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OFFICIAL REPORT
(HANSARD)

Thursday, December 5, 2002

THE HONOURABLE DAN HAYS
SPEAKER

CONTENTS

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THE SENATE

Thursday, December 5, 2002

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

Prayers.

SENATORS' STATEMENTS

EIGHTY-FIFTH ANNIVERSARY OF HALIFAX EXPLOSION

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I rise today to commemorate the eighty-fifth anniversary of the Halifax Explosion on December 6, 1917. The explosion in Halifax of that year was a bit like our Ground Zero. Many Canadians do not know that, in a city of 50,000 people, over 2,000 died either as a direct or indirect result of the collision of two ships, the *Imo* and the *Mont Blanc*, in Halifax Harbour.

My father was a high school student. He watched the windows of his classroom implode on the students. Those children made their way home through the streets of Halifax to discover that friends' homes had disappeared from sight. He was luckier in that when he reached his home, although the roof had come off the top of the building, the house was still habitable in the basement and the main floor. That is where 10 children awaited the arrival of their father.

When their father arrived, like so many Haligonians and some Dartmouthians, the children learned that he was injured. A piece of shrapnel had gone into his leg. Although, today, that would be a minor injury, in December of 1917 it was an injury that led to gangrene and eventual death.

The 10,000 people who were injured included two characters to whom my father referred — Bill "Peewee" Shea and Bernard "Kid" O'Neill. Peewee Shea woke up in intense darkness and realized that the men on either side of him had been killed. He heard a voice that he recognized calling him, and he ended up in Camp Hill Hospital. He was temporarily blind but did recover sight in one eye. The other eye was amputated. They fixed up his battered leg and he lived with the evidence of the explosion for the rest of his life. Many of the victims retained vivid blue lines on their bodies, particularly on their faces, as a result of the severity of the explosion. As a child growing up in Halifax, as I walked down the street, I could see who had been a victim of the Halifax Explosion.

If one looks carefully at the Estimates from that time, one will see a line item that refers to the victims of the Halifax Explosion because they were given pensions. They were considered to be war casualties because the munitions ship *Mont Blanc*, carrying ammunition to Europe, and its collision with the *Imo* caused the Halifax Explosion, the largest man-made explosion before Hiroshima in 1945.

[*Later*]

Hon. Donald H. Oliver: Honourable senators, I wish to associate myself with the remarks of the Leader of the Government in the Senate, Senator Carstairs, with regard to the eighty-fifth anniversary of the Halifax explosion.

As she has already indicated, some 85 years ago, on December 6, 1917, the Belgian merchant ship *Imo* and the French munitions ship *Mont Blanc* collided in Halifax harbour. Fires then ripped through the *Mont Blanc*, forcing her crew to evacuate, and desperate measures were taken by fire crews to put out the blaze to prevent a major explosion, but to no avail. Some 21 minutes later, after the ships' collision in Canada's wartime harbour, a massive explosion struck the face of the populous north end of Halifax and flattened it along with hundreds of innocent Haligonians. A mushroom cloud rose over the harbour and a tidal wave went out to sea.

In 1917, Halifax, Nova Scotia, had a population of 50,000 people. In mere seconds, some 1,600 Canadians died and another 9,000 were injured by the blast. More than 13,500 buildings were destroyed in a split-second fire flash and 6,000 Nova Scotians became homeless. The explosion of the *Mont Blanc* was the world's largest man-made explosion in history, until an atomic bomb was dropped on the Japanese city of Hiroshima.

The Halifax explosion was a human tragedy that was then complicated by an Atlantic Canadian blizzard. Many, at the time, wondered if Halifax would survive. Survive it did, thanks to a great many Nova Scotians from outside Halifax, Canadians from across this country and the people of Boston.

I want to say something about our neighbour, the United States, in an era of popular anti-Americanism. They came through for my province in our hour of need in 1917-18. Every year since, we have shipped them the best Christmas tree we could find as a method of symbolic repayment and friendship. This year, a year after the tragedy of September 11, a Nova Scotian Christmas tree from the beautiful South Shore will stand proudly at Ground Zero in New York. We have stood proudly with our American allies in their hour of need, just as they stood with us some 85 years ago. From tragedy and hardship come strength, wisdom and, most important, love: a lesson Nova Scotia learned a long time ago.

