CANADA

Debates of the Senate

2nd SESSION • 37th PARLIAMENT • VOLUME 140 • NUMBER 21

OFFICIAL REPORT
(HANSARD)

Tuesday, November 26, 2002

THE HONOURABLE DAN HAYS
SPEAKER

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

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

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

THE SENATE

Tuesday, November 26, 2002

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

Prayers.

SENATORS' STATEMENTS

GREY CUP 2002
VANIER CUP 2002

CONGRATULATIONS TO MONTREAL ALOUETTES AND SAINT MARY'S HUSKIES

Hon. B. Alasdair Graham: Honourable senators, last Saturday and Sunday, football pride was rampant in Canada. Fans from coast to coast to coast were treated to two of the most exciting matches in the history of Canadian football. On Sunday, at Commonwealth Stadium in Edmonton, before a sell-out crowd of over 62,000 fans, the Eskimos and the Alouettes battled right to the wire, with the Als emerging triumphant in a game that saw the Grey Cup returned to Montreal for the first time in a quarter of a century. Both competing teams, the Canadian Football League, the organizers and the hospitable City of Edmonton deserve an enormous amount of credit, our thanks and our praise. The CFL and the Grey Cup are safe in Canada for many years to come.

Hopefully, honourable senators will understand if my simon-pure amateur gaze and my interest were more sharply focused on the SkyDome in Toronto on Saturday, where the Huskies of both the University of Saskatchewan and Saint Mary's University in Halifax engaged in a titanic battle of gargantuan proportions for the coveted Vanier Cup, emblematic of football supremacy among universities in Canada.

I say all of this in the absence of the Honourable Senator Willie Moore, who underwent surgery in a Halifax hospital yesterday and hopefully will be back with us in much improved health early in the New Year. Let it be said, without equivocation, that Saint Mary's does not have a greater or more loyal supporter than Senator Moore. We can only hope that Saint Mary's second straight Vanier Cup victory eased the pain enough for Willie to smile all the way to the hospital, after watching his beloved Santa Marians capture another Canada-wide championship. I understand that he stayed at home, glued to the television until the end of the game, before he accepted a ride to the hospital on Saturday.

Honourable senators, I am not here today to justify the role that sports and fitness play in the whole development of the human being, but I do believe strongly that sports should be an integral part of the quality of life for all Canadians. I think there is a pretty universal realization that the ancient Greeks were correct in their concept of balance between mental and physical activities, that we should all strive for perfection of the whole self. I think most senators would share that assumption.

Why do I say all of this today? I am confident that most of us would agree that the historic objective of our institutions of higher learning is to cultivate and nourish the spirit of excellence both in the lecture halls and on the playing fields of our country. Football in itself is a kind of flagship sport. To many, it is a treasured tradition. More often than not, it proves to be a valuable rallying call for many of our alumni to come home. It is a link to the past and a promise for the future.

To all the universities across Canada and their young, determined, high-spirited athletes who began their tentative quest for the Vanier Cup in the lag days of summer and the exciting, colourful, crackling days of the early autumn, we say, "Well done, better luck next time, keep the faith, keep up the fight, never give up. Higher! Faster! Stronger!"

A special tip of the hat to those talented, fleet-footed, dipsy-doodling leather luggers from Saint Mary's who came to win, accomplished their task and added new lustre to the institution and to a program that is the envy of the nation.

• (1410)

AGRICULTURE

DECLINE IN NUMBER OF YOUNG FARMERS

Hon. Donald H. Oliver: Honourable senators, our agriculture industry is in a crisis, but this is not new. High costs, bad weather and foreign subsidies have been hurting Canadian farmers for years. New census information reveals a greater threat to the agricultural industry in Canada: fewer young farmers.

The 2001 census information indicates that our farmers are proportionately older because fewer young people are choosing farming as a career. Older farmers have stayed put and kept farming, while younger people get involved in more profitable sectors like agri-business. The number of farmers fell by 10 per cent over the last five years. One third of those who remain will turn 65 within the next 10 years. Younger farmers make up a mere 12 per cent of all Canadian farmers currently in the field. This trend is devastating to rural Canada and casts doubt over the future of traditional farming in our country as we know it today.

Honourable senators, we must ask ourselves: Why is this happening in a time when the actual size of farms has been on the rise and new technology has improved the quality of production? Many obstacles face new farmers in Canada today. Farm subsidies in other countries make it hard for our farmers to compete; capital gains taxes on transferred property and crushing start-up fees reduce profits to the point where many farmers cannot make ends meet without off-farm income.

The federal government also has a part to play in this devastating trend. Current agricultural policies favour support payments in sectors where the benefit is minimal and often not needed.

Honourable senators, I ask: Who will put food on our tables in the near future if nothing is done? The food will not grow on its own. The government must refocus its agricultural policies on the traditional farm, and the capital tax rules on farming equipment must be reformed. These measures will ease the financial burden young farmers face right now. Pressure must be exerted on foreign governments to reduce their subsidies so that a fair market can exist with more room for competition, allowing all farmers to compete on the same level. Immediate steps must be taken to address the decline of our national farming population, or we will no longer have traditional farms in Canada at all.

INTERNATIONAL DAY FOR THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Hon. Catherine S. Callbeck: Honourable senators, yesterday marked a very important day. It was the International Day for the Elimination of Violence against Women. On this day, the United Nations General Assembly invites governments, international organizations and non-governmental organizations to raise public awareness of the problem of violence against women. While this day was only the third time that the UN has officially marked the day, it is a day that has been recognized by women's activists around the globe for over 20 years.

While rights and freedoms are a vital part of being Canadian, the unfortunate reality is that the rights and freedoms of women in Canada and around the world are shattered by violence. Fifty-one per cent of Canadian women have been victims of at least one act of physical or sexual violence since the age of 16.

While statistics like this are alarming, many efforts are being made to help women who have been affected by violence. From April 1, 1999 to March 31, 2000, 57,182 women were admitted to 448 shelters for abused women across Canada. In my home province of Prince Edward Island, Transition House Association received over 8,000 calls in the year 2000. The statistics are saddening, as they show that violence against women is all too common. They are important in that they indicate that women are using resources such as Transition House.

Honourable senators, it is my hope that one day we will not need the number of shelters that we have now. However, until that time comes, it is important that we raise awareness of the issue and support the organizations that strive to help women.

KYOTO PROTOCOL ON CLIMATE CHANGE

BRIEFING BY MINISTERS

Hon. Gerry St. Germain: Honourable senators, last Thursday morning, there was a briefing organized by the government. The Ministers of the Environment and Natural Resources were the organizers. The notice went out at 4:56 p.m. on the evening prior to the 8:30 a.m. Thursday briefing. Specifically, the notice said:

> Ministers Herb Dhaliwal and David Anderson invite all opposition members to a briefing on the Government of Canada's plan to meet our climate change objectives under the Kyoto Protocol.

In spite of the late notice, some of us decided to go to the briefing, specifically to learn the current details that the government has been promising Canadians relating to ratification and implementation of the Kyoto treaty. Since the two ministers had made the invitation to opposition parliamentarians and since this issue will most likely impact significantly on the people of my region and various other regions of this country, I wanted and expected to put direct questions to the government ministers. To my surprise, I found that the ministers had misrepresented their attendance by instead sending their ADMs. The ministers thought, it seems, that their time would be better served by briefing their own caucus members right across the hall, even though they had specifically invited opposition members to a briefing with them.

It must be said that the public officials did their utmost to provide details to those members of the Canadian Alliance caucus, the Progressive Conservative caucus and the Bloc Québécois caucus who were present. However, they were so restricted in their information, it was incredible. The government sent these ADMs in to read from prepared notes, and I believe that they were really sent to cover for the ministers. The government sent in these soldiers but did not arm them with all of the details of the Kyoto plan, possibly because the government does not have any details. That was borne witness by the questions that were placed to them and that unfortunately they were unable to answer.

Honourable senators, the government seeks to ratify an international environmental treaty, but this government has chosen to ignore the established procedures to effect such ratification. When will this government recognize that we cannot proceed to ratification until the necessary enabling legislation is first passed by the House of Commons? It is important that we follow the customary practices and procedures of Parliament.

ACCESS TO CENSUS INFORMATION

SOURCE OF PETITIONS

Hon. Lorna Milne: Honourable senators, normally when I rise early in the day in this place, I am presenting a petition. I will be doing so later today. However, I thought honourable senators might be interested to know precisely where these petitions come from, particularly in their own areas. I will go through the list today. These petitions were collected primarily by Muriel Davidson of Brampton and Gordon Watts of Vancouver.

The petitions this week came from Surrey, Vancouver, Victoria, and Richmond, B.C., and the British Columbia Genealogical Society. In Alberta, they came from Crossfield and from Red Deer. In Saskatchewan, they came from Yorkton. In Ontario, they came from Kapuskasing, St. Catharines, Ancaster, Bradford, Toronto, the Smith Family Reunion, the Mississauga Family History Society, Etobicoke, Owen Sound and the British Home Children group in Kingston. In Quebec, they come from the British Home Children group of Sainte-Agathe, Inverness and Saint-Malachi, as well as from the Asbestos société d'histoire. In Nova Scotia, they came from Hilden, from New Waterford and from Halifax.

There were non-resident petitions collected in the provincial archives in Fredericton, New Brunswick and in Canning, Nova Scotia.

The Saskatchewan Genealogical Society collected a great number of names at their meeting. They come from Hawaii; Gig Harbor, Washington; Christchurch, New Zealand; Australia; the Tacoma Genealogical Society; the Reno Family History Centre; Title Research in London, England; the Gold Coast Family History Society of Australia; the Steere family reunion; the Casey family reunion; and the Family History Center in Traverse City, Michigan. One interesting petition from Michigan came from Canadians who work at Dow Chemical in Midland, Michigan.

Other petitions came from Kamloops, British Columbia; from Calgary; from Lethbridge; from Saskatoon, Lindsay and Toronto; from Pointe-Claire, Quebec; from Danville, Kentucky and Dingwall, Scotland.

Honourable senators, there is an interest around the world in Canadian history and genealogy. I will be presenting these petitions later today.

[*Translation*]

GREY CUP 2002

CONGRATULATIONS TO MONTREAL ALOUETTES

Hon. Lise Bacon: Honourable senators, I wish to join with Senator Graham in congratulating the Montreal Alouettes on last Sunday's magnificent win, which we all watched. I would also like to congratulate all those who attended the event for their great sportsmanship, whether they were from Edmonton, Montreal or elsewhere. That is the picture of Canada that needs to be seen.

ROUTINE PROCEEDINGS

TREASURY BOARD

CANADA'S PERFORMANCE 2002—REPORT TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, two copies of the annual report to Parliament of the President of the Treasury Board, entitled: "Canada's Performance 2002."

SCRUTINY OF REGULATIONS

FIRST REPORT OF JOINT COMMITTEE PRESENTED

Hon. Céline Hervieux-Payette: Honourable senators, pursuant to rule 104, I have the honour to present the first report of the Standing Joint Committee for the Scrutiny of Regulations, concerning the permanent order of reference and the expenses incurred by the committee during the First Session of the Thirty-Seventh Parliament, pursuant to rule 104.

(*For text of report, see today's* Journals of the Senate.)

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

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

CANADA-JAPAN INTERPARLIAMENTARY GROUP

TWELFTH ANNUAL BILATERAL MEETING, SEPTEMBER 24-29, 2002—REPORT TABLED

Hon. **Jean-Claude Rivest:** Honourable senators, on behalf of Senator Poulin, I am honoured to present, in both official languages, the report of the Canada-Japan Interparliamentary Group following the Twelfth Annual Bilateral Meeting, held in Japan from September 24 to 29, 2002.

[*English*]

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 4 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

TRANSPORT AND COMMUNICATIONS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY MEDIA INDUSTRIES

Hon. Joseph A. Day: Honourable senators, pursuant to rule 58, I give notice that at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on Transport and Communications be authorized to examine and report on the current state of Canadian media industries; emerging trends and developments in these industries; the media's role, rights and responsibilities in Canadian society; and current and appropriate future policies relating thereto; and
>
> That the Committee submit its final report to the Senate not later than Wednesday, March 31, 2004.

ACCESS TO CENSUS INFORMATION

PRESENTATION OF PETITIONS

Hon. Lorna Milne: Honourable senators, I have the honour to present 831 signatures from Canadians in the provinces of B.C., Alberta, Saskatchewan, Ontario, Quebec, Newfoundland and Labrador and Nova Scotia who are researching their ancestry,

as well as signatures from 422 people from the United States, Australia, New Zealand and the United Kingdom who are researching their Canadian roots. A total of 1,253 people are petitioning the following:

> Your petitioners call upon Parliament to take whatever steps necessary to retroactively amend the confidentiality privacy clauses of statistics acts since 1906, to allow release to the public, after a reasonable period of time, of post-1901 census reports starting with the 1906 census.

Honourable senators, this makes a total now of 19,482 signatures to the Thirty-seventh Parliament and petitions with over 6,000 signatures to the Thirty-sixth Parliament, all calling for immediate action on this very important matter of Canadian history.

QUESTION PERIOD

FISHERIES AND OCEANS

DEPLETED COD STOCKS— PROPOSAL TO ALLOW LARGER FISHING BOATS

Hon. Gerald J. Comeau: Honourable senators, we have recently learned that the European North Sea cod collapse will be as devastating as the Canadian northern cod collapse, as announced privately to Liberal caucus members last week in Ottawa.

The European proposal is to go to smaller boats in order to reduce the pressure on their depleted stocks. In Canada, the Minister of Fisheries and Oceans has launched an initiative to go to bigger boats with even more catching capacity and higher capital outlay which will place even more pressure on the fishermen. It is counterproductive. They will have to catch more fish in order to pay the higher capital outlay.

Would the Leader of the Government in the Senate explain why her government would not consider the common sense European solution to ease pressure on our diminishing northern cod fish stocks?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question today. I will take forward a recommendation to the Minister of Fisheries that he examine the new policy that has come out of the northern European communities with respect to their attitude toward the cod fishery. What is significant is that neither cod fishery seems to be doing well. That is of dismay to a great number of Europeans and Canadians who are impacted by the cod fishery.

Senator Comeau: Honourable senators, I appreciate the fact that the Leader of the Government in the Senate will bring forth this suggestion to the Minister of Fisheries. If I may think out loud for a moment, perhaps we could ask Françoise Ducros to describe the mental capacity of those who would come up with the idea to increase catching capacity when the stocks are collapsing.

I ask the Leader of the Government in the Senate, who comes from Nova Scotia and who would understand the fact that smaller boats are actually less onerous on our fish stocks, to bring this kind of common sense approach to the cabinet table, and that those who come up with these hair-brained ideas of increased fishing capacity not be able to bring forth these ideas anymore.

Senator Carstairs: I thank the honourable senator for his follow-up. There are several issues I believe should be put on the table. I know we were all in caucuses at lunch so word may not have reached the honourable senator that Françoise Ducros has, in fact, resigned. Of course, I would be delighted to bring that issue forward. I believe it is a positive suggestion, and I always bring forward positive suggestions.

• (1430)

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

PROPOSAL TO PROVIDE EQUITY FINANCING AND LOAN GUARANTEES

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, while I am on my feet, I wish to address an issue that was raised by the Honourable Senator Oliver last week. I want to make sure that no confusion has arisen from the answer that I gave at that time. While I do not think that has been the case, there may well have been some confusion, and I wish to clarify my answer.

The Honourable Senator Oliver's question concerned a fund of $100 million. He then made a connection with the concept of a financial institution. In my answer to him at that time, I did not clearly indicate that the $100 million fund had already been announced. In fact, it had been announced on the Wednesday before the honourable senator asked the question. Therefore I would not want my answer to him to imply that it had not been announced.

However, remarks that were attributed by the media to the EDC and, incorrectly, to the Department of Finance were not connected to the African Investment Fund but, rather, to discussions that had taken place earlier on the prospective establishment of a development financial institution. Establishment of that development financial institution has not yet proceeded.

FINANCE

CHANGES TO DISABILITY TAX CREDIT

Hon. Marjory LeBreton: Honourable senators, my question is for the Leader of the Government in the Senate regarding the Disability Tax Credit. After losing a court appeal concerning an individual's ability to feed himself, the Minister of Finance announced on Friday of the Labour Day weekend that he would tighten the law so that an individual could only qualify for that credit if he could not physically move food from his plate to his mouth. On Wednesday of last week, November 20, 2002, members of the government party in the other place stood with the opposition in unanimously urging the government to back off on the planned changes to the disability tax credit.

