that sets out, in a general way, its intent, but the real meat of the legislation will appear in the form of regulations. While we have a joint committee for the scrutiny of regulations and statutory instruments, it does its work very effectively after the regulations have been made and only deals with their legality, not whether they are the most appropriate responses to the issues at hand.

Regulations are the method by which governments can avoid parliamentary scrutiny of their legislative schemes. We have before us a very important bill that deals with the protection of copyright when broadcast signals are retransmitted through new types of distribution centres, including the Internet. However, as

is often the case now, the real conditions under which copyright will be protected will be spelled out in the regulations.

I urge senators to consider how important it will be for the communications industry and Canadian consumers to have the regulations made under this bill placed before the Senate or the House of Commons for review before the regulations have the force of law. We, as parliamentarians, must reassert our place in the legislative process. We should not allow government to bypass scrutiny through the use of regulation-making power. We in the Senate should adopt a regular practice of putting forward amendments to all framework bills that come before us, which would include a meaningful role for the Senate in the regulation-making process.

Senator Day: Does the honourable senator wish me to reply to that statement? Is that a question or a comment? If it is a comment, I agree.

On motion of Senator Kinsella, for Senator Rivest, debate adjourned.

[Translation]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with the unanimous consent of the Senate, all items on the Order Paper that have not been reached could stand until the next sitting of the Senate, and we could move on to the adjournment.

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

Hon. Senators: Agreed.

The Senate adjourned until Wednesday, October 23, at 1:30 p.m.

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