CRIMINAL CODE
FIREARMS ACT

DIVISION OF BILL—
ACCURACY OF MESSAGE TO COMMONS

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I wish to formally record my dissatisfaction with the message sent to the House of Commons yesterday because I am convinced that, as written, it confirms that the Senate has trespassed on the rights and privileges of the other place. Had the message read that the Senate felt that Bill C-10 was best dealt with by dividing it in two, in accordance with its subject matters, and requested concurrence before proceeding any further, the Senate would have shown a respect for the other place without which Parliament cannot function properly. As it is, the Senate has asked for concurrence after the fact and, to add insult to injury, gave no reason.

The fate of Bill C-10 was determined with the complicity of the government, leaving the duly elected representatives completely in the dark during the entire time. I, for one, do not care to be identified with the message and am pleased that members on all sides in the other place have already raised appropriate questions of privilege.

[*Translation*]

ROUTINE PROCEEDINGS

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FIFTH REPORT OF COMMITTEE PRESENTED

Hon. Lise Bacon, Chairman of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Thursday, December 5, 2002

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FIFTH REPORT

Your Committee recommends that the following funds be released for fiscal year 2002-2003.

Aboriginal Peoples (Legislation)

Professional and Other Services	$ 4,000
Transport and Communications	$ 300
Other Expenditures	$ 700
Total	**$ 5,000**

Banking, Trade and Commerce (Legislation)

Professional and Other Services	$ 11,500
Transportation and Communications	$ 1,000
Other Expenditures	$ 2,500
Total	**$ 15,000**

• (1340)

Energy, the Environment, and Natural Resources (Legislation)

Professional and Other Services	$ 10,000
Transportation and Communications	$ 500
Other Expenditures	$ 1,000
Total	**$ 11,500**

Internal Economy, Budgets and Administration

Professional and Other Services	$ 3,000
Transportation and Communications	$ 0
Other Expenditures	$ 0
Total	**$ 3,000**

National Finance (Legislation)

Professional and Other Services	$ 3,000
Transportation and Communications	$ 0
Other Expenditures	$ 0
Total	**$ 3,000**

Rules, Procedure and the Rights of Parliament

Professional and Other Services	$ 7,400
Transportation and Communications	$ 0
Other Expenditures	$ 0
Total	**$ 7,400**

Social Affairs, Science and Technology (Legislation)

Professional and Other Services	$ 2,500
Transportation and Communications	$ 0
Other Expenditures	$ 0
Total	**$ 2,500**

Transport and Communications (Legislation)

Professional and Other Services	$ 10,000
Transportation and Communications	$ 0
Other Expenditures	$ 0
Total	**$ 10,000**

LISE BACON
Chair

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

Senator Bacon: Honourable senators, with leave of the Senate and notwithstanding rule 57(1)(*g*), I move that the report be placed on the Orders of the Day for consideration later this day.

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

Hon. Senators: Agreed.

On motion of Senator Bacon, report placed on the Orders of the Day for consideration later this day.

[*English*]

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Tommy Banks, Chair of the Standing Senate Committee on Energy, the Environment and Natural Resources, presented the following report:

Thursday, December 5, 2002

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

FOURTH REPORT

Your Committee, which was authorized by the Senate on November 7, 2002, to examine and report on emerging issues related to its mandate, respectfully requests, that it be empowered to adjourn from place to place within Canada, to travel outside Canada and to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of such study.

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

Respectfully submitted,

TOMMY BANKS
Chair

(*For text of Budget, see today's* Journals of the Senate*, Appendix "A", p. 315.*)

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

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

AGRICULTURE AND FORESTRY

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Donald H. Oliver, Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Thursday, December 5, 2002

The Standing Committee on Agriculture and Forestry has the honour to present its

SECOND REPORT

Your Committee, which was authorized by the Senate on October 31, 2002 to examine the impact of climate change on Canada's agriculture, forests and rural communities and the potential adaptation options focusing on primary production, practices, technologies, ecosystems and other related areas, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of the Committee's examination and to adjourn from place to place within Canada and to travel outside Canada for the purpose of such examination.

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

Respectfully submitted,

DONALD H. OLIVER
Chair

(*For text of report, see today's* Journals of the Senate, *Appendix "B", p. 323.*)

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

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

TRANSPORT AND COMMUNICATIONS

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Joan Fraser, Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Thursday, December 5, 2002

The Standing Senate Committee on Transport and Communications has the honour to present its

SECOND REPORT

Your Committee, which was authorized by the Senate on Wednesday, October 30, 2002, to examine and report on issues facing the intercity busing industry, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical, and other personnel as may be necessary for the purpose of its study.