In the face of such a clear expression of opinion from its own members in the other place, including several cabinet ministers, when will the government announce that it will not proceed with this draconian measure?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, clearly the message was received forcefully from the government benches as well as from the opposition benches last week. The Honourable Minister of Finance has indicated that he will take those reactions under serious contemplation.

As the honourable senator knows, while an announcement had been made, no legislation had followed. Thus, the matter is still at the stage of a potential change to the Disability Tax Credit.

THE ENVIRONMENT

RATIFICATION OF KYOTO PROTOCOL— CANCELLATION OF MEETING WITH MINISTERS OF THE ENVIRONMENT

Hon. Gerry St. Germain: Honourable senators, my question is for the Leader of the Government in the Senate relating to the Kyoto Protocol. The premiers are accusing the government of trying to divide and conquer rather than trying to reach consensus.

In light of the controversy surrounding this issue, why would the Prime Minister be meeting with individual premiers and thus causing the cancellation of the Friday meeting of the ministers of the environment?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest of respect to the honourable senator, I do not think that the meeting was cancelled because the Prime Minister had decided to hold meetings with provincial premiers, not only about Kyoto but about a number of other issues as well. The meeting was cancelled because the government had asked senators and members of the other place to debate the motion on whether the government should ratify the Kyoto Protocol — which is not necessary, frankly, on the part of the government. In other words, the government does not need to have the approval of the Senate or the House of Commons in order to ratify a treaty. However, this government wants to hear from all members of both chambers and has, therefore, put forward that particular motion.

RATIFICATION OF KYOTO PROTOCOL

Hon. Gerry St. Germain: Honourable senators, there is a strong possibility that the cabinet could approve the ratification independently. However, I am sure that the minister is aware that the Liberal government, as it did with the National Energy Policy, is fanning the flames of separatism in the West, which is totally ludicrous and totally unnecessary. Premier Klein has criticized the Prime Minister for proceeding with the debate on the ratification of the Kyoto Protocol without provincial consensus, a clear indication that the greatest opponent to ratification of the accord in its present form, without a plan, is prepared to work towards consensus. Why would the government, rather than working towards consensus, take on these provincial premiers, who are now ganging up on the government unnecessarily?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, there is a plan. It is not one that has found favour with every single premier in every single province of Canada. However, several provinces are on record as being totally in favour of what the government is doing.

The government is acting in a reasonable and responsible way, which is to ask parliamentarians their views on the Kyoto Protocol before the cabinet chooses to ratify.

Senator St. Germain: Honourable senators, they may be asking for approval but why would the Associate Deputy Ministers not answer our questions in regard to the plan? We asked the ADMs how much money would be set forward for this program. They could not give us an answer. If there is, indeed, a plan in place, they should be able to give us answers. The ADMs are not incompetent. They are excellent and competent people whom I have known for many years in the civil service, yet they could not answer.

Senator Carstairs: I was not at that meeting because I am not an opposition member, and therefore I do not know what answers the ADMs gave to you. However, this issue has been raised before in this chamber. Sometimes individuals are given answers but they do not like the answers.

AGRICULTURE AND AGRI-FOOD

DECLINE IN NUMBER OF YOUNG FARMERS

Hon. Donald H. Oliver: My question is a follow-up to questions raised last week about recent farm statistics put out by Statistics Canada. The latest farm census shows that only 11.5 per cent of farm operators are younger than 35 years of age. This is a dramatic drop from five years earlier. It coincides directly with the agricultural policies that this government has been pursuing since coming to power.

This trend has a social dimension that will affect the composition of farms and farm communities for years to come. Could the Leader of the Government in the Senate comment on this worrying trend from a social perspective with respect to the plight of rural Canada and what her government can do to make farming more attractive for young Canadians?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, let us be clear: There are, in fact, 40,000 farm operators in this country under the age of 35. It is clearly an exciting venture for some of them.

The honourable senator is quite right when he says that the average age of farm operators has risen from 47.5 years of age in 1991 to 49.9 years of age in 2001. There has been an increase in the average age of farmers. There has also been an increase, interestingly enough, in the average age of individuals who operate small businesses. That, too, has seen an increase in the number of individuals and the age of individuals who are pursuing those ventures.

We are seeing some demographic changes in our country. The changes cannot be entirely attributed to agricultural policies. In fact, this government has been enormously supportive to agriculture throughout this country.

However, demographics show that young people today prefer to move into our cities. They are not remaining in rural communities. If they are not living in rural communities, they will not be farmers, and they certainly will not be small business operators in those same farming communities, which is of concern, and is a situation that we should be monitoring carefully.

Senator Oliver: Honourable senators, there are, in fact, obstacles. Some people have pointed out that some farmers must pay hefty capital gains taxes when transferring their property. Others cite the daunting start-up costs involved in building a farm operation large enough to generate a decent income. Could the Leader of the Government please tell us what the government intends to do about these obstacles to young farmers and would-be farmers? Since this is a pre-budget period, would the Leader of the Government in the Senate undertake to speak to the Minister of Finance and find out whether he is prepared to make some changes in capital gains and capital tax provisions for farmers?

Senator Carstairs: Honourable senators, with the greatest of respect, I think the honourable senator knows that when a farmer passes a farm on to his son or daughter, there are no capital gains. The capital gains come into play if a farmer sells the farm to someone who is not a member of his immediate family. In that case, he should be paying exactly the same capital gains as would any other business that is sold, and not passed down from one generation to the next.

NATIONAL DEFENCE

ALLOCATION OF ADDITIONAL FUNDS TO BUDGET

Hon. J. Michael Forrestall: Honourable senators, I wish to ask a question of the Leader of the Government in the Senate based upon the welcome news from the Prime Minister and others that there may be some additional money forthcoming for defence spending.

• (1440)

The Prime Minister has said that we will see this money in the budget next February. Could the minister undertake to lend her good offices — in some instances she has proven to be successful in this — to urge upon her colleagues to commit, at a minimum, to funding the Canadian Armed Forces with an additional $1.5 billion, which represents the money that they need immediately to cover current operations and meet their deficit?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator has, of course, indicated what the Prime Minister announced shortly following his first meeting with NATO, that there would be additional dollars for defence. While the Prime Minister has not put a figure on the table, he has indicated that it would not be the $4 billion that has been requested by various organizations, including the Standing Senate Committee on National Security and Defence.

As to the representation of $1.5 billion, I will bring that forward to the Minister of Finance who, as honourable senators know, is doing pre-budget consultations at the present moment.

Senator Forrestall: Honourable senators, sometimes it seems to me that the senator talks herself into and out of my good graces without too much trouble at all. If she is suggesting that the Canadian Armed Forces do not need an immediate injection of $4 billion, a one-time item, into its financial stream in order to update, modernize and replace rusted-out equipment, then she is sadly wrong, or badly advised.

Will the Leader of the Government in the Senate give us some undertaking that she will at least press the government to ensure that if we have to send troops to an Iraqi war, the government will cover the costs of that movement from new appropriations and not re-raid, if you will, the current, overly-strapped defence budget, which is, I repeat, in drastic need of a $1.5 billion infusion.

Senator Carstairs: The honourable senator, in essence, asks a hypothetical question. I am still very hopeful that we will not be engaged in an Iraqi war, and therefore the issue of where we take those new appropriations from will not be an issue. I am hopeful that Saddam Hussein can be convinced to follow his obligations under Resolution 1441, that we will be able to rid that country of weapons of mass destruction, should they exist, and that the people of his country will not suffer the terrible calamity of war, because it is always the citizens, and rarely the leaders, who suffer those calamities.

UNITED NATIONS

IRAQ—TRAINING OF WEAPONS INSPECTORS

Hon. Douglas Roche: Honourable senators, last week I drew the attention of the Leader of the Government in the Senate to Resolution 1441, to which she has just referred, and which has within it a section mandating all countries to participate in the process to ensure that the inspection process is a bona fide process and, thus, not subject to faulty interpretation. Given Canada's desire to avoid war, what is the Canadian government doing specifically with respect to ensuring that Resolution 1441 is carried out in a bona fide way?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I understand that we have two inspectors on that roster. In addition, Canada is supporting and hosting a five-week training course for inspectors, and we are currently evaluating a request to provide additional expertise for the Iraq action team. Those individuals will go with Canadian values, and I am hoping in that respect we will see fulfilled the spirit of Resolution 1441.

FOREIGN AFFAIRS
NATIONAL DEFENCE

REVIEW OF FOREIGN AFFAIRS AND DEFENCE POLICY—REQUEST FOR DETAILS

Hon. Douglas Roche: Honourable senators, I thank the minister for her response.

I want to direct her attention now to a subject that we have discussed before, that is, the Speech from the Throne, now almost two months old, in which the government said that it would set out a long-term direction on international and defence policy and, moreover, that the government would engage Canadians in a discussion about the role Canada will play in the world.

When I raised this mater with the minister on October 9, the minister invited me to send ideas forward to her for the government, which I did in a letter of October 16. To put the letter in one sentence, it said that there ought to be a recognized body that would carry out this review, have public input and be appropriately organized, funded and publicized.

The minister was kind enough to reply to my letter on November 7, in which she said that she was forwarding a copy of my letter to her colleagues, the Honourable Bill Graham and the Honourable John McCallum, for their attention. I thank her for that.

Another three weeks have gone by, and we have not heard a word about the nature, the style or the content of a review of this extremely important subject. At this moment, Iraq is showing us a need for a long-range policy, and we have not heard a word. I am wondering what the government will do so that people across the country who are following this matter can have some clarification and guidance from the government as to how they can actually participate.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I cannot give the honourable senator any new information this afternoon about the process. As he indicated, he did write to me. I, in turn, wrote to him, but I also wrote to the Defence Minister and also to the Foreign Affairs Minister. At this point in time, I can give him no more details as to the process that will take place. As soon as I have those details and am able to share them with him, I will do so.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, I would like to deal with Item No. 2 under Motions first and then revert to the order proposed on the Order Paper.

[*English*]

KYOTO PROTOCOL ON CLIMATE CHANGE

MOTION TO RATIFY—POINT OF ORDER

On the Order:

> That the Senate call on the government to ratify the Kyoto Protocol on Climate Change.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a point of order. Item No. 2 in the *Order Paper and Notice Paper* is a motion under the heading "Government Business." I question whether that is appropriately placed on the Order Paper because this is a motion dealing with a resolution that is proposed for the Senate to consider that calls on the government to do something.

It seems to me, honourable senators, that there is something tautologous in the proposition, and it could hardly be a government motion calling upon the Senate to recommend something to the government. I have no difficulty in participating in the debate on this subject; however, I do not think it should be under "Government Business." I think it would be more orderly if it were placed under "Other Business."

Hon. Sharon Carstairs (Leader of the Government): With the greatest of respect to the Deputy Leader of the Opposition, this is a motion that is being made by the government, and it is perfectly reasonable that it be located under Orders of the Day, Government Business and then Government Motions.

Hon. Anne C. Cools: Honourable senators, I am trying to follow the debate.

• (1450)

Senator Kinsella has raised a most interesting point. Close examination of the motion causes one to question what kind of motion it is. If Senator Carstairs is correct and it is a government motion, the government is proposing that the government be called upon to ratify the Kyoto Protocol on Climate Change. This is quite an interesting oddity because, unless I am totally mistaken, I understood that this motion was about the government calling upon Parliament to support its actions in respect of the Kyoto Protocol.

I have been reading up on this subject matter because it is before us and I was planning to speak to it, although obviously not today. The Prime Minister has repeatedly said, in the last several weeks, that he would be asking Parliament to ratify the Kyoto agreement. This has captured my attention because Parliament has no process whatsoever for ratifying treaties. As a matter of fact, the process of ratification is an act of the sovereign, acting alone, with her ministers and does not include Parliament. Ratification is an act of the executive. It is an act of the cabinet.

For many months now, I have been thinking that the Prime Minister would ask Parliament to support his actions, as cabinet is an executive. This will obviously need some sort of clarification, Your Honour, because the motion as written on the Order Paper is precisely the opposite of what the Prime Minister has been saying in all his public statements.

Perhaps we can look to some of the newspaper coverage. For example, if we were to look at the Montreal *Gazette* of October 31, 2002, the editorial headed "PM kills Kyoto talks" reads:

> Mr. Chrétien invented the arbitrary Dec. 31 deadline himself, without consulting employers, provincial governments or even, it seems, his own cabinet. By year-end, he stubbornly insists, Parliament must ratify the Kyoto accord, committing Canada to reduce emissions of greenhouse gases by a good 20 per cent from current levels.

The same thought is repeated in *The Globe and Mail* of Thursday, November 7, 2002. The article, written by John Ibbitson, states clearly:

> ...then Mr. Chrétien will proceed with asking Parliament to ratify the accord regardless.

The same thing is said again in the *Ottawa Citizen* on November 16, 2002, in an article by Kate Jaimet, which states:

> The summit provided an international stage for the prime minister's surprise announcement he would hold a House of Commons vote on ratification of the Kyoto climate change accord before the end of 2002.

Honourable senators, there is something very wrong with this motion being listed as a government motion. On the face of it, the motion is not the government asking Parliament to support the government. On the face of it, the motion has the Senate calling upon the government to ratify the Kyoto Protocol on Climate Change. There is something wrong with this. We would have to search and probe a little deeper because, as we know, these statements have been made as well, I believe, by Her Excellency Adrienne Clarkson before us in the Speech from the Throne on September 30. She said clearly in the Throne Speech that Parliament would be asked to ratify the Kyoto Protocol.

Honourable senators, those statements have also been made on numerous other occasions. It seems to me, as well, that Prime Minister Chrétien, when he spoke in Johannesburg, South Africa, in September this year, said the same thing.

It is a very interesting phenomenon because I do not understand how a government motion can be worded that the Senate calls upon the government to act. I would even go a little further and say that this motion is misplaced on the Order Paper. I am not too sure, because Senator Kinsella did not speak for too long, but his point was largely that it was misplaced on the Order Paper. Am I correct on that? Clearly, it is misplaced on the Order Paper. It is not a government motion because it is not a government initiative. The motion, as scripted, clearly is the initiative of the Senate. The motion clearly states "That the Senate will call on the government to ratify the Kyoto Protocol on Climate Change." Clearly, if the debate is to go forward with a bit more smoothness, it would be a simple matter to relocate the motion on the Order Paper.

There is a form of motion that can be moved by a government minister and not be a government motion. That is called an open question motion. Perhaps Senator Robichaud meant this as an open question. An open question motion is like a free vote. It means that senators can vote as they see fit.

I do not know how we should proceed, but this motion is about the Senate asking the government to take a particular action. This is not about the government asking the Senate to support it or even to ratify anything. I do not know if other senators wish to speak, but I think Senator Kinsella is absolutely correct: This motion is not, as scripted, an initiative of the government. If it is an initiative of the government, then it is a piece of deception.

Hon. Laurier L. LaPierre: Honourable senators, I rise on this point of order. I am going where angels fear to tread.

I have looked at this motion. As usual, I follow the logic of Senator Cools with great interest and respect. Parliament does not ratify treaties. I have absolutely no doubt about that, unless Senator Beaudoin tells me otherwise. It is the Queen, the Crown and the executive branch that do it in the name of the Canadian people.

Therefore, by the Senate calling on the government, which includes the Crown on behalf of the executive branch of the government, we are humbly begging the authorities whose power it is to ratify the Kyoto Protocol on Climate Change because it is an important document, because it is an important treaty and because the health of our children depends upon it.

As far as the government is concerned, Mr. Chrétien and others are demanding or asking that Parliament ratify the accord. I am sure that the Prime Minister, who has been around longer than have I, both in this house and in the other House, knows all the rules involved.

[*Translation*]

This is his way of saying that the document is important. I would very much appreciate it if my parliamentary colleagues, the members of the House of Commons and the Senate, would help me in declaring this document a priority in order that it be ratified.

[*English*]

Therefore, Your Honour, we should proceed to discuss Kyoto as quickly as possible so that we can be part of the process. When the House of Commons rises on December 13 and the Senate rises thereafter, there will then be a clear statement on the part of all of us that Kyoto is worth having and, therefore, that we wish to approve it.

• (1500)

Senator Kinsella: Honourable senators, I raised this point of order because there are consequences in our rules to items appearing or not appearing under Government Business. I refer honourable senators to rule 39, whereby, at any time, the government can decide that there has been enough debate on a particular item and invoke time allocation.

Consider the absurdity of the situation. If the minister as the representative of the government asks the Senate to tell the government to do something, it does not have to do it. The minister, in responding earlier today to a question, said as much. She is quite correct.

Consequently, my views on this particular motion, asking the Senate to call on the government to do something, to ratify the Kyoto Protocol, would not be that dissimilar to those of Senator LaPierre. However, in terms of procedure, it is quite unacceptable and quite out of order to place this kind of motion under Government Business. It makes a facade of the entire exercise, which many are arguing it is anyway. I digress, and that is a discussion for another time.

As far as the point of order is concerned, this item, as Senator Cools has pointed out, by the clear language of the motion, is having the government ask the Senate to tell the government to do something, and it is the government that is asking that it be asked to do something. It does not have to ask. It can do it. It can tell itself to do it.

More important, it would be abusive of the consequences of having this item under Government Business. It would multiply the facade of a serious consideration if, at some point in time, the government, not liking the way the debate is going, pulls the plug. That is not the intent of rule 39.

Rule 39 has typically been invoked when a government bill, typically introduced in the other place, has arrived here, and for whatever parliamentary reason, the Senate is not dealing with that bill as expeditiously as the government would like. The government would then invoke, in order to get its legislative business done, the time allocation or the guillotine. The guillotine is a consequence of having this motion under Government Business, and I object to that.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the fact that this motion is under Government Business is not open to debate. The possibility of invoking rule 39 of the *Rules of the Senate*, on limiting debate, is completely hypothetical at this point.

This motion was moved in a Notice of Motion last week. That is why it is now under Government Business. The motion reads: "That the Senate call on the government..." It is the same when the government needs an opinion. The government calls on the Senate to study bills. There is a certain procedure that must be followed. In this case, the government is giving the Senate the opportunity to consider and vote on this agreement. We hope that the Senate will call on the government, which is one way of putting it, to sign the Kyoto Protocol.

Honourable senators, there is no reason to raise a point of order and we should proceed with Government Business.

[*English*]

Senator Cools: Honourable senators, I was following the debate with some interest. It seems that if we were to follow the logic of Senator LaPierre, and even the logic of Senator Robichaud, we would immediately be faced with a host of other problems.

I believe Senator Robichaud made a mistake when he said the government was calling on the Senate. The motion says that the Senate is calling on the government. However, it seems that, if I follow the logic of these two senators, we are now confronted with new problems that continue to make the motion quite defective and even out of order.

If we accept the logic of Senator Robichaud and Senator LaPierre that the Senate is calling upon the government, and the government also represents the Crown, then we have a situation where we are not dealing with any ordinary motion at all. This motion would then be in the form of a motion that we call an "address." If the Senate is trying to converse or have a communication with the Crown, the form of the parliamentary proceeding is an address.

For those honourable senators who do not know what an address is, Erskine May, 22nd Edition, at page 606 reads:

> An address to Her Majesty is the form ordinarily employed by both Houses of Parliament for making their desires and opinions known to the Crown as well as for the purpose of acknowledging communications proceeding from the Crown.

To follow Senator LaPierre's logic where he was describing the Senate as a supplicant to the government, which is what this motion does, since it is the Senate essentially praying to Her Majesty to ratify the Kyoto accord, Erskine May reads at page 607, under "Subjects of Addresses":

> Addresses have comprised every matter of foreign or domestic policy, the administration of justice...

Down the page, Erskine May continues:

> Addresses have been frequently presented praying that Her Majesty will give directions for the presentation...

— or whatever it is.

The phenomenon of this motion is that the Senate is calling on the government to ratify the Kyoto Protocol on Climate Change or that the Senate is asking the government to take these executive actions. Whatever it is, the fact of the matter is that it is very clearly a prayer. The motion does not say that the Senate orders the government or the Senate instructs the government. What we have here is a pretender motion. What we have here is a motion that is an address in drag disguise. That is what it is.

I will tell you why I believe that this is the case: All of the public relations and all of the press statements building up to the ratification of the Kyoto Protocol have been based on the premise that the government was asking Parliament to support it, to approve of what it was doing. I do not believe I am mistaken. I have done a survey of the press coverage. Suddenly the situation has changed. By this motion, it is not the government asking government to support it; it is Parliament asking the government to take this action.

To my mind, this is a pretender motion. The seriousness of it becomes even more consequential when one understands that the Prime Minister and the Government of Canada are currently locked into a major disagreement with the governments of a number of provinces in this land. This motion is asking us — by a prayer, by a pretender address — essentially to plead with the government to ratify this agreement.

• (1510)

All honourable senators can make their conclusions, but the manner in which this matter is proceeding is unparliamentary and extremely improper. It is offensive to the concept of a proper address as an expression of the opinion of the Houses to Her Majesty, and tends to put Her Majesty and Her Majesty's representative in Canada at a terrible disadvantage. I am certain that it would not be the intention of this house, or either chamber of the Houses of Parliament, to offer any indignity or insult whatsoever to Their Excellencies or to Her Majesty.

Honourable senators, there is something very wrong here and it should be corrected.

The Hon. the Speaker: I thank honourable senators for their comments on this point of order. While it may seem straightforward, this is an important matter and I will take it under consideration. I will have a ruling on it tomorrow or perhaps even later today, although we would be out of order in terms of a ruling later this day.

OFFICIAL REPORT

POINT OF ORDER—CORRECTION

Hon. Gerry St. Germain: Honourable senators, I rise on a different point of order, and I seek guidance from the Chair. This may be a question of privilege.

Honourable senators, Thursday last I posed a question in the Senate, to which there was a response from the Leader of the Government in the Senate. There were comments from another senator during the course of the response. Those comments were included in the blues but left out of the Official Report of Hansard. I refer to page 395 of Hansard. My question related to disparaging remarks toward President Bush. After I made a statement, Senator LaPierre said, "It is better than to be something**." At that point, Senator Carstairs, the Leader of the Government, rose and spoke to the comment, which I was unable to hear.

I seek guidance on this. I think that what was reported in the blues should be in the Hansard of the day in its entirety. I do not know what the remarks were, but it is my understanding that they were in the form of a personal attack. Senator Carstairs, in her wisdom, stood and said:

> Honourable senators, let me begin with a comment. What I have always found most refreshing about the Senate chamber is the degree of civility that prevails on all sides, and is practised by all members of this particular institution. I would recommend it not only to the other place but to Canadians generally in terms of our manner of speech and decorum.

Honourable senators, I am not that sensitive, but I do not believe this is the place for personal attacks while senators are asking questions or making comments.

I am asking that His Honour deal with this matter as he sees fit as the Chair of this institution. I would hate to see this institution reduce itself to the level of personal attacks. You can attack me for my politics or for any position I take, but I do not believe that senators on either side should participate in any way, shape or form in personal attacks, regardless of what position is held.

The Hon. the Speaker: Changes to the Official Hansard are dealt with as points of order. However, they are always specific in terms of either correcting language or, by agreement, changing the record. Senator St. Germain's point of order does not provide us with enough information to deal with this matter in that way. I believe it would be in order for him to raise this point of order if he has a specific request to make of the chamber, and that is customarily done by leave.

Senator St. Germain is quite right that there is a rule of the Senate admonishing us not to use sharp or taxing speeches in this place. We have had rulings on that subject. He is quite correct in terms of personal attacks, and the use of taxing or sharp language.

Senator St. Germain: Honourable senators, I would ask, if it is in order to do so, that the portion, "It is better to be something**" be recorded in the record. That is all I am asking for. If that is asking too much, that is fine, I have stated my case.

The Hon. the Speaker: I do not know what it is, so we cannot deal with it in the normal way. I will undertake to see what I can find out. However, it would be incumbent on the honourable senator to request that the record be corrected to reflect what was said. As I said earlier, that is something we do from time to time.

Rule 51 reads:

> All personal, sharp or taxing speeches are forbidden.

Senator St. Germain: I would ask that Hansard record what the blues showed.

The Hon. the Speaker: What do the blues say, Senator St. Germain?

Senator St. Germain: The blues state as follows:

> **Senator St. Germain:** Yes, that is you. I know it is you, senator, that referred to him as calling him a moron. If that is the way you want to conduct yourself as a Canadian, it does not reflect the region that I represent.
>
> **Senator LaPierre:** It is better than to be a something**.

That is the portion that I request be included in the record.

The Hon. the Speaker: Is it agreed, honourable senators, that the record be corrected to show what is in the blues?

Hon. Senators: Agreed.

PHYSICAL ACTIVITY AND SPORT BILL

THIRD READING—MOTIONS IN AMENDMENT—DEBATE ADJOURNED

Hon. Francis William Mahovlich moved third reading of Bill C-12, to promote physical activity and sport.

He said: Honourable senators, I am pleased to speak at third reading of Bill C-12, to promote physical activity and sport. I should like to congratulate the Standing Senate Committee on Social Affairs, Science and Technology for its careful examination of Bill C-12. In addition, I should like to thank the witnesses for sharing their perspectives on this bill.

The committee heard from a variety of interests. The key issues raised were the accountability of the proposed sport dispute resolution centre to Parliament, official languages and the balance in the bill between physical activity and sport. Honourable senators, I will respond to these issues during the course of my remarks.

Bill C-12 symbolizes collaboration between the Departments of Canadian Heritage and Health Canada, which have worked closely to draft this bill. This bill is also the result of extensive consultations and exchanges with the sports community and with all levels of government. Their total support has made the existence of this bill a reality, and it is important that we recognize this.

Bill C-12 is long overdue. It will replace the 1961 Fitness and Amateur Sport Act, which is no longer representative of today's sports reality. Like many other countries, Canada must amend its legislation to adapt to new realities and to effectively reflect and strengthen the important role the Government of Canada plays with regard to physical activity and sport.

• (1520)

Starting with the title, the proposed legislation will replace "fitness" with "physical activity," which refers more to the action of being active instead of one of the end results. In addition, the legislation no longer refers to "amateur" sport. Few countries refer to amateur sport in their modernized legislation, as this concept is increasingly ambiguous, since professional athletes compete in the Olympics and amateur athletes collect fees at some competitions.

The proposed legislation responds to the recommendations of the 1998 report from the Standing Committee on Canadian Heritage Subcommittee on the Study of Sport in Canada. The subcommittee's report revealed the strengths and weaknesses of the Canadian sport system. Many witnesses were heard, and thanks to the dynamism and contribution of all the stakeholders in the sport community, the conditions to promote the advancement and profile of sport in Canada were brought together.

Following on the recommendations of the subcommittee, the Government of Canada launched a broad process of consultation. Between 1998 and 2000, approximately 500 representatives from the sport community were heard and their recommendations recorded. Many innovative ideas were brought up during the process.

To reflect on these recommendations, the National Summit on Sport, presided over by the Right Honourable Prime Minister, was held in Ottawa in April 2001. The summit strengthened ties between the Government of Canada, provincial and territorial governments and the sport community.

Advisory committees made up of experts on sports were created by the Secretary of State to elaborate on recommendations from the national consultation process and to propose measures for the implementation of the Canadian Sport Policy. This policy constitutes a truly national effort and is evidenced by its endorsement in April of this year by all of the federal, provincial and territorial ministers responsible for sport.

Entrenching the federal government's policies on physical activity and sport into the bill recognizes that physical activity and sport are an integral part of Canadian life and culture that provide health benefits and promote social cohesion, economic activity, cultural diversity and quality of life. It also demonstrates the Government of Canada's commitment to encourage and assist Canadians in increasing their level of physical activity and their participation in sport.

Honourable senators, Bill C-12 addresses the fact that physical inactivity is a major detriment of health and that most Canadians are not active enough to maintain good health. In our efforts to avoid a health care crisis, our goal must be to reverse this trend.

Physical inactivity is costly. The Subcommittee on the Study of Sport in Canada reported that reducing physical inactivity by 10 per cent can save $5 billion annually in health care costs. Last year, provincial and territorial ministers responsible for sport approved a complete two-year work plan, including initiatives directed to underprivileged children, youth and other disadvantaged Canadians and agreed to foster access to physical activity.

Honourable senators, Bill C-12 also recognizes the Government of Canada's commitment to support the pursuit of excellence in sport and to build capacity in the Canadian sport system. Sport affects a very large number of Canadians. According to a 1998 general social survey, over 8.3 million Canadians aged 15 and over participate in sport on a regular basis.

According to a 2000 Statistics Canada survey, an estimated 1.8 million people are involved in sport and recreation organizations on a voluntary basis, not to mention the millions more who take part as parents, spectators, officials and administrators.

Given today's challenges facing sport, the proposed legislation clarifies, along with the title and the terminology, the existing ministerial mandate to adequately reflect and strengthen the role of the ministers responsible for sport and fostering, promoting and developing sport in Canada.

Over the past 10 years, the Canadian high performance sport system has experienced a large number of disputes over the selection of athletes on national teams and over doping in sport. Internal mechanisms of sport organizations have many limitations. To respond to the demands of athletes in sport organizations, the proposed legislation provides for the creation of the Sport Dispute Resolution Centre of Canada. This centre will provide equitable access to conflict resolution and can be used as an alternative to costly and lengthy court cases.

The creation of the centre demonstrates the importance given by this government to principles such as transparency, equity and diligence. It will place Canada at the leading edge internationally and will ensure stability, continuity and credibility to the alternate dispute resolution process.

Honourable senators, with respect to accountability to Parliament, concerns have been raised that the accountability of the sport dispute resolution centre is somehow diminished because it reports to the minister and the public and not Parliament. This policy position was not taken lightly. The sport community has said that it wants a firm federal commitment to an alternative sport dispute mechanism but that it was important, if not critical, that this mechanism not be, and more important not be seen to be a federal institution. The sport community said that if the mechanism were seen as just another federal institution, the success of the centre would be at risk.

The bill has been drafted to build in a responsible level of accountability to the government and the taxpayers of Canada, while at the same time creating a desired non-governmental organization in response to the express needs of the people whom the centre was designed to serve.

The manner in which Bill C-12 creates the sport dispute resolution centre has the support of the sport community, the House of Commons, and the Commissioner of Official Languages. In fact, the commissioner has testified that the Official Languages Act cannot apply to the centre for reasons of jurisdiction under the Constitution and is satisfied with that reality.

Turning to the subject of official languages...

...this brings me to the criticism that the bill does not satisfactorily address the commitment to Canada's official languages.

These concerns are difficult to understand given that the bill's preamble expresses a clear and unequivocal commitment to strengthening the bilingual character of Canada and to promote physical activity and sport having regard to the principles set out in the Official Languages Act. The words "strengthening the bilingual character of Canada" come directly from the Official Languages Act.

Bill C-12 will enable the minister to take measures to encourage, promote and develop physical activity and sport, which, when necessary, can include measures to advance and protect the equality of status and use of the English and French languages.

Bill C-12 requires the Sport Dispute Resolution Centre of Canada to offer its services to and communicate with the public in both official languages of Canada, and that the board of directors makes bylaws with respect to the conduct and management of the centre, including the establishment of policy respecting the official languages of Canada.

As well, Bill C-12 requires that the minister use the guidelines to appoint the centre's board of directors and address the diversity and bilingual character of Canadian society.

I should now like to address the concern that Bill C-12 is somehow biased toward sport and views physical activity as a poor cousin.

• (1530)

The title of Bill C-12, "An Act to promote physical activity and sport," is the first clear indication that the government holds both of these objectives in equal esteem. The preamble treats equally both physical activity and sport. Strong policy objectives are stated for both physical activity and sport. The objectives of the bill are to encourage, promote and develop physical activity and sport in Canada.

The legislation enshrines the new Canadian Sport Policy. This new policy, recently signed by the federal, provincial, and territorial ministers responsible for sport, commits governments to address the problem of declining physical education in schools, an important cause of physical activity.

Bill C-12 allows for the Governor in Council to designate the member or members of the Queen's Privy Council for the purpose of this bill. This recognizes that more than one minister can play a role in promoting physical activity and sport, as is the case today with the primary responsibility for physical activity lying with the Minister of Health and the primary responsibility for sport residing with the Minister of Canadian Heritage.

The government's commitment to physical activity is strong and clear, as evidenced in the 2002 Speech from the Throne in which the government committed to move ahead with an action plan in health policy areas under its direct responsibility, including working with its partners to develop a national strategy for healthy living, physical activity and sport, and convening the first ever national summit on these issues in 2003.

Health Canada has already begun to move ahead with the development of a healthy living framework that recognizes the importance of lifestyle choices in the health of Canadians and will include a physical activity component.

[*Translation*]

Honourable senators, Bill C-12 has been a long time in coming and it is the result of many years of widespread public consultations.

[*English*]

Bill C-12 sets out the government's policies in physical activity and sport, and provides the tools to encourage these two important elements that affect the lives of millions of Canadians. It is important to remember that Bill C-12 is enabling legislation. It does not provide solutions; it provides the tools for government to find the solutions.

Canada needs this legislation to encourage and promote all Canadians to improve their health by integrating physical activity into their daily lives, and to increase their ability to participate and succeed in sport to their desired level of excellence. Honourable senators, I urge you to pass Bill C-12 without delay.