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

Respectfully submitted,

JOAN FRASER
Chair

(*For text of report, see today's* Journals of the Senate, *Appendix "C", p. 331.*)

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

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

FOREIGN AFFAIRS

BUDGET—REPORT OF COMMITTEE PRESENTED

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

Thursday, December 5, 2002

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

SECOND REPORT

Your Committee, which was authorized by the Senate on Thursday, November 21, 2002 to examine and report upon the Canada — United States of America trade relationship and the Canada — Mexico trade relationship, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place in Canada for the purposes of its examination.

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

Respectfully submitted,

PETER A. STOLLERY
Chair

(*For text of report, see today's* Journals of the Senate, *Appendix "D", p. 337*.)

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

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

COPYRIGHT ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Michael Kirby, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Thursday, December 5, 2002

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

FIFTH REPORT

Your Committee, to which was referred Bill C-11, *An Act to amend the Copyright Act,* in obedience to the Order of Reference of Wednesday, October 30, 2002, has examined the said Bill and now reports the same without amendment.

Respectfully submitted,

MICHAEL KIRBY
Chair

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

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

• (1350)

NATIONAL SECURITY AND DEFENCE

BUDGET—REPORT OF COMMITTEE PRESENTED

Hon. Colin Kenny, Chair of the Standing Senate Committee on National Security and Defence, presented the following report:

Thursday, December 5, 2002

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

THIRD REPORT

Your Committee, which was authorized by the Senate on Wednesday, October 30, 2002, to examine and report on the need for national security policy for Canada, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place within Canada and to travel inside and outside Canada, for the purpose of such study.

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

Respectfully submitted,

COLIN KENNY
Chair

(*For text of report, see today's* Journals of the Senate, *Appendix "E", p. 345*.)

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

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

FOREIGN AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY THE EUROPEAN UNION

Hon. Peter A. Stollery: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Foreign Affairs be authorized to examine the consequences for Canada of the evolving European Union and on other related political, economic and security matters;

That the papers and evidence received and taken during the First Session of the Thirty-seventh Parliament be referred to the Committee; and

That the Committee report to the Senate no later than March 31, 2004.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY EMERGING DEVELOPMENTS IN RUSSIA AND UKRAINE

Hon. Peter A. Stollery: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Foreign Affairs be authorized to examine emerging political, social, economic and security developments in Russia and Ukraine; Canada's policy and interests in the region; and other related matters;

That the papers and evidence received and taken during the First Session of the Thirty-seventh Parliament be referred to the Committee; and

That the Committee report to the Senate no later than March 31, 2004.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY ISSUES RELATED TO FOREIGN RELATIONS

Hon. Peter A. Stollery: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Foreign Affairs, in accordance with rule 86(1)(h), be authorized to examine such issues as may arise from time to time relating to foreign relations generally;

That the papers and evidence received and taken during the First Session of the Thirty-seventh Parliament be referred to the Committee; and

That the Committee report to the Senate no later than March 31, 2004.

NATIONAL SECURITY AND DEFENCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

That the Standing Senate Committee on National Security and Defence have power to sit on Monday next, December 9, 2002, even though the Senate may 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.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT WITH CLERK DURING ADJOURNMENT OF THE SENATE

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

That the Standing Senate Committee on National Security and Defence be permitted, notwithstanding usual practices, to deposit its interim report on national security with the Clerk of the Senate during the Christmas adjournment, and that the report be deemed to have been tabled in the Chamber; and

That copies of the report be made available to all Senators in their offices and by e-mail at the time of tabling.

QUESTION PERIOD

CRIMINAL CODE FIREARMS ACT

DIVISION OF BILL—ACCURACY OF MESSAGE TO COMMONS

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, this question would more appropriately be addressed to the Chairman of the Standing Senate Committee on Legal and Constitutional Affairs, but I know he is unavoidably absent. I will direct it to the Leader of the Government in the Senate, who may want to take it under advisement. It has to do with Bill C-10. To paraphrase Lewis Carroll, the saga of Bill C-10 get curiouser and curiouser.

Your Honour assured us that the message sent to the House of Commons yesterday included Bill C-10. That was made clear at least four times. Yet, last night, the Standing Senate Committee on Legal and Constitutional Affairs had on its agenda Bill C-10. On its agenda this morning, we see reference to Bill C-10; and on an agenda for a meeting on Wednesday, December 11, and again on Thursday, December 12, we see Bill C-10.