The Hon. the Speaker: Will the Honourable Senator Mahovlich permit a question?

Senator Mahovlich: Yes.

Hon. Wilbert J. Keon: Honourable senators, first, let me commend the honourable senator for his role in this legislation. Second, let me say that the principles involved here are commendable. However, as I indicated the other day in committee, there are things about this legislation that really concern me.

There is a false assumption implicit in the legislation that sports are good for health. While physical fitness is good for health, physical activity sometimes is lethal to patients with certain medical conditions, if it is unsupervised, and sports in particular are frequently damaging to health. There is overwhelming evidence that there are huge health bills as a result of sport early in life, as it relates to injury, damage to the musculoskeletal system, and damage to the neurological system, which is tragic and can result in great disability.

My question to Senator Mahovlich is the following: I raised the other day the need for some continuity when this legislation is implemented; some continuity that would allow for appropriate educational programs so that we do not have this blind promotion of sport, particularly sport that is not good for people. I am asking the honourable senator if he will make this a mission, since he is so highly respected in this field in Canada, and should be, to follow this legislation and see that, in the long run, the legislation will, in fact, promote good health rather than bad health in many people?

Senator Mahovlich: Honourable senators, this legislation will provide solutions. It would give the government the tools to find the solutions. I agree with the honourable senator; there are all kinds of sports that are most damaging. We see it all the time. With this legislation, the government has a beginning and is committed to advancing our children in sports that are good and healthy for our minds and physiques. It is important that we pursue this goal.

Hon. Lowell Murray: Honourable senators, let me begin where Senator Mahovlich and Senator Keon left off. It is with regard to the distinction they make between physical activity on the one hand and competitive sport on the other.

Bill C-12 is entitled, "An Act to promote physical activity and sport." Senator Mahovlich, in his remarks today, properly and accurately reflected some of the discussion at the meetings of the Standing Senate Committee on Social Affairs, Science and Technology on this very matter. At the first of the three meetings that the committee devoted to this bill, our friend Senator Morin focused on a serious deficiency in this bill. He let us know, and he let the officials of the government know, that while the bill is entitled "An Act to promote physical activity and sport," the bill is deficient where physical activity is concerned.

Senator Morin referred to the progress and innovation that has taken place on the physical activity side of the equation over the years. He let us know that the knowledge and understanding by members of his profession of the links between physical activity and health have increased substantially over the years. Senator Morin saw this bill as an opportunity to the government to introduce new policies, new mandates, new objectives, but an opportunity that, unfortunately, had been missed.

Senator Morin also said that the references in the bill to physical activity were virtually word for word those that could be found in the original 1961 legislation, which this bill will repeal. He pointed out also that correcting the problem of obesity, which I believe he said is a problem with one third of the population and is growing more serious with young people, is one of the priorities in the health field today.

• (1540)

Over the next several meetings of the committee numerous honourable senators, almost everybody on the committee, returned to this theme, namely, the importance that we must attach not only at the federal level but at other levels of government to physical activity and to the link between physical activity and health. Senator LeBreton picked up on it, as did Senators Cook, Léger, Callbeck, Cordy and Roche, to mention a few. They were particularly insistent on the need for more attention to be devoted, notwithstanding the constitutional situation that we all understand, to the schools and to the education system here.

One of the witnesses before the committee was Mr. Rick Bell from the Coalition for Active Living, an organization that, I hasten to say, receives funding from Health Canada and which appears to be a federation of various national and regional groups. Mr. Bell pinpointed clause 5, which sets out the objects and mandate of this legislation. While, as he pointed out, there is a certain bow to physical activity, it is really couched in wonderful generalities, whereas most of the provisions of that clause would enable the minister to assist sport activity, as distinct from physical activity, at various levels.

The minister and his officials took the position, as Senator Mahovlich has repeated today, that this is enabling legislation and, in any case, sport activity is more structured and organized. This is why the provisions relating to sports are more explicit and mandatory than are the provisions relating to physical activity generally.

They also point out — and this may be the nub — that physical activity is really a health issue, which is to say that it comes under the Minister and the Department of Health. Senator Morin said on this issue, I think quite properly, that Health Canada, far from increasing its activity in this sphere in recent years, has cut back, notably in the program that we understood under the label "Participaction."

The Secretary of State for Sport stated that provincial and territorial ministers had signed on to a Canadian policy that includes a specific requirement that physical activity and education in schools will be increased. I think the Senate should know about the discussions that took place in the committee on this matter. I take it to have been the consensus of the committee that this bill, while it has quite commendable provisions relating to sport, is not very encouraging when it comes to doing anything concrete in the field of encouraging physical activity. It is also the consensus of the committee, if I may make bold to interpret it, that more ought to be done by the federal government and, perhaps, by Health Canada to drive home to Canadians the important causal link between physical activity and health.

Honourable senators, I think you know from second reading, and if you followed the committee proceedings, that my preoccupation and that of several other senators has been with the lack of accountability of the proposed sports dispute resolution centre. I will not repeat what I said at second reading. The bill does not provide for sufficient ministerial

oversight or, indeed, for any parliamentary accountability at all on the part of this new centre. While, as I said at second reading, this is not an enormous sum of money — it looks like a budget of about $1 million a year and a relatively small complement of personnel — there is a principle to be noted and a precedent that I wish we could avoid here, that of setting up these organizations supposedly at arm's length but not at all accountable to Parliament or to government.

This issue was canvassed at the committee. We had the officials and the Secretary of State and various proponents from the sports communities. One of the things that I find troubling is the casual attitude that some citizens take toward accountability. They seem to think that it is not only normal but a quite welcome development that Parliament should create and fund bodies that then are free not only to do what they want in their chosen field but also to be completely outside the ambit of ministerial oversight or of accountability to Parliament. Something is wrong here, if this is the attitude that is taking hold in the country.

The minister, officials and others defended this lack of accountability and explained it, as Senator Mahovlich did today, by saying the centre should be independent of government, free from political interference and flexible in its operations. Those were the watchwords and clichés that were sent forward in defence of this regime.

Honourable senators, we agree that the centre should be independent and free from interference. It should be flexible in its operation, and it will be. This legislation lets it be free from interference and flexible in its operation. However, the centre is being created by an act of Parliament. It will be funded by Parliament. We want Parliament to insist that certain basic minimum standards of accountability be respected.

This centre is being set up under something called the "Alternative Service Delivery Policy" of the Treasury Board. I obtained a copy of the guidelines that are sent to departments of government by the Treasury Board when this Alternative Service Delivery Policy is being invoked. It seems to me that the centre fails on a number of counts. Some of the questions that the Treasury Board puts to departments when they are considering an alternative service delivery model are the following: Does the new arrangement provide an appropriate decision-making role for ministers? The answer to that is "No." Are the arrangements appropriate for reporting results and other relevant performance information to ministers, Parliament and citizens? The answer there, obviously, is no — certainly not so far as the minister and Parliament are concerned. Will there be openness that is conducive to disseminating information to the public, either formally through the Access to Information Act or routinely through informal channels? This document states:

> The *Access to Information Act* and the associated policies are based on the principles that:
>
> - information should be made available to the public,
> - exceptions to the right of access should be limited and specific,
> - decisions relating to disclosure of information should be reviewed independently, and
> - heads of government institutions are responsible for ensuring that their institutions comply with the Act and for making any required decisions.

What about the Privacy Act? The question that is put in the Treasury Board guidelines is this: Are there appropriate provisions to ensure the privacy of Canadian citizens? Will there be a regime in place that protects personal information from unauthorized collection, use or disclosure? The document continues. None of this applies to this proposed new centre — none of it. The centre is to be exempt, if this bill goes through as it is presently drafted, from all those requirements.

• (1550)

Honourable senators, I really believe we should strike a small blow for accountability to the government, and Parliament, by amending the bill in the following respects. These are so fundamental that I cannot believe serious, principled objection can be taken to them by the government, or by the supporters of the government here or in the other place.

We should at least require, with respect to this new sports dispute resolution centre, that the minister be obliged to table the corporate plan and the annual report in Parliament. How on earth would that requirement interfere with the flexibility or the autonomy of the proposed new centre? The short answer is that it would not. It could not. However, it preserves some modicum of accountability to Parliament that I think is our duty to insist upon.

As I pointed out at the committee, the Minister of Canadian Heritage, I think, tables the annual report of the CBC/Radio-Canada, every year. Because she is required to do that and because the report can be up for discussion, no one suggests that somehow ministers or parliamentarians are interfering in the internal operations of the CBC.

We should have an amendment to require that the Auditor General do the books. That is hardly political interference. That, surely, is asserting our right as parliamentarians to ensure that there is due diligence so far as the money that we will be called upon to vote them every year is concerned.

There is a provision in this bill — I pointed it out at second reading — that would permit the minister to dissolve this centre that is being created by Parliament without ever having come back to Parliament, and to distribute the assets of the centre to like-minded organizations. I think that provision should be deleted from the bill.

I believe that the law on Access to Information and the Privacy Act should be made applicable to this centre. This is the most basic, fundamental framework of parliamentary accountability, and I believe we should insist upon it.

Senator Mahovlich referred to the question of official languages. There were some concerns raised by the Commissioner of Official Languages concerning the linguistic provisions of the bill in general, and several provisions in the clauses establishing this proposed new centre: subclause 9(5) requiring that the centre offer its services to and communicate with the public; subclause 14(3)(*b*) requiring that the board of directors be representative of the bilingual character of Canadian society; and subclause 17(1)(*g*) authorizing the board to make bylaws regarding the establishment of official language policy for the board.

Now, I had been and still am of the opinion that the matter of official languages could and should be covered by subjecting this proposed new centre to the Official Languages Act. However, the government has insisted that there is a jurisdictional issue here: that while we are setting up this centre under our own federal authority, the actual activity that the centre will be involved in, which is the resolution of disputes, comes under property and civil rights under the Constitution, and therefore there would be jurisdictional problems in applying the Official Languages Act to it. The Commissioner of Official Languages accepts this argument, understands the difficulty and is satisfied with the clarification that was made regarding language provisions that will be applicable to the centre, so she is not pursuing her earlier recommendation that the centre be made subject to the Official Languages Act, and neither will I.

However, to me, the government's argument regarding the Official Languages Act demonstrates some of the hazards of creating these hybrid creatures, half in and half out of the federal government — created by Parliament, funded by Parliament, not accountable to Parliament, and defined by what they are not. That is what this bill does. It defines this centre by what it is not: Clause 9(2) states that the centre is not an agent of Her Majesty; clause 9(3) says that the centre is not a departmental corporation or a Crown corporation within the meaning of the Financial Administration Act; clause 9(4) says that for the purposes of the Federal Court Act, the centre is not a federal board, commission or other tribunal within the meaning of that act; clause 14(4) says that its guidelines are not statutory instruments for the purpose of the Statutory Instruments Act; clause 17(3) says that its bylaws are likewise not instruments for the purposes of the Statutory Instruments Act; clause 26 says that its directors, officers, employees are deemed not to be employed in the Public Service.

You see what we are doing here. We are creating these hybrid organizations — Parliament is creating them, Parliament is funding them, but they are not accountable to Parliament. We are left to speculate, I suppose, not only on what they are doing but also on our own responsibilities for them.

We should insist on a minimum of structured accountability to Parliament in this new centre. I hope and believe that some of the amendments I have suggested will be forthcoming, but I will begin by moving one of my own to provide that the corporate plan and the annual report be tabled in Parliament.

MOTION IN AMENDMENT

Hon. Lowell Murray: Honourable senators, I move, seconded by the Honourable Senator Oliver:

That Bill C-12 be not now read a third time but that it be amended

(*a*) in clause 32 on page 13, by adding after line 27 the following:

"(4) The Minister shall cause a copy of the corporate plan to be tabled in each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the plan.",

and

(*b*) in clause 33, on page 14, by adding after line 11 the following:

"(5) The Minister shall cause a copy of the annual report to be tabled in each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives the report.".

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

[*Translation*]

Hon. Jean-Robert Gauthier: I would like to speak to what I think is a good motion. May I have a copy?

Honourable senators, we are asking the new centre, which would be created under Bill C-12, to table its working plan through the minister responsible. This is the start of parliamentary accountability. It is absolutely critical to know the action plans of these organizations and to debate them in the Senate. We are responsible for the money that this centre will distribute. We are accountable to Canadians to know if the centre will be able to fulfil the requirements set out in the legislation.

• (1600)

I would like to bring a different perspective to this motion regarding official languages. Senators Mahovlich and Murray have both spoken about this issue. It is important that it be discussed in the Senate. I am not a member of the Standing Senate Committee on Social Affairs, Science and Technology. In the Senate, any senator may attend committee meetings and take part in the debate. In the case of Bill C-12, I participated in the work of the committee.

I am not fully convinced, even though there was some movement by the minister towards a certain linguistic equality, that he understood the amendment regarding the preamble.

The bill's preamble makes reference to the bilingual character of Canada. At committee, and here in the Senate, I was told that the wording was taken from the Official Languages Act. I recognize this. This wording has been part of the Official Languages Act for years, and it is time that it changed. Why? I would like to replace it with a notion of linguistic duality. Why? Because it reflects the reality of today rather than the reality of yesterday.

I have been on the Hill for some years now. Let me tell you, the word "bilingual" is not very popular with the people of Canada. There are 19 million anglophones who speak no French, are not bilingual, but claim to be full-fledged Canadians. I say no to them. We have two official languages. Are the four million Canadians living in Quebec who do not speak English, full-fledged Canadians? Of course they are. The term "bilingual" has probably been poorly explained and misunderstood. There is the concept of individual bilingualism. All Canadians are free to learn another language if they wish and, if they learn another official language, so much the better.

Then there is the concept of institutional bilingualism. The government, Parliament and all of its institutions must be capable of serving Canadians in their language of choice. It is absolutely elementary and basic to require all federal institutions to be capable of serving Canadians in both official languages.

Senator Mahovlich has said that the centre is not a federal institution. I acknowledge that. The government does not want to recognize this new centre as a federal institution, on the grounds that it comes under provincial jurisdiction. Many of the conflicts it resolves fall under provincial jurisdiction. The federal government would not want to interfere in this.

I have read legal opinions on this matter. I accept, with a certain degree of reluctance, that this centre is not subject to the Official Languages Act, because it is not a federal institution. I acknowledge that fact.

As Senator Murray has said, however, if we pass this bill, and if we determine its operation and its application and if we cover the cost — the budget is not huge, but that is not a concern — in principle, if we are to cover the cost, this means we are accountable to the Canadian people. Accountability is important and essential.

Honourable senators, we have recently had some not very pleasant experiences relating to bilingualism. You are no doubt all aware of what happened last week in Edmonton. There was some question as to whether the national anthem was to be sung in both official languages, or just one. Fortunately, the decision was to use both. There is an obvious duality in Edmonton.

Incidentally, I congratulate the Montreal Alouettes on their Grey Cup win. I am not a supporter, but they have shown one thing: determination. They have been wanting the Grey Cup for 25 years. I was pleased for them, but my CFL team is Ottawa.

Honourable senators, the reason I am supporting Senator Murray's amendment is because of my concern for parliamentary accountability. I have served for a total of 30 years in the House of Commons and the Senate. I have always been concerned about accountability. I was even chair of the Public Accounts Committee for years. I made sure that every federal institution came before the committee to defend its Estimates. Since we were accountable to the Canadian public, we had the information required to defend the funds requested.

Honourable senators, I reserve my right to speak to the main motion at a later date.

[*English*]

The Hon. the Speaker: Senator Roche, do you wish to speak to the amendment?

Hon. Douglas Roche: Honourable senators, I wish to —

Hon. Francis William Mahovlich: If I may, I wish to answer Senator Gauthier.

The Hon. the Speaker: The Honourable Senator Mahovlich may put a question or make a comment, but he may not answer because it is not his time.

Would the Honourable Senator Gauthier permit a comment?

Senator Mahovlich: Honourable senators, I should like to answer.

The Hon. the Speaker: Honourable senators, the Rules of the Senate provide that one may put a question or make a comment.

Senator Mahovlich: I have a comment concerning accountability. Bill C-12 includes many provisions in respect of accountability. Clause 14 states that the directors are to be appointed by the minister. Clause 27 establishes an audit committee consisting of at least three directors. Clause 28 provides that the accounts and financial transactions of the centre are to be audited annually by an independent auditor. Clause 31 states that relevant provisions of the Canada Business Corporations Act apply. Clause 32 requires that the centre prepare a corporate plan for each fiscal year and deliver a copy to the minister. The minister is accountable to Parliament.

Some Hon. Senators: No.

• (1610)

Senator Mahovlich: Is the minister accountable to the government? Clause 33 states that the board of directors shall deliver an annual report to minister. Clause 34 provides that for an annual public meeting to discuss the report and other matters. Finally, clause 35 outlines that the minister maintains the authority to dissolve the centre.

Senator Lynch-Staunton: Shame! What was the question?

The Hon. the Speaker: Senator Mahovlich has made a comment. It is provided for under the rules. He may also speak on the motion in amendment. I gather that was a comment. Senator Gauthier is entitled to respond if he wishes.

Senator Gauthier: I understand the role that Senator Mahovlich is playing in regard to Bill C-12, and I believe he is doing a great job. The only point I am trying to make is that the Auditor General should be involved here. All commissioners, whether the Privacy Commissioner, the Commissioner of Official Languages or any other, should also be agents of Parliament, which they are. They are our representatives and speak for us. They should be able to look into this organization to ensure that it complies with the established methods that we have before us to provide for accountability.

I can tell honourable senators right now that I will be looking at this organization to see how effective it will be. That will be the end product here. How effective will it be solving problems? How effective will it be in reaching out to all Canadians? I am sure the honourable senator understands what I mean.

Senator Mahovlich: I do understand the honourable senator.

The expression "linguistic duality" is not an expression in the Official Languages Act, but I do agree that we should change the Official Languages Act. I like that expression.

Senator Gauthier: I completely agree that the phrase is not in the bill, but it should be. I tried hard to get it into Bill S-32 in the last session, but I did not succeed. However, neither is the word "bilingual" in the Official Languages Act nor "bilingual" in the Constitution of this country. Honourable senators will not find the word "bilingual" in the Constitution of Canada. We do find the two official languages, though. There is a quid pro quo here.

Senator Mahovlich: There is much work to be done.

Senator Roche: Honourable senators, I wish to propose a sub-amendment to the amendment of Senator Murray. I begin by expressing my full support for Senator Murray's amendment and the position that he took in his address. Senator Murray, in his speech, touched on an area that will be the heart of the sub-amendment that I will propose; that is, the question of the dissolution of the centre, which is contained in clause 35.

Clause 35, honourable senators, states that the minister may, by order, dissolve the centre for a central reason if he is satisfied that the centre has failed for a period of one year to carry on its affairs and business. I ask the question: What is the criterion that the minister will use?

In raising that question, I wish to speak to the principle at work here. This bill will establish the sport dispute resolution centre, which, after it is set up by law, can then be dispensed with at the choice of the minister. The bill does not say what the specific criterion is, nor does it give us, who are causing the centre to come into existence, any say in ending it.

This is a matter of some concern to me, honourable senators. I recall an instance when legislation provided for the establishment of a body that was then ended by the government of the day, without recourse to legislative action. That was the establishment in the late 1980s of the Canadian International Institute for Peace and Security, otherwise known as CIIPS. It, too, had a board. It, too, was funded. It, too, operated at arm's length from the government. However, in circumstances that were never fully explained to the public, the government of the day at a later period decided to do away with it.

That is wrong. If something is important enough to be established by legislation, then surely the lawmakers who have enabled the organization or the centre to be set up should have some say in its demise.

Honourable senators, the sport dispute resolution centre is central to this bill. The work done by the Standing Senate Committee on Social Affairs, Science and Technology, which examined this bill, certainly went into this in some detail. The summary of the bill states that:

> The enactment establishes the Sport Dispute Resolution Centre of Canada, an independent organization whose mission is to provide to the sport community a national alternative dispute resolution service for sport disputes, and expertise and assistance in that regard.

When we come to the bill and the actual establishment of the centre, clause 9(1) reads:

> A not-for-profit corporation is hereby established to be called the Sport Dispute Resolution Centre of Canada... which shall include a dispute resolution secretariat...

There is no option given here. The centre "shall" provide a dispute resolution process. That must be encoded into law if this bill is accepted the way it is.

Clause 12 provides that:

> The affairs and business of the Centre shall be managed by a board of directors...

There is no option. The precise manner in which the operation of the centre will be under the purview of these directors is set out. However, despite the imperative quality of the language establishing the centre, we are left with a permission that is to be given to one individual, the minister, who will be able to end this centre.

If it was the original intent of the government that this centre operate at the discretion of the minister, why did the government not say this in the beginning and provide for legislation that would enable the minister to set up the sport dispute resolution centre. Therefore, if he sets it up, given the permission under the legislation, he then would logically have the right to end it if, in his judgment, it should be ended. However, that is not what the bill does. The bill does not give the minister permission to set up the centre. The bill says that, under law, the centre shall be set up and so run, funded, operated and supervised by a board.

• (1620)

Honourable senators, I believe that, under clause 35, the minister ought not to have the power to dissolve the centre. I would like to underline that I do consider this centre important. I consider it so important that, once it is established, I want it to be there. I want the Parliament of Canada that enabled this centre to be set up to have some say in whether it will actually be continued after some period.

Honourable senators, I have more things to say in relation to this bill. However, I shall confine myself in this intervention to focussing on the point that I have been trying to make. I now make that point: The minister shall, himself, have some

accountability in any exercise of clause 35. This is the point of Senator Murray's amendment, that the minister shall be accountable to Parliament. Thus, my amendment is aimed at providing the accountability if the minister so exercises clause 35.

Thus, honourable senators, I move, seconded by Senator Murray:

> That the amendment be amended by adding:
>
> (*c*) The minister, in exercising clause 35, shall include in the annual report the reason for the dissolution of the Sport Dispute Resolution Centre.

The Hon. the Speaker: It is difficult to know until the motion is put exactly what the motion will be. In the case of this sub-amendment, before I put the question, Senator Roche, I should draw to the attention of the honourable senators the provisions of *Beauchesne's Parliamentary Rules & Forms 6th Edition* at paragraph 580 that deals with sub-amendments:

> (1) The purpose of a sub-amendment (an amendment to an amendment) is to alter the amendment. It should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment. If it is intended to bring up matters foreign to the amendment, the Member should wait until the amendment is disposed of and move a new amendment.
>
> (2) A sub-amendment must attempt to explain the substance of the amendment and may not substitute an entirely new proposal.

This sub-amendment does not do that. However, I question whether this is an elaboration or variation on something in the amendment, or whether it is a new matter. Accordingly, I ask for leave to proceed with putting this amendment forward in order that it is clear that honourable senators are aware of this concern, and that we are proceeding knowing that and doing so with leave.

Is leave granted, honourable senators, to put the amendment?

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am a bit confused. Why should we grant leave? In no way do I mean to prevent Senator Roche from proposing an amendment. There are certain procedures that must be respected. A sub-amendment may not be added to an amendment currently being considered by the Senate.

Are we to suspend the *Rules of the Senate* in order to allow Senator Roche to propose his amendment to the Honourable Senator Murray's amendment so that both may be considered a single amendment? I would like to understand.

[*English*]

The Hon. the Speaker: Senator Murray's amendments amend clause 32 and 33 of Bill C-12. Senator Roche's sub-amendment deals with clause 35 of the dissolution. Senator Murray's amendments deal with the annual report and the corporate plan. That is why I rose, to indicate that this is more than a sub-amendment. If we are to proceed to include it with Senator Murray's amendment, we should do so with leave.

I take it from the comments of Senator Robichaud that leave would not be granted.

Senator Robichaud: No.

The Hon. the Speaker: Perhaps not.

Before I say more, perhaps I should hear from Senator Roche and Senator Gauthier.

Senator Roche: Thank you, honourable senators. My sub-amendment purports to include in Senator Murray's amendment something that was not there but which is directly relevant to the annual report that Senator Murray's amendment deals with. Although I mentioned clause 35, that was only to indicate what it is that I am talking about: namely, that the annual report, which is the centrepiece of Senator Murray's amendment, would have to include the reason that the dissolution of the centre is being invoked, which the minister can do under clause 35. Clause 35 is not central to my sub-amendment. What is central is the annual report, including the permission for the minister to dissolve the centre. That is why I wrote it in the way that I did.

Senator Murray: Honourable senators, I believe there are a number of problems here. First, because I heard Senator Roche speaking to this issue at committee, I had hoped that he might present an amendment simply to delete clause 35 in its entirety. The consequence of doing so, if such an amendment passed, would be that in order to dissolve the centre, the government would have to come back to Parliament. As the bill now reads, the minister can dissolve the centre. However, Senator Roche has not done that. Perhaps I can persuade someone else to do it at the appropriate time.

There is another problem with Senator Roche's amendment, however, and I have just been seized with the draft. The amendment reads:

> The minister, in exercising clause 35 —

— which is the clause that would authorize her to dissolve the centre —

> — shall include in the annual report the reason for the dissolution of the Sports Dispute Resolution Centre.

The annual report referred to in my amendment is the annual report of the Sports Dispute Resolution Centre.

• (1630)

I do not think that we could accept an amendment that purports to let the minister include something in an annual report that is not hers.

Even if Senator Roche wants to make a provision that the minister will be able to exercise her authority to dissolve the centre, but would have to explain to Parliament why, he would need to draft another amendment to do that. This one falls short of his objective.

The Hon. the Speaker: Is the honourable senator no longer seconding this amendment?

Senator Murray: I am always prepared to extend the courtesy of seconding.

The Hon. the Speaker: Senator Roche, it appears that there are problems with this sub-amendment, which I have already pointed out, plus some other problems. Accordingly, the time for this type of motion to be brought would be after we have dealt with that which is on the floor of the Senate now, which is the amendment proposed by the Honourable Senator Murray.

Senator Roche: Honourable senators, I understand the point that has been made. I am willing to withdraw my sub-amendment. I have made my point. I was prepared to advance an amendment, but I was under the impression that it would not be permitted, as there was one amendment on the floor.

The Hon. the Speaker: We make exceptions sometimes when we stack amendments, but that is done with leave and there is no leave. The honourable senator does not need to withdraw the motion because the question has not been put. The honourable senator has spoken on Senator Murray's amendment, and the sum of what has transpired is that the proper time for him to put his amendment will be after we have disposed of the amendment on the floor.

On motion of Senator Robichaud debate adjourned.

EXPORT AND IMPORT OF ROUGH DIAMONDS BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Sibbeston, seconded by the Honourable Senator Milne, for the second reading of Bill C-14, providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for the export of rough diamonds in order to meet Canada's obligations under the Kimberley Process.

Hon. Roch Bolduc: Honourable senators, I rise today to address at second reading Bill C-14, regarding controls on the export, import or transit of rough diamonds. This legislation is the end result of a process initiated by African countries hoping to stop, or at least limit, the use of rough diamonds to finance rebel groups in a number of nations torn by conflict.

Known as the Kimberley Process, it is a scheme started in 2000 at Kimberley, South Africa and developed by representatives of various governments in conjunction with the diamond industry to provide a certification process to try to ensure that all the rough diamonds traded between participating nations are legitimate in the sense that they do not originate from rebel-held areas. The intention is to support the sanctions of the United Nations Security Council.

Marilyn Monroe, in what became her signature song from the 1953 film, *Gentlemen Prefer Blondes*, proclaimed "diamonds are a girl's best friend." I do not agree with that, but that is the way it is.

Their relative rarity and beauty, when cut and polished, have made diamonds a valued and valuable commodity, items to be treasured. In this category, there have been a number of large diamonds that have achieved their own measure of fame, including the Kohinoor diamond and the Great Star of Africa, both currently part of the Crown Jewels of England.

Another well-known diamond is the Regent, which weighed 410 carats in the rough when it was found in 1701. It was subsequently cut in a cushion-shaped brilliant cut and worn in the crown of Louis XV. Following the French Revolution, it was set in the hilt of Napoleon's sword, which is currently on display at the Louvre.

Honourable senators, perhaps the most famous and notorious diamond is the Hope Diamond, which has been renamed several times during the course of its supposedly unlucky history. Believed to be found in India, it was cut to 67 carats in 1673 and was set in gold as a pendant for King Louis XIV, at which time it was known as the Blue Diamond of the Crown or the French Blue.

This diamond disappeared during the French Revolution. It was bought by Henry Philip Hope in 1830 in London. Following a string of bad luck during which all the members of the Hope family died in poverty, it travelled through the hands of other owners who similarly found themselves suddenly and unexpectedly in need of cash. This record of bad fortune ended when the diamond was donated to the Smithsonian Institution in Washington.

However, bloodshed was not among its believed failings. The notion that individual gems can be cursed makes for interesting stories and the details told by various others to this affect are myriad.

Honourable senators, in recent times reality has exceeded the most chilling fables ever told. Commonly referred to as "conflict diamonds" or "blood diamonds," the flow of rough diamonds from war zones to jewellery stores has helped finance mass terrorism, rape, torture and mutilation in Africa on an almost unprecedented scale. Of course, it is the diamond producing countries wherein the problem lies, with greatest focus on Angola, Sierra Leone and the Democratic Republic of the Congo, all of which are signatories to the Kimberley Process.

Sierra Leone's people had suffered more than eight years of civil conflict when the United Nations established the United Mission in Sierra Leone in 1999. Subsequently, on July 5, 2000, the Security Council imposed a ban on a direct or indirect importation of rough diamonds from Sierra Leone that were not controlled by the government through a certificate of origin scheme much like that proposed by the Kimberley Process. At the time of the ban, official diamond exports from Sierra Leone amounted to only $2.25 million as contrasted with an industry estimate that actual production amounted to some $105 million. Thus, there have been roughly $100 million in revenue from illicit diamond exports that accrued to financial armed conflict and criminal activity.

One of the difficulties in Sierra Leone from a control perspective is that the diamonds are not concentrated in a limited location. They are spread over a large area of the country, and are usually found by impoverished individuals who spend their time digging manually or with rudimentary equipment and sifting through the sand and soil in locations where they think diamonds might be found. It is difficult work that might be compared to the initial gold rush work in California — where my grandfather went, by the way — Alaska and Yukon.

During the early part of the conflict in Sierra Leone, smuggling of diamonds ran alongside mainstream commerce. When the professionals fled the country, the business was left to diamond runners who serviced those involved in the war. Since the establishment of relatively peaceful conditions following the coup in 1999, those doing business outside established channels have clearly been operating without even a pretext of legitimacy.

• (1640)

One of the difficulties has been the absence of legitimate professional buyers. Without an appropriate market to establish and maintain fair pricing within the country, smuggling has been the more profitable route to take. In the normal situation, one would expect that smuggled items would be sold at a discount and should be less profitable. The story in Angola is similar, with a Security Council resolution on June 24, 1998, prohibiting the direct or indirect import of diamonds from Angola other than those controlled through a certificate of origin issued by the Government of Angola.

Conflict diamonds continue to fund rebel groups in these countries and have been a significant factor in the duration of the wars. On the other hand, legitimate diamonds have contributed to prosperity and development in many parts of Africa. It is important to ensure that this aspect of the diamond industry is not overlooked or crippled by attempts to control the trade in conflict diamonds.

One of the problems that the diamond industry has faced is that the financing of rebellions, particularly of rebellions of the vicious and brutal nature seen in Africa, has begun to change the general high regard in which diamonds have been held worldwide. It might be argued that the Kimberley Process being implemented by Bill C-14 is in part a measure to restore consumer confidence and the sparkle to the image of diamonds.

Unfortunately, both the Kimberley system and the bill itself contain inherent failings which make it unlikely that they will accomplish the primary objective of ending the trade in conflict diamonds.

First, the structure of the certification system means that Canada will almost certainly be in breach of its World Trade Organization obligations. If the trade to particular nations is restricted, those that are signatories of the protocol of the treaty, a kind of protectionism is achieved. In one way, it could be perceived as such. While this may or may not give rise to trade challenges, it should be borne in mind we are intentionally implementing a system that is in violation of other commitments, and it will be important to consider whether the good that we hope and anticipate will come from the Kimberley Process will outweigh the harm done to the reputation of the World Trade Organization countries participating.

Second, there is no independent monitoring process to determine whether the participants in the Kimberley Process are complying with its requirements. We might naturally have confidence that Canada will meet those requirements, but the fact that Canada is now not meeting its World Trade Organization obligations suggests that everyone else will have reason to doubt, just as there may be doubts about other signatories.

Third, the Kimberley Process itself does nothing with regard to cut and polished stones or jewellery, and Bill C-14 is completely silent on this issue. Once work has been done on the rough diamonds, they fall back into anonymity and the whole purpose of the certification system may be defeated. In this context, it should be noted that the comparable legislation under consideration, but not yet passed, by the United States explicitly covers both polished and jewellery containing diamonds.