The question is: Has Bill C-10 been returned? Did it ever get to the House of Commons? Can it be in two places at once?

I am referring to formal notices of committee meetings. Once again, as the question was asked yesterday: Where is Bill C-10?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, that is the work of the committee. It is not my work. The honourable senator is quite right when he says that the person to ask that question of is not me but rather the chair of the committee. Unfortunately, he is not here today. I do not even know whether the deputy chair of the committee is here. Perhaps he could afford a reply to that question.

Senator Bolduc: He is always here.

[*Translation*]

Senator Lynch-Staunton: Can Senator Beaudoin explain to us why his committee, according to the four notices sent to its members, is continuing to consider Bill C-10? Yesterday, the Speaker of the Senate told us, at least four times, that Bill C-10 was included in the message sent to the House of Commons. This is a fact-finding question.

Is Bill C-10 still before the committee? If so, it is not included with the message. If it is part of the message, it cannot be before the committee. I would like to have it explained to me how a bill can be in two places at once.

Hon. Gérald-A. Beaudoin: First of all, Bill C-10 does still exist. Second, we have sought the consent of the House of Commons. That consent is or is not forthcoming. If it is, the bill will be legally split in two in the House of Commons.

I have always used the term Bill C-10, but added "Part I" and "Part II" or "Document A" and "Document B." I have been very cautious. I have also referred to the two other documents that might be forthcoming from the House of Commons.

I confirm that Bill C-10 does still exist in pure law, that is certain, because we are asking that it be divided in the House of Commons. That is the precise moment at which the bill will become two. That is all I can say at this stage.

• (1400)

The legal aspect of the situation seems very clear to me. This is why I always use the words, yes, it is Bill C-10, Part I, Part II, or Document A, Document B. Right now, Bill C-10 has been sent back to the House of Commons, but only Document A will be debated by the other place.

It is so true that, in our message, we asked that, as regards Part II — that is Document B — the Standing Senate Committee on Legal and Constitutional Affairs proceed with its review. This has already been done; the committee sat yesterday and today, and it will sit on Tuesday, Wednesday and Thursday, next week. From a strictly legal point of view — and I will only deal with this aspect — this appears to be the situation.

[*English*]

Hon. Terry Stratton: Honourable senators, I wish to ask a supplementary question of the Deputy Chair of the Standing Senate Committee on Legal and Constitutional Affairs.

I understand that yesterday, one of the witnesses from the Department of Justice mentioned the so-called study of the "alleged" bill. In committee, when we were discussing whether we had a real bill, it was referred to as an "alleged" bill by members of the committee as well as by the witness, although he said it facetiously.

There was a question as to the reality of whether we had a bill. Some of us on our side questioned that, and some of us agreed to hear witnesses under protest because we had no indication of whether a true bill was in front of us. Was that not the honourable senator's recollection?

Senator Beaudoin: Honourable senators, I have always been very prudent when dealing with questions of legality because that is fundamental, but I still say that Bill C-10, legally speaking, exists in the House.

As far as the study of Bill C-10B is concerned, I would point out that this is a pre-study until there is concurrence. Only when the House of Commons concurs with the message of the Senate — and I do not know if that will happen — can the bill be divided. Then we will have Bill C-10A and Bill C-10B. I will refer to those two documents as Bill C-10A and Bill C-10B only for the moment.

We are in the situation where Bill C-10A and Bill C-10B are the subjects of studies. If it is accepted by the House of Commons, the first part of the bill will become Bill C-10A. As a natural reaction, some may laugh at that whole concept. I have not modified my view of what is happening, and I will not. I await the "verdict," if I may use that expression, although it is constitutional and not criminal law. Only at that moment will we know what will happen. With respect to the study the committee members did, yesterday, on the second part of Bill C-10 and that we continued this morning, I believe it was quite appropriate. I see no problem with it.

Senator Stratton: Under protest.

Senator Beaudoin: However, of course, if the House does not concur in what is proposed, that will be another story, and not a very interesting one, in my opinion. If there is concurrence, to me, it will mean that we have created a new precedent, the only one since 1867. That is not bad at all.