In the absence of change to Bill C-14, it would seem that Canada will be following on this issue rather than leading. On this point, the diamond industry has indicated that it has planned to design a form of warranty consisting of a theoretically traceable chain of certificates from the mine right through to the finished jewellery. Since the current proposal is that the warranty will basically consist of a statement that the diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds, there is some doubt about its effectiveness. To put it another way, the statement is about as reliable as the unsubstantiated word of the supplier.

Finally, the certification system is not being funded on a cost recovery basis. Thus, it is the taxpayer who will likely be picking up the majority of the expenses for an industry that generates a huge amount of wealth worldwide each year. Keep in mind that the value of rough diamonds each year is roughly $10 billion, and the annual value of those finished diamonds and accompanying settings in jewellery is in the neighbourhood of $75 billion.

Briefly summarized, Bill C-14 may well turn out to be nothing more than a costly ineffective measure in contravention to our WTO obligations, with the primary effect being in the nature of a public relations program on behalf of the diamond industry. However, I would not want to leave honourable senators with the wrong impression. The fact is that Canada now has a significant diamond mining industry with roughly 4 per cent of the world's annual diamond production by volume and 6 per cent by value. We have a number of additional mines scheduled to go into production over the next decade that are expected to raise our nation's stake in world diamonds to 17 per cent by value. This is not negligible for a country like Canada, particularly since those businesses will be located in some regions of Canada that need them. That is why I can understand Senator Sibbeston's interest in this subject.

In addition, Canada is an exciting frontier for exploration for further discoveries, with exploration activities in Canada accounting for almost half of the world's investment dollars.

Whatever else may be said about it, the Kimberley Process initiative to limit or eliminate the use of rough diamonds in the funding of conflict is one that we cannot ignore. Indeed, we have to be part of it, if for no other reason than we require a market for the diamonds we produce. Even though Canadian diamonds would not and could not be presently classified as "conflict" or "blood" diamonds, the Kimberley Process is one that forbids export to or import from countries which are not signatories. Simply put, Canada cannot afford to risk being excluded from the majority of the diamond-trading world.

Thus, although the Kimberley Process itself and Bill C-14 have potentially serious flaws that are likely to limit their effectiveness, we have to be generally supportive of this initiative.

Honourable senators, it may be that we will be able to make improvements to the bill during committee hearings. I certainly am looking forward to hearing about the progress that other signatory nations have made in devising and implementing comparable legislation. While the title of Ian Fleming's memorable *Diamonds are Forever* may be a truism, we hope the impact of international controls on conflict diamonds will be to ensure that "War is Forever" in diamond producing countries does not become a truism as well.

[*Translation*]

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, would Senator Bolduc take a question or two?

Senator Bolduc: Yes.

Senator Lynch-Staunton: I was not going to ask you if your grandfather had invested his $10,000 in diamonds.

This bill, if I understand correctly, stems from an international treaty or agreement. Is it a treaty or an agreement?

Senator Bolduc: It is a process that was agreed to between countries. Apparently there would be sanctions by the Security Council. There was some sort of government approval for implementation. I cannot confirm this for you. Since I do not want to misspeak, I will provide you with an official response tomorrow. I do not want to let my imagination get the best of me.

[*English*]

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

• (1650)

CODE OF CONDUCT AND ETHICS GUIDELINES

MOTION TO REFER DOCUMENTS TO STANDING COMMITTEE ON RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Carstairs, P.C.:
>
> That the documents entitled: "Proposals to amend the Parliament of Canada Act (Ethics Commissioner) and other Acts as a consequence" and "Proposals to amend the Rules of the Senate and the Standing Orders of the House of Commons to implement the 1997 Milliken-Oliver Report," tabled in the Senate on October 23, 2002, be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.

Hon. Serge Joyal: Honourable senators, it is a privilege for me this afternoon to share my thoughts with you on this important motion introduced by the Deputy Leader of the Government in the Senate.

However, first, I should like to commend Senator Oliver for his work in 1997 on the committee that published the important report to which his name is attached, the Oliver-Milliken report. This report is an essential contribution to the discussion of a potential code of conduct for senators and members of the other place.

Before I address the substantial issue at stake this afternoon, I am tempted to follow his path and establish some of my credentials on the subject with which we are dealing. I would like to remind you, as he did of his earlier years in school, that the thesis of my Master of Administrative Law was entitled *The Disciplinary Power of Public Authorities in Canada, the United Kingdom, France and the United States*, and yes, I did get my degree. That was in 1969, so it was a long time ago.

As for the subject we are discussing today, I went into my own files and discovered that after I had been elected to Parliament in July 1974, one of my first speeches in the other place was about a code of ethics, and I can quote verbatim what I said in December 1974 because it is of relevance today:

> I believe that a code of ethics should be adopted and my colleagues in the House of Commons should be interested in promoting such a code.

Honourable senators will understand that the subject was a hot issue in 1974. I understand that it still is, so I am privileged this afternoon to share my thoughts with honourable senators on this issue.

Honourable senators, the Senate is a self-regulating body. It already has its own rules and mechanisms in respect of the ethics of its members. We all know that in the *Rules of the Senate*, rule 65(4) and rule 94 deal specifically with conflict of interest. I will remind honourable senators that the Parliament of Canada Act, in sections 14 to 16, deals essentially with the contractual capacity of members of Parliament vis-à-vis the government and, of course, prohibits contracts between members of Parliament and the government or government agencies.

I must also remind honourable senators that the Criminal Code, at sections 119 to 121, deals specifically with the issue of bribery and corruption and has been the object of various judgments in the past. We addressed very superficially that issue in the Criminal Code with Senator Sparrow last week.

What can we say? We have some rules entrenched in statutes and in the rules of this place, and I think it is an important element to remember that. Why are we asked today to deal with this issue? Has recent history shown that the existing rules are ineffective? In fact, in the past, when we had to deal with issues of conflict of interest, the rules in the Parliament of Canada Act, the Criminal Code and the Rules of the Senate proved to be of use and were efficient. If we are asked today by the Deputy Leader of the Government in the Senate to deal with this issue, it is essentially because we are called to address whether or not the present rules meet the higher expectations of the public, and whether or not existing rules meet contemporary needs. That is why we are debating this issue, honourable senators.

I think we must ask ourselves why we have ethical standards for parliamentarians. In my humble opinion, such standards are not simply a set of dos and don'ts. Ethical standards essentially embody the honour and commitment to public service shared by the members of this chamber, the ethical standard of each and every member of this place.

The adoption of a code of conduct as proposed by the government raises the basic question of proportionality, the balance between the rights to privacy of individual senators, on the one hand, and the maintenance of public trust in legislators on the other. This is the essential judgment that we have to make when we evaluate a proposed code of ethics. In other words, individual senators have a right to privacy as Canadians, and that right to privacy has to be balanced with the right of the public to maintain its trust in the institution that has a paramount legislative responsibility.

The package that has been proposed by the government, in my humble opinion, raises three fundamental issues. Three sets of principles are, in my opinion, at stake in the government's proposal. The first point is that the chamber, our chamber, is the sole master of the rules regarding the conduct of its members. This is fundamental. The second point is that the Senate is an autonomous house of Parliament. This is also fundamental. The third point is that the structure of government provides for a clear separation of rights and privileges or prerogatives between the executive, the legislative and the judicial branches of government. These are the vital checks and balances of our system of government. In other words, each branch of government — the executive, the legislative and the judicial — is autonomous in its responsibility and master of its privileges and rights.

One could be tempted to ask, "What do we mean by privileges?" I know in 2002 the word "privilege" sounds a little antiquated. It seems that when you have a privilege, you are different from the others. You have something more. You have something that the others do not have. We must understand what we mean by "privileges" when we are discussing Parliament or the legislative branch of government. What does it mean?

Mr. Joseph Maingot, the learned and well known former Law Clerk and Parliamentary Counsel to the House of Commons, in his book published in 1997, entitled *Parliamentary Privilege in Canada*, stated:

> The privilege and control over its own affairs and proceedings is one of the most significant attributes of an independent legislative institution.

What does that mean? It clearly means that a legislative institution has to be the master of its affairs and the master of its proceedings. Maingot goes on to say that the right of a legislative institution to regulate its own internal affairs and procedures from interference includes at least three elements, and the first is the right to enforce discipline on its own members. This right is one of our prerogatives as an autonomous legislative house. The second is the right to administer that part of the statute law relating to its internal procedure. In other words, when there is a matter related to our internal procedure, it is for us to administer, as Maingot states, without interference from the courts. Third according to Maingot, is the right to determine its own code of procedure. Those are the essential elements that we must dispose of when we are talking about privileges of Parliament.

• (1700)

In other words, the privileges, the prerogatives and the responsibilities that we have govern our own affairs and to maintain the control of our proceedings are also enjoyed by the House of Commons.

The Constitution of Canada does not make any distinction between the two Houses in this regard. We enjoy exactly the same prerogatives, the same powers and the same responsibilities for our own affairs. This was the subject of lengthy discussion in the Supreme Court in its landmark *Donahoe* decision of 1993. That judgment is important. Former Chief Justice Lamer and Justice McLachlin, as she then was, discussed parliamentary privilege at great length. I will quote Chief Justice Lamer's comments in respect of the importance of those privileges:

> It is clear that the privileges inherent in legislative bodies are fundamental to our system of government... the maintenance of the independence of the different branches from one another is necessary to their proper functioning.

Honourable senators, it says to each branch of government, "mind your own business." That is essentially the message. The justices stated clearly that parliamentary privilege maintains a separation of the legislative, executive and judicial branches of government.

Justice McLachlin, in the same judgment in 1993, wrote the following:

> ...these privileges must be held absolutely and constitutionally if they are to be effective; the legislative branch of our government must enjoy a certain autonomy which even the Crown and the courts cannot touch.

What is quite clear is that the Supreme Court of Canada, when faced with this issue, recognized the constitutional importance of the principle that we are the master of this house and the other place is the master of its own affairs.

Honourable senators, this is not a new concept. In 1884, more than 120 years ago, Lord Chief Justice Coleridge, in the landmark *Bradlaugh v. Gossett* decision, stated:

> The jurisdiction of the Houses of Parliament over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, "They would sink into utter contempt and inefficiency without it."

For a long period of time, the courts have held that this principle is, if I may paraphrase, sacrosanct to the existence of Parliament and to the balance between the branches of our government.

Honourable senators will understand that this question is asked in the federal context of a bicameral Parliament. I want to stress that our Parliament consists of two chambers, plus the Crown. These are the three elements that constitute the Parliament of Canada. The provincial legislatures, on the other hand, consist of two elements. When the provincial legislatures adopt their own codes of conduct, they do not need to take into account what is happening in another chamber. It is important to remember that we have a bicameral Parliament. Both chambers remain autonomous insofar as their privilege or their prerogative to maintain control over the members remains within their walls.

Honourable senators, this issue is not new. The Fathers of Confederation knew that the Senate must be independent from the government, from the Crown and from the other place. I will quote Sir John A. Macdonald, at the time of Confederation, in reference to the Senate:

> It must be an independent House having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch and preventing any hasty or ill-considered legislation which may come from that body.

Obviously, the Fathers of Confederation understood the concept. They had the clearest perception of reconciling two legislative houses in one Parliament.

The Hon. the Speaker: I regret to advise the Honourable Senator Joyal that his time has expired.

Senator Joyal: Honourable senators, I seek leave to continue.

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

Hon. Senators: Agreed.

Senator Joyal: Honourable senators, the Fathers of Confederation had the clearest idea of what the Senate should be. They knew that there were 10 elements that distinguished our house in terms of composition, role and function from the other place. I will speak to those 10 elements because constitutionally the Senate is quite different from the other place. Allow me to state the 10 fundamental elements of distinction.

First, the government cannot be brought down by a vote in the Senate. We cannot defeat the government and force an election. We can veto a bill, but that does not bring down the government.

Second, ministers of the Crown are not responsible to the Senate. Honourable Senator Bolduc raised this point last week. For example, if a minister of the Crown were in the Senate, we could not bring him down, but in the other place, they could bring him down. If senators were to refuse a minister's Estimates, we could not bring him down in this place.

Third, there is no alternative government in the Senate. We are, of course, divided between the opposition and the government, but the alternative government does not sit in front of me. There is no such thing in the Senate.

Fourth, senators do not usually serve as responsible ministers for government departments. When it happens, it is exceptional and temporary.

Fifth, the composition of the Senate does not determine who forms the government. The number of members on each side of the Senate does not determine who will form the government. It has happened that the minority party in the Senate is the government in the other place. That occurred in the early 1990s.

Sixth, the Senate embodies the federal principle in that it acts on behalf of sectional interest. This notion is fundamental. Our chamber embodies the federal principle, which is that Canada is composed of smaller regions that are less populated and less influential than the central provinces of Canada. Our Constitution has reconciled the fact that there is a heavy concentration of population in Central Canada, with smaller regions outside of that area. The fundamental role of this place is to compensate for the domination of Central Canada in the other place so that smaller regions have an equal power to the voices of Ontario or Quebec in our federal Parliament. This fundamental role distinguishes our house from the other place.

Seventh, the Senate represents minority interests that are underrepresented in the other place. There was also, at that time, religious duality. They recognized that the interests of minorities would be better protected by this chamber than by the other place. This is a fundamental element. That is why I and all of my colleagues from Quebec in the Senate sit for a district. This is linked to the protection in Quebec of our linguistic minority rights.

• (1710)

Eighth, the Senate is appointed, not elected. I do not need to spend a lot of time on this, but this has important implications for the legislation we are debating.

Ninth, senators represent regions rather than ridings. This is an essential element, because we have a broader spectrum of interests to represent instead of a small urban riding.

Tenth, the Senate cannot initiate appropriation and tax bills. We all know that that is because of section 53 of the Constitution Act, 1867.

Honourable senators, if you think these distinctions were not as clearly defined in the minds of the founders as they are today, let me quote George Brown, the Leader at the time of what we call the Liberal Party today.

> The desire was to render the Upper House a thoroughly independent body — one that would be in a position to canvass dispassionately the measures of this House and stand up for the public interest in opposition to hasty or partisan legislation.

In other words, they knew exactly what they were doing, when they entrenched those principles in the Constitution.

All honourable senators know that those principles are at the heart of the functioning and operation of Parliament. That is why the Senate is independent from the Crown, and from the executive government. It did not take the 1993 opinion of Chief Justice Lamer in *Donahoe* to know that. The independence of the legislature from the government dates back from 1689, the Bill of Rights. Our learned colleague Senator LaPierre could tell us the context in which Parliament at that time tried to get from the Crown its own capacity not to be overly dominated by the Crown. That is the basis of the autonomy of Parliament.

All honourable senators know that the honourable justices who wanted to recognize that autonomy state very clearly that there is a clear parallel between the doctrines of the independence of the judiciary and of parliamentary privilege, as the latter is the means by which the Houses of Parliament protect their independence. In other words, it is as I said earlier on: each one must mind its own business. That is the only way the system can function. The courts recognize that clearly.

Honourable senators, when we hold these principles, which are so important to define our institution, and put those principles to the test with the draft bill, then we may come to a conclusion as to whether this draft bill is acceptable or not. This bill, in my humble opinion, raises these constitutional issues.

Let us look into the bill. As far as the independence of the Senate vis-à-vis the executive government is concerned, to me, the bill raises two major points. The bill provides, in clause 72(1), that the Governor in Council appoints the Ethics Commissioner. What does that mean? It means that we lose our responsibility to define and decide who will be the Ethics Commissioner. It falls to the Governor in Council. There is no point for us in voting a resolution as, for instance, when we appoint the Privacy Commissioner, the Information Commissioner, the Official Languages Commissioner or the Chief Electoral Officer. We are asked by resolution to concur with the other place, so we can at least express a clear will.

In this bill, that decision is reserved for the Governor in Council. This is an important element. However, there is another element. If we wish to remove the Ethics Commissioner, what does the bill say? It says that we can petition the Governor in Council. I repeat: petition, through an address. Honourable senators know what a petition is: one asks for permission. That does not mean that you affirm that you have come to the conclusion that the person must be replaced. This means clearly that, in relation to the executive government, we yield our responsibility to decide in our soul and conscience who will be the person responsible for the monitoring of ethics in this place.

My second point is: How is the independence of our chamber maintained in this bill in relation with the House of Commons? Honourable senators, I find in the draft bill that there are five points where we are, I should say, fronting the House of Commons. The first is that there is only one Ethics Commissioner. Our two responsibilities have been fused into one. There will be only one ethics czar, as one newspaper has called him. This is important, and is my second point, because the Ethics Commissioner is appointed for a lifespan of one Parliament, for five years. I have been here five years, and I feel that if we to appoint an officer to help to monitor the ethics rules or the code of conduct in this place, it should not be based on a lifespan of one Parliament. It should reflect the continuity, stability and long-term perspective that are characteristics of our place.

My third point is very serious. Clause 72 (7) of the bill states that any member of either the Senate or the House of Commons can make a request for an investigation, which means that someone in the other place can trigger an investigation on the government leader here.

Some Hon. Senators: Oh, oh!

Senator Joyal: It means that we here can trigger an investigation on a minister of the Crown in the other place. In other words, it mixes the two. Do ethics need to be politicized? Do we need this means to maintain the transparency of our decision-making process?

Some Hon. Senators: No, no!

Senator Joyal: This is very serious because, in a bicameral system, each house should remain responsible for its own constitutional responsibilities. If it is within the power of the other place to bring down the government or to bring down the minister, they must act upon it. However, that is not our responsibility. I humbly submit to honourable senators that we might want to have it. That is another thing. I do not think that we have been operating without it. I do not think that that has been a major cause of distrust of the public in the government. This is not, honourable senators, our responsibility, in my humble opinion.

The fourth point is that the bill envisages or contemplates a joint committee to monitor the rules. This is worse than anything that I can imagine. I do not want to exaggerate this point, but imagine what happened in 1999, where there was a ganging-up in the other place among various parties which I will not name and the kind of scenes that we had against our chamber in the Senate lobby. Imagine that there is a joint committee to debate ethics in which senators are on par with members of the other place and the other place is taking the lead. Where will that leave us? Do we really need this to increase transparency in this place?

Some Hon. Senators: No!

Senator Joyal: If we want to politicize the system, if we want to make the system a political Frisbee between the two houses, fine. However, before putting that into legislation, I ask honourable senators to think of Section 33 of the Constitution Act, which states clearly that we are the chamber responsible for determining the qualifications or the removal of an honourable senator from this place. This is a constitutional responsibility that we have. We must retain that responsibility as long as we operate within the framework of the present Constitution.

• (1720)

Honourable senators, this is a very important issue. Practice tells us that when an officer of Parliament, such as the ones I have mentioned — the Privacy Commissioner, the Access to Information Commissioner or the Official Languages Commissioner — table their reports, what happens in the other place? I wish to quote a study that was done by a learned student of University of Saskatchewan, a thesis that was recently released:

> It is often co-opted by the members of the other place for political gain, while in the Senate, it is used as objective information.

That statement speaks of the political culture of both places. Honourable senators glean this from sitting on Senate committees. What do we do with the reports of those officers of Parliament? Honourable senators have tried to deal with this aspect and understand the functioning of the system. If there is a need to redress, the issue is addressed objectively. Honourable senators need only to read the proceedings in the other place to realize that most often such reports are used for political gain, because members of the House of Commons are elected, and there is a government in waiting on the opposition benches. That situation does not exist in the Senate. Honourable senators try to understand the problems and make recommendations to solve them.

Honourable senators, there is another issue that I wish to raise in relation to the draft bill. The proposed legislation, if adopted as a bill, will become part of the statute law. Clause 72.5(3) says that the privileges of both houses are protected in that bill. Once the bill is enacted — and I will quote the Honourable Senator Beaudoin — a law is a law is a law. When it becomes law, it becomes the responsibility of the courts to adjudicate and arbitrate. Even though a clause would be included telling the courts to stay out of this, the jurisprudence is thick where the court takes the responsibility sometimes with two pinches; however, they nevertheless take the responsibility.

Honourable senators, do we need this draft bill in order to have an efficient code of conduct?

Honourable senators, I wrestle with this matter because, like all honourable senators, I try to maintain the trust of the public in this chamber. Many honourable senators wrestle with policy studies, with attending to legislation through committees and with being here and listening carefully. We can do that as long as the Senate sits. However, we know that the public asks for more. It is fair to question whether the present set of rules meet those expectations and whether they can stand up to public criticism and review.

Honourable senators cannot ignore the situation that would be created if the other place were to adopt its own code of conduct and Ethics Commissioner and in the Senate it remained business as usual. I do not wish to think of the wrath of God that would be over the head of honourable senators if that day were to come.

What do we do? Are we damned if we do and damned if we do not? Honourable senators, there is a way to address this issue. When I was reading about these matters in the report of the Honourable Senator Oliver, I looked into what similar parliaments have done. I looked to the Westminster Parliament, which is a parliament that we cannot ignore. The first preamble of our Constitution says — and I remind honourable senators of it — that we are to have a Constitution similar in principle to that of the United Kingdom. That is the first "whereas" of our Constitution.

I looked at what they did. I discovered that on April 1, 2002, less than six months ago, the Upper House in the United Kingdom, of its own initiative adopted a code of conduct distinct from the code adopted for MPs. They adopted a code distinct from the ministerial code that is the responsibility of the Prime Minister in the United Kingdom. There are three codes: one for the members of the House of Parliament, one for the Upper House and one for the Prime Minister. It is this way for very good reason: Ministers are ministers, and they need to have stricter rules because they have executive power. Honourable senators know what that means in terms of appointments, contracts and the like.

The House of Lords understands that the independence of their chamber is essential to the maintenance of checks and balances in that system. In terms of governance, they have established a subcommittee of the Committee of Privileges that is responsible for the internal review of the code and of its administration. To administer this code, they established a registrar who works under their clerk. They have adopted the position of a registrar who has the responsibility to receive the declarations of the members and to ensure that those declarations meet the objectives of the registry.

Honourable senators may ask what is in the registry. In the registry, there is the disclosure of what they call the "relevant interest." The relevant interest must be defined. Relevant interest is essentially a clear differentiation between what a member owns

and the right of the public to expect that decisions will be taken in the common interest. They have defined that. They even published the registry. If honourable senators search the Internet, they will find a copy of the registry.

This is a clear illustration that the constitutional privileges of this house can be maintained and that a system can be adopted to meet the expectations that all honourable senators want to fulfil in this place.

Senator Nolin has spent hundreds of hours with the members of his committee, on an issue that is difficult and emotional. I am sure that Senator Nolin does not want his good work and the work of his committee to be set aside because it does not appear to be transparent in terms of legislation.

We are all challenged on that basis, individually. We all want to do the right thing. However, the proof has not been evidenced that we must abandon the constitutional principles that characterize our system for the benefit of transparency, and for the benefit of answering to the public that our rules need to be revamped, readjusted and, as the Italians say, the *aggiornamento* has been done in a way that meets the expectations of the public.

MOTION IN AMENDMENT

Hon. Serge Joyal: Honourable senators, I should like to move an amendment to the government motion. I would like the motion that the government has introduced to be amended. I propose, seconded by Honourable Senator Losier-Cool:

> That the committee —

It could be the Rules Committee.

> — in conjunction with this review, also take into consideration at the same time the code of conduct in use in the United Kingdom Parliament at Westminster, and consider rules that might embody standards appropriate for appointed members of a House of Parliament who can only be removed for cause; and
>
> That the Committee make recommendations, if required, for the adoption and implementation of a code of conduct for Senators, and concerning such resources as may be needed to administer it, including consequential changes to statute law that may be appropriate.

• (1730)

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

Hon. Lowell Murray: Might I ask the Honourable Senator Joyal a question?

The Hon. the Speaker: You may, Senator Murray, if he will take a question.

Senator Joyal: Certainly.

Senator Murray: I congratulate the honourable senator on an excellent speech. I am persuaded by many of his arguments, especially those relating to the independence and autonomy of the Houses of Parliament.

However, my question is whether that argument necessarily leads him or would lead us to two different codes of conduct, one for the House of Commons and one for the Senate; and two different officers to monitor them. To put it another way, does the honourable senator have a principled objection to a single code of conduct for both Houses and a single officer, provided that we had the right to appoint that officer?

Senator Joyal: I thank the Honourable Senator Murray for his question.

My clear answer is yes. If that is the route taken, I think the registrar, that is, the officer who would receive the declaration from senators, must remain within the sole control of our house. In the other place, as I said, the other House has different operational principles. They are based, for instance, on an electoral lifespan. They live for five years. The Prime Minister of the day wants to have a say in the selection of the Ethics Commissioner because that commissioner deals with the survival sometimes of his own minister and cabinet and of himself at the extreme limit of it. We are not confronted with that. We are a house that operates on a long-term basis. In fact, in previous bills, in Bill C-6 in 1978, when the government of the day — and, I saw Senator Fairbairn here — introduced a bill, there was the possibility of two registrars. There was the possibility of the appointment of a registrar to serve until the age of 70. In other words, we cut for ourselves the solution that answered our needs. There is nothing in those principles that hurts the proper functioning of a registrar if we have ours and if they have theirs.

As to the codes of conduct, they are fundamental. Our code of conduct must reflect our institutional principles. I have stated those principles earlier. We are here up to age 75. My electorate cannot make a judgment on me if I am a bad parliamentarian or not. Senators should judge me. Once we have acted, the other place is our judge on the basis of what we do. We operate in a different context and a different set of elements that compel our code of conduct to reflect that.

As much as the other place might need to have some code of conduct that reflects their characteristic, we must have one that reflects ours. The differences in the other place are that, again, we cannot bring down the government; they can. They are all ministers-in-waiting in the other place. There is one group on one side and the other one is deferred to the next election. It influences everything. We must have a set of rules that reflect the essential role that we have in the Parliament of Canada and the fact, as I said, that we are appointed and not elected and that we can be revoked only for cause.

Honourable senators are familiar with section 31. There is no such thing as section 31 for the other place. This section deals with vacancies. Although we do not like the person here, we are stuck with that person. No one can remove that person if none of the three causes of removal is met. This is different. This is fundamental. Perhaps there is a need, if we look into a code of conduct that is different and reflects that difference.

Senator Murray: For the sake of argument, what concerns me about my friend's proposition is the clear inference that I draw that what he has in mind, certainly for us, is an extremely detailed code of conduct. When we were being disrespectful students, we used to call it a "Frenchman's Constitution," attempting to cover every possible eventuality. However, I would want a code of conduct to be couched in terms of fairly general principles.

Second, if we go to two separate codes, there is a problem with the obvious comparisons and invidious ones that will be made as to whether one is less stringent than the other. We will spend a great deal of time, or they will, trying to defend ourselves on those points. Surely, the honourable senator would agree — perhaps he would not — that what we strive for is a single code couched in terms of general principle but to which members of both Houses could prescribe.

Senator Joyal: I certainly am not of the opinion that the code should be detailed in a certain way. Here, I am thinking of Senator Bolduc and of *Le petit catéchisme*, where we had to memorize the 361 clauses and recite them all in a row. I think honourable senators will remember that it started with the first one, "Where is God? God is everywhere."

Again, honourable senators, the code of conduct at Westminster contains in its definition two prohibitions and seven general principles. Those principles are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. All their codes are contained in a couple of pages. It is not something that details each and every imaginable situation. That is not the way that I envisage a code of conduct.

On the other hand, there is no doubt that we have our rules. I drew this to the attention of the Honourable Senator Sparrow last Thursday. Our present rules on the issue of conflict of interest are more stringent than the ones in the other place. In the other place, there is only one rule. It is rule 21. That rule 21, which I quoted last week, states:

> No member is entitled to vote upon any question in which he or she has a direct pecuniary interest and the vote of any member so interested will be disallowed.

We have a further rule, rule 94, which compels a senator who has a pecuniary interest, generally, not to sit on such committees and any question arising in the committee.

• (1740)

We go further. If I understand it, the phrase "shall not sit on such committee" means that a senator cannot even ask questions. That senator cannot sit or exercise his or her right of membership. That is our rule 94. It is different from the rules of the other place. The other place does not have such a rule. It is not an affront to rationality to have some distinctions between the two Houses. We already have it in our own rules.

Of course, honesty is honesty. I fully agree with the honourable senator. There is no such thing as Senate honesty versus House of Commons honesty. However, there are different elements, as I have explained in my remarks, that ask from us a higher level at some times, as reflected in our present rules. I am not inventing those rules; I am just reading the little red book that is on the table. That is what the committee should consider, in my humble opinion, if there is need for such elements of qualification.

Senator Murray: In suggesting that we might replicate here in this chamber the provisions that exist in the House of Lords at Westminster, has the honourable senator reflected, speaking of political cultures, on the considerable differences between their upper house and ours?

Senator Joyal: Absolutely. I do not want to spend too much time on this today. I have produced a book on this subject, and the honourable senator is part of it. It is not yet published, but it is coming. There is no question that there are differences. I do not want to give another lecture on this matter, and I do not want to abuse the time of honourable senators. I do not want to abuse your patience. I am not suggesting at all that we just replicate the code of the upper house at Westminster. That is not at all what I am saying. I am saying there is a model that respects the principle of the independence of chambers. That is essentially what I have been labouring to explain. I think that since this is a worthwhile objective to maintain, it is helpful to try to understand how they have done it. However, the upper house at Westminster is essentially different from us on five respective constitutional grounds.

Professor David Smith, who is a learned professor of political science at the University of Saskatchewan, in his chapter in our book goes on at length to establish the differences between the two chambers. I think one thing we can do in the committee is to invite Professor Smith as a witness to help us to understand the differences and to maintain that division, which is essential in our system. I am not at all confusing our chamber with the upper house at Westminster. That is too clear in my mind. There are resources where we could certainly have an opportunity to debate that at length.

Hon. Herbert O. Sparrow: Honourable senators, I should like to ask a few questions of the honourable senator. Perhaps he can answer them all at the same time.

I believe the honourable senator referred to the idea that we must have a code of conduct. That remark would indicate that the honourable senator does not feel that the existing rules are sufficient to control our conduct as far as this chamber is concerned.

The honourable senator also talked about public criticisms and that we are to meet the expectations of the public. It seems to me that any criticism that has taken place in the last while, be it a year or two years, has not been directed at the Senate or the House of Commons; actually, it has been directed at the executive. Somehow or other, we are being caught up in that. Some say that we share that problem, but we do not or we should not. We should be part of the criticism of the actions that are taken. I do not believe that the public, at least at this point, expects that change as far as this chamber is concerned.

We are grabbing at straws to do something to convince the public that we are doing something. It is a smoke and mirrors scenario in that some people believe that we are trying to fool the public by saying, "Yes, we are doing something," when in reality we are already covered. Surely the message we can get to the public is that we are covered and that we are doing these things. I do not know exactly how to coalesce those provisions, but at least they are there, without going to the further extent of having a new registrar or whoever it is to control the actions of the Senate.

In my remarks originally, I stated that we are masters in our own chamber. I hope that is what the honourable senator was trying to tell us today as well. I would like the honourable senator perhaps to repeat that.

Another aspect concerns me. What has happened since Confederation, since the rules were established for an upper chamber and for an independent Senate? What happened to those principles of independence? Have they been encroached on or have we allowed the Rules of the Senate to be encroached on?

Senator Joyal: I thank the honourable senator for his questions.

If Honourable Senator Sparrow got the impression that I was stating that we need a code of conduct, that is not what I said. I said, and I will repeat the motion in amendment, that the committee make recommendations, if required, for the adoption and implementation of a code of conduct. I did not presume what will come out of the committee. "If required" are the words I used. If the committee comes to the conclusion that, as the honourable senator stated properly, the present rules are efficient and sufficient to give us the capacity to meet expectations, and if we have to deliver them in a different form, then the committee will consider that. I am not at all of the view today that we need a code of conduct as they have in the upper house at Westminster. If that is what my honourable friend has in mind, that is not what I have said, and I answered Honourable Senator Murray on this point.

Honourable senators, the second point is that we have to remain masters of our chamber. I have said quite clearly that the proof has not been made that we have to yield those principles in order to review or adopt a code of conduct. That has to be very clear. The proof has not been made that we have to abandon our responsibility to conduct our own affairs. I have repeated that perhaps two or three times, but I am happy to repeat it again.

Finally, with regard to the overall objective that we now have in front of us, it is important, as the honourable senator has said, that we look into what has happened since 1867. It is helpful to look at the history of senators who had to resign for X, Y, Z reasons. How it happened and how the rules were useful need to be looked into. We do not need to rush into it. We have to look carefully at the instances where the Senate, as a chamber, was faced with a conflict of interest situation, or an issue related to the conduct of senators, and at how the rules were helpful in solving the issue.

In the past, we have been able to adopt rules to meet particular problems. We adopted rules two years ago in that regard after the Rules Committee laboured for a long time on a set of proposals that are now part of our red book and that they do not have in the other place. I do not want to expand on this matter today because I do not want to put too many issues on the table, but we do have a much stricter policy in relation to senators who have to answer calls from the court than does the other place. We have that in our book, and we did it two years ago.

• (1750)

If we try to consolidate all the books, including the *Rules of the Senate of Canada*, and all the statutes, most of our answers might already be present. However, we must do that in the committee. As I said, we should review the various cases that have occurred in the past 100 years or so and draw lessons from the past.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, I thank Senator Joyal for his efforts. The last part of his response to Senator Sparrow shed a lot of light on the situation. I conclude that our rules are sufficiently broad to accommodate the constraints of this proposal.

I would have one question about this famous ethics commissioner. You have examined a similar role in the House of Lords. Is the commissioner there independent, or an employee of the House of Lords? Does his job consist solely in keeping records? Does he have a power of recommendation when certain rules of conduct are breached?

Senator Joyal: The registrar is an officer of the House of Lords. He comes under the responsibility of the senior clerk. In other words, as our clerks in the Senate come under our responsibility, he is an employee of the House of Lords, although I do not wish to slight our clerks in any way. It is very clear. This is not an individual whose authority comes through an Order in Council, unlike our clerk here. That is very clear.

The other part of your question is important. It raises the issue of the ability to obtain from this registrar an opinion which can be followed, and thus to be protected against outside allegations, which might have an adverse affect on a person's reputation as well as that of the institution. The registrar has this responsibility to provide an opinion. When a member of the House of Lords complies with that opinion, he is protected. Consequently, there is a way to maintain individual and institutional integrity by following the advice received from the registrar. He does not merely write things down in some big ledger, he provides advice. This is no different than what we have in the Senate at the present time with our legal counsel.

The honourable senator will recall his arrival in this institution. At my first sitting, I greeted the clerk of this institution and then met with the legal counsel, with whom I was required to speak in order to ensure that I was not in conflict of interest, under sections 14 through 16 of the Parliament of Canada Act, and that I was thoroughly familiar with the contents of the little red book. We already have a legal counsel who assists us in our work.

As Senator Sparrow indicated, we are not starting from zero. There are already elements of our system that we must study and consider whether it would be worthwhile to include these notions — and to use the well-known legal expression — to see if it meets our objectives. We must first identify these various elements.

Senator Nolin: In the list of arguments raised by Senator Joyal, the one that most interests me has to do with clause 33.

I would ask him to confirm that there is nothing in his proposal that would threaten our power to decide for each and every one of us, for all of us as a body. The Senate would have full authority to decide the rules for each senator, individually. Am I following the senator?

Senator Joyal: Exactly, that is the gist of Senator Oliver's proposal. Your name should have appeared first on the report; that would have spared confusion.

That is the gist of Senator Oliver's second recommendation: Everything related to the code of conduct must come under the responsibility of the Senate and remain under the control of the Senate. My proposal is that we should not have to prove otherwise.

Senator Nolin: If we were to prove this, it would only be an argument to suggest a constitutional amendment.

Senator Joyal: To the limit, as they say in English —

[*English*]

I like the expression in English. I wrestled with that.

[*Translation*]

There is no literal translation of that expression in French. What will the impact of enacting this legislation be? It will impact upon section 18 of the Constitution, which states that we are the ones who determine the extent of these responsibilities. Section 18 is very clear. We cannot use section 18 to deny section 31. Honourable senators are aware of the principles of constitutional interpretation: one cannot have one section state the opposite of what another section very clearly defines. There is no doubt in my mind.

[*English*]

They are sound principles, and we must stick to them.

Hon. Colin Kenny: Honourable senators, I have a question for Senator Joyal, if I may. First, I thank the honourable senator for his remarks. He did the chamber a service.

I am a tad confused, given the nature of the Constitution, the Criminal Code, the Parliament of Canada Act and our rules. They seem to work well. We seem to be wandering around looking for a solution for which there is no problem.

Why is an amendment of this nature being put before us? Looking at the United Kingdom example, if I am following the drift of the argument correctly, we already have a solution that works pretty well.

We have not had a series of problems here. When there have been problems, one of the elements that I mentioned earlier dealt with the problem. Why is the honourable senator proposing this amendment rather than taking a look at consolidating matters in a fashion that would be comprehensible to the public, and presenting it in a way that the public would accept?

Senator Joyal: Honourable senators, I thank the honourable senator for his question. I do not think that the approaches are mutually exclusive. They are part of the same process. I have drawn the attention of my colleagues this afternoon to the example of the system that has been implemented in the upper chamber at Westminster essentially because the proposal introduced by the government in the form of a draft bill would go head to head with some constitutional principles that, until now, we have maintained in regulating the conduct of senators.

• (1800)

My approach is such that the government has asked us to do something that would effectively have us abandon that responsibility. If we were to be asked to do that, then we should look into a system where they did something such that they did not need to do that. The second part of my proposal —

The Hon. the Speaker: Honourable Senator Joyal, with my apologies, it is my obligation to inform honourable senators that it is now six o'clock. Is it agreed, honourable senators, that we not see the clock?

Hon. Senators: Agreed.

Senator Joyal: We have a draft bill before us that, in my opinion, harms those essential elements of our Constitution and the very characteristic of this chamber. I asked if it would be possible to have a system that would not cause any harm. I was told that there is such a system. I did not set aside the suggestion of Senator Sparrow that there is baggage accumulated through years and centuries of decisions, rules and precedents, whereby we have rules. As Honourable Senator Nolin said, these rules have been dispersed. The first exercise should be to try to determine what we have and, on the basis of that study, determine the next step. I am not putting the cart before the horse but I am trying to understand the various implications of the initiatives. The committee, if necessary and if required, could make a recommendation.

Senator Kenny: If I may, honourable senators, why is the honourable senator not proposing to the chamber precisely that? Why is the honourable senator proposing that we look at Westminster rather than at the consolidation and compilation, as he described it, that seems to be working so reasonably well?

Senator Joyal: Honourable senators, one is not exclusive of the other. If the honourable senator will look into the second paragraph of the recommendation, the committee could look into the practice that we have followed. I quoted some of the rules and some sections of the Parliament of Canada Act and of the Criminal Code, wherein there are, in my humble opinion,

problems. I have mentioned that problem before to honourable senators. The Law Reform Commission in 1987 first identified the problem. The Stanbury-Blenkarn Committee in 1992 identified the problem and advised the committee to look into it. It is part of the rules and the statutory obligations that we need to examine before we make a recommendation. It is part of the same exercise that the committee, under the chairmanship of an able senator, will have the opportunity to examine and define the various elements of this proposal.

I have tried to put this in a constitutional context so that we could well understand what we will be dealing with in that proposal. On that basis, the committee will have an opportunity to review all of the dispersed elements of our code of conduct.

Senator Kenny: Without belabouring this debate, is the honourable senator confident that the study will take place? Will it require a further amendment to ensure that there is an examination of this compilation, and that it is included in the study?

Senator Joyal: Honourable Senator Kenny, I like the fact that, in this chamber, we are all equal. If Senator Kenny feels that a sub-amendment should be included in the terms of the reference for the study, I would consider the possibility. I invite the honourable senator to offer a sub-amendment.

Senator Kenny: Honourable senators, I have a final question for the honourable senator. If there are two different approaches, one here and one in the other place, at the end of this exercise, what advice does the honourable senator have for the chamber in terms of the perception of the two different approaches? Clearly, the perception is important, and how the public sees us is important.

If I follow the honourable senator's reasoning, he is suggesting that we have a code of conduct, or an approach, that is appropriate to the chamber, and that they in the other place have an approach that is equally appropriate for them. Senator Murray hinted at the possibility that invidious comparisons are avoided by having an identical approach. Given that the two chambers are not identical, such an approach, in my view, is out of the question.

How should we clearly demonstrate to the public that we have a rigorous, effective, working code of ethics?

Senator Joyal: I thank the honourable senator for his question. First, I would point out that when our colleagues requested that the chamber do a special study, it sparked a special study that had a communications package attached to it. There is no doubt that the committee charged with this study must consider that as part of the responsibility of the committee.

On the other hand, if we were to come to the conclusion that the existing, dispersed rules needed to be consolidated in a set of guidelines, specifically, oriented on the nature of the conduct of senators, we could do that as well. We could do that now. We could charge a group of researchers to prepare that and come up with a consolidation. However, we will definitely need something in our hands to show that we have rules.

Perhaps some other honourable senators have heard that some people think that we have no rules. In all fairness, when I looked into that I was surprised to discover that we have so many rules. It was only when I began to dig into it that I realized we had a set of elements that needed to be put together in a visible form. Perhaps that will be the conclusion required to answer the criticism that was mentioned. We will have to say that we have an efficient and transparent system. We must look into the package on that basis, and that is up to the committee. It is a worthwhile exercise.

The first element that drew my attention when I read the draft bill was its institutional question. That was my preoccupation.

On motion of Senator Beaudoin, debate adjourned.

• (1810)

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

The Hon. the Speaker: Honourable senators, before calling the next item on the Order Paper, Senator Banks has requested the floor to ask for leave.

Hon. Tommy Banks: Honourable senators, I request leave of the Senate, notwithstanding rule 95(4), that the Standing Senate Committee on Energy, the Environment and Natural Resources have power to sit now, even though the Senate is sitting, because we have witnesses, some of whom have come from out of town and have now been waiting for an hour. I should like to not keep them waiting any more, if possible.

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

Hon. Senators: Agreed.

Motion agreed to.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Donald H. Oliver: Honourable senators, with leave of the Senate and notwithstanding the rules of the Senate, I should like to make a similar motion to that of Senator Banks for the Standing Senate Committee on Agriculture and Forestry. We have had witnesses waiting since 5:30. We should like to proceed with our study on climate change.

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

Hon. Senators: Agreed.

Motion agreed to.

Hon. John Lynch-Staunton (Leader of the Opposition): I should like to move that the Senate sit while the committees are sitting, if anyone is left in the chamber.

PERSONAL WATERCRAFT BILL

SECOND READING—DEBATE ADJOURNED

Hon. Mira Spivak moved the second reading of Bill S-10, concerning personal watercraft in navigable waters.

She said: Honourable senators, Bill S-10, the personal watercraft bill, is essentially the same bill introduced in the last session of Parliament as Bill S-26. Like its predecessor, its function is to give local communities choice and local control over a significant problem in their lakes and rivers, a problem that arose some 10 years ago and begs for a resolution.

I speak, of course, of the use of personal watercraft, also known as Jet Skis or Sea-Doos, in areas where they pose an undue threat to safety, to the environment and to everyone's personal enjoyment of the waterways.

The bill received what I can only describe as a surprising level of interest and unsolicited support. Some 74 organizations are now behind it: municipal associations, cottagers' associations, wildlife groups and others who are chagrined by the status quo. More than 500 letters, as well as signatures on petitions, arrived unsolicited from Canadians, many of them asking what they can do to advance the proposed legislation. In addition, there was considerable interest in magazines, newspapers, radio and television.

Earlier this year, I also received a letter from the Minister of Fisheries and Oceans, who is responsible for the Canadian Coast Guard that regulates small vessels on our lakes and rivers. He is now the former Minister of Fisheries and Oceans, but what he wrote is instructive. Among other things, he said: "Where it can be demonstrated that a certain boating activity poses a danger to the public or is harmful to the environment, a boating restriction may be imposed for the purpose of controlling or prohibiting navigation." That is exactly what Bill S-10 proposes to do: to allow local communities to determine where personal watercraft can be safely used and where their use poses a danger to the public or is harmful to the environment; to have them propose the restrictions that are needed and acceptable; and, finally, to have the federal government, which has sole jurisdiction in these matters, to put them into effect by amending a schedule.

A reasonable person might ask why we need this bill if the minister acknowledges that a boating restriction is possible. To answer the question, we must read further in the minister's letter. Although the Coast Guard allows communities to restrict waterskiing or to set speed limits for all boats on their lakes, it does not allow them to restrict the specific use of personal watercraft. As the minister said, such a move would be considered a major change to current policy.

What this bill would do is change policy. It could be effected by a very simple regulatory change, but neither senators nor members of Parliament can amend regulations, which is another issue in itself. Bill S-10 mimics what the Coast Guard officials proposed to do in 1994, which appeared in the *Canada Gazette* as a proposed regulation, until something happened to change government policy. How did that first policy arrive, the policy to allow communities a choice in the matter and why was it changed? Coast Guard internal documents made available only this summer through Access to Information law helps us to piece this together.

According to these documents, Coast Guard officials were well aware of the problem. Its Rescue and Environmental Response Division had found that personal watercraft have a higher rate of collisions than any other small vessel. A disproportionate number of calls on its 1-800 boating safety hotline were about personal watercraft.

Parks Canada also had the skinny on these thrill craft. Its officials wanted the restrictions to keep personal watercraft away from swimmers and surfers in Pacific Rim National Park where a number of incidents had occurred.

The RCMP had accident figures from across the country and the police were concerned. Honourable senators get the picture.

Coast Guard officials discussed PWC restrictions at a meeting with provincial representatives because there were "increasing demands to have such a specific restriction by municipal administrations." It was then agreed to select one application for such a restriction where full public consultation was done.

The test case was a community in Quebec. By decision of provincial minister Ryan and Transport Canada Minister Corbeil, the Coast Guard received the application and published it in Part I of the *Canada Gazette*. This agreement with the governments came unglued. According to a letter from a Saskatchewan official who wanted that province included in the federal regulation, he had discussed it in the months before the June 1994 publication in the *Canada Gazette* and was advised that "the subject was under a cabinet seal of secrecy at the time and could not be discussed."

When the Coast Guard's compromise to allow communities to set speed limits for PWCs and times of day for their use emerged in the *Canada Gazette*, there was a great hue and cry, mainly from the marine manufacturers of personal watercraft.

What the internal documents describe as a "balanced regulatory regime" went out the window. This bill attempts to restore that balance.

A regulatory regime unduly influenced by one segment, in this instance the marine manufacturers, is unworkable. We have ample evidence that it is not working. The spontaneous outpouring of support for this bill is one piece of evidence that the status quo is not working.

Another piece of evidence is the CHIRPP data, emergency room information collected and analyzed by Health Canada under the Canadian Hospitals Injury Reporting and Prevention Program. The status tells us that PWC use results in a disproportionate number of injuries. All things being equal, personal watercraft should account anywhere from 3 to 5 per cent of the emergency room injuries. In fact, they account for more than 20 per cent of them.

The clearest piece of evidence that this is not working is the action by provinces that are no longer prepared to sit by and watch PWCs and power boats harm their drinking water, their environment and the safety of others on or near their lakes and rivers.

• (1820)

In British Columbia, a municipality has banned personal watercraft from a lake on Vancouver Island.

In New Brunswick, in the interests of protecting their watersheds, provincial authorities have banned all motorized watercraft from some 30 lakes.

Last summer, in the interests of safety, the Quebec government gave municipalities the authority to set near-shore speed limits, and it is widely expected to soon ban gas powerboats on small lakes.

None of these provincial or municipal actions are in keeping with the constitutional division of powers, under which the federal government has sole jurisdiction over navigation, the sole right to set limits on when and where boats can and cannot go. In the absence of federal action, however, these actions are morally, if not constitutionally, justified.

A better course would be to do what Bill S-10 proposes to do: to respect the federal government's constitutional authority while acknowledging the need for local choice and control. Bill S-10 does this by requiring a resolution from a local authority, together with proof of consultation, to come to the federal minister for publication in the *Canada Gazette*. It would require a public comment period, and it would give the minister the right to deny the requested restriction if it would unduly impede navigation.

Bill S-10 is much the same as its predecessor, except in the penalties clause. When we were drafting Bill S-26, the Canada Shipping Act was up for review. This is the act that gives the government its authority to make boating restrictions regulations. There is a penalty section in that act. Our legal drafter was led to believe that the maximum fines would increase; however, he did not know for certain, and he estimated too high. Therefore, in Bill S-10, we have reduced the fine to keep it in line with the fine under the revised Canada Shipping Act. Anyone who operates a PWC in a restricted area under this bill would pay the same maximum $500 fine that a boat towing water skiers would pay if convicted of a breach of a regulation under the Canada Shipping Act.

I do not expect that Bill S-10 will be needed everywhere. I hope it will not be needed in the majority of our lakes and rivers. Voluntary codes, negotiated settlements and good common sense by personal watercraft users should solve many of the problems. However, where a certain "boating activity" poses a danger to the public or is harmful to the environment, local authorities should be able to apply for a boating restriction as they do for other boats. Bill S-10 will give them the means.

I will not reiterate all of what I said about the previous bill. I simply hope that we can quickly bring this bill before the Standing Senate Committee on Transport and Communications.

On motion of Senator Cook, debate adjourned.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, given how late it is and given that certain committees are meeting right now, I move, with leave of the Senate, that all items on the Order Paper that have not been reached stand in their place on the Order Paper until the next sitting, and that we proceed with adjournment.

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

Hon. Senators: Agreed.

The Senate adjourned until Wednesday, November 27, 2002, at 1:30 p.m.

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