LIBRARY OF PARLIAMENT

RECEPTION OF BILL C-10

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is for the co-chair of the Standing Joint Committee on Library of Parliament. Can the honourable senator advise the house whether Bill C-10 has arrived in the parliamentary library, which is halfway between the House of Commons and this place?

Hon. Sharon Carstairs (Leader of the Government): Not these days.

Hon. Fernand Robichaud (Deputy Leader of the Government): It was rumoured that they saw it going through.

CITIZENSHIP AND IMMIGRATION

DENIAL OF APPEAL FOR LANDED IMMIGRANT STATUS OF NIGERIAN FAMILY

Hon. A. Raynell Andreychuk: Honourable senators, a Nigerian mother and her four daughters have been taken into a shelter in a Calgary church because their claim for refugee status was denied. The mother claims that her daughters, if returned to Nigeria, will be subjected to the cultural practice of female genital mutilation. This custom has been known to cause death and has been classified by the Canadian Immigration and Refugee Board as persecution. In 1993, Canada became the first country to make this practice a ground for granting refugee status.

Can the Leader of the Government in the Senate advise me what the government will be doing in light of the fact that the appeal by this family has been denied? Will the minister consider humanitarian grounds, as it would appear that the appeal board did not take this issue very seriously? This is a serious problem that is not geographically restricted to northern Nigeria. I would suggest that any child within the boundary of Nigeria could be subject to this practice. What is the minister's position? What is the government's position in assisting these four children?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for her questions. However, I do not think it is appropriate to suggest that an independent agency did not do its work properly.

Several boards have been established. Individuals have a right to lay appeals. In this case, the appeal was denied and due process was certainly followed. Having said that, as the honourable senator knows, the minister has taken a direct interest in this case, and it is my understanding that the department is looking seriously at it.

Senator Andreychuk: I believe that the practice now is to indicate that, if a family comes from a particular region of Nigeria, then the claim will be taken more seriously than others where the practice, allegedly, is not as widespread.

Given the fact that it is difficult within one sovereign state to deny access to leaders who think this practice is appropriate, is there any reconsideration of directives to the Immigration Appeal Division which would suggest that their decisions should be framed in a more global way?

In light of the fact that we are talking about four female children and a practice that Canada has said is horrific, unnecessary and contrary to any humanitarian conduct, will the minister intervene? We have led the attack internationally and nationally. Will the minister not intervene for the sake of these four children?

Senator Carstairs: As the honourable senator knows, I cannot comment on the exact specifics of this case, nor can the Minister of Immigration in the other place.

The honourable senator has made a statement with respect to female genital mutilation, and I apologize for my hesitation, honourable senators, but I find that practice of mutilation so incredibly offensive that I have difficulty repeating that word. I do not think it should be done on a geographic basis. It should be based on the principle that Canada has taken a strong stand on the practice. We would assume, therefore, that all our agencies and appeal boards would recognize the position taken by the Government of Canada, that this practice is not tolerable.

• (1410)

Senator Andreychuk: I appreciate the fact that the minister joins me in condemning this practice. I ask that she take this matter to the minister as a specific request on humanitarian grounds.

Senator Carstairs: I can assure the honourable senator that I will make that representation.

To inform honourable senators of the process in my office, all questions are monitored every single day. As soon as one of us asks for something to be brought forward to the minister, it is done so later that afternoon, This request will certainly get that extra special treatment.

FOREIGN AFFAIRS

RECOGNITION OF HEZBOLLAH AS TERRORIST ORGANIZATION

Hon. David Tkachuk: Honourable senators, I wish to ask a question on an event reported in the *Washington Times* on December 4 and again today in the *National Post*. It is about two speeches made by Sheik Hassan Nasrallah, the leader of the Hezbollah in Lebanon. One was to an estimated "10,000 gun-toting, bearded fighters in southern Lebanon on Friday." He said,

> By Allah, if they touch Al Aqsa we will act everywhere around the world.

He was referring to a Muslim site in Jerusalem. He then goes on to say at another rally in the Bekaa Valley:

> Martyrdom operations — suicide bombings — should be exported outside Palestine.
>
> I encourage Palestinians to take suicide bombings worldwide. Don't be shy about it.

At one of the rallies there were several hundred suicide commandoes as well.

I also read in the *National Post*, today, that the Liberal federal government is thinking about banning all Hezbollah organizations in Canada, including those outside of the military group. As a cabinet minister, does the leader support placing all Hezbollah organizations in Canada under the Terrorist Act, Bill C-36?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as you know, there is a clear process under Bill C-36 as to how an organization can be listed under the provisions of that act. Obviously, the speeches to which the honourable senator referred today will become part of the evidence of any investigation with respect to this particular organization. However, I wish to tell the honourable senator that I will wait, as I believe all ministers must, for the evidence and its presentation.

Senator Tkachuk: Honourable senators, does the minister have any idea as to when the cabinet will deal with this issue? I am dealing only from newspaper reports, and that is why I am asking a cabinet minister. However, my understanding is that it will be in the near future. When we talk about "the near future," are we talking about before Christmas or will we be postponing the banning of this terrible organization in this country until well into the next year?

Senator Carstairs: Honourable senators, all I can say is that information is presented to us by CSIS and recommendations are made. We hear that evidence and make decisions. That is how Hamas was put on the list one week ago. That process is continuing not only for Hezbollah but also for a number of other organizations. When it comes to cabinet and is decided, it will be released to the Canadian public.

Senator Tkachuk: Honourable senators, the minister has been defending, in this place, the other two groups on the basis that they do social and cultural — whatever that is — work overseas on behalf of their organizations. That is why they have been exempted from being placed under Bill C-36. I take it that the new evidence is showing that the government was wrong and that these organizations actually are funding terrorist activities around the world?

Senator Carstairs: Honourable senators, the information is still being gathered. When it is presented to cabinet, cabinet will make a decision.

REVIEW OF ASSESSMENT PROCESS FOR RECOGNIZING TERRORIST ORGANIZATIONS

Hon. A. Raynell Andreychuk: Honourable senators, I supported this policy, that we separate the humanitarian, education arm from the political arm. In the 1980s, that seemed to make sense because we had limited communications, and we were looking at organizations like ANC at the time. It would be very difficult for someone who joined ANC in South Africa to know what was happening in the political arm in Zambia or Libya. There has been merit in not restricting the humanitarian arm. However, in light of cell phones, CNN, and the Internet, everyone seems to have some access. Perhaps it is time for the Canadian government to reassess its policy with a view to stating that, if you join an organization that has a political wing, you will be tainted. Such a policy would be in keeping with our message in the International Criminal Court. We are strongly supporting that court, which says, as part of its policy, that they do not care if it is a general or a soldier, president or constituent, if they are culpable for a crime against humanity, they will be equally charged. We need to reconsider organizations, not just Hezbollah, in that light and give a clear signal to those who wish to come to Canada that you cannot use that excuse. In a modern world, that would make more sense.

Is the government reassessing its entire assessment process of these organizations?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as organizations are presented to cabinet, all these issues are debated and discussed. Clearly, the easier ones to deal with have only one purpose, which is a terrorist purpose. They become easy to categorize.

I respect the contribution that has just been made by the honourable senator and I can assure her, since I will be part of those deliberations, that I will take that suggestion under consideration.

THE ENVIRONMENT

COSTS OF KYOTO PROTOCOL

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. The media reported that, on Monday, the federal government intends to push through ratification of the Kyoto Protocol without consultation from the provinces and territories and without making the true costs known to all Canadians. If the unknown costs related to ratification of the Kyoto Protocol skyrocket, the federal government may well blame the provinces for any cost overruns, just as today it blamed the provinces, in part, for the gun registry costs.

When the registry was originally announced, Canadians were told it would cost $2 million. No solid estimate can be given for costs with regard to Kyoto. In light of the Auditor General's inquiry into the gun registry, Canadians have every right to be worried about the federal government's management skills. Why should Canadians believe the government about the costs of the Kyoto Protocol when they could not trust the federal government about the costs of the gun registry?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I will begin with the honourable senator's opening remark, with which I totally disagree. The honourable senator has indicated that there has not been consultation with the provinces and territories. That is false. There have been five years of consultations between the provinces, the territories and the federal government. Those consultations are open to continue, provided that the provinces and the territories give up their position right now. They are not willing to sit down and have debates and discussions, which is why the last two meetings have been cancelled.

Senator Lynch-Staunton: The Prime Minister said, no.

JUSTICE

AUDITOR GENERAL'S REPORT—FIREARMS REGISTRY PROGRAM—RESPONSIBILITY FOR COST OVERRUNS

Hon. Terry Stratton: Honourable senators my question is to the Leader of the Government in the Senate. It is obvious, except to the government, to our great misfortune, that the Gun Registry Program is not working. Instead of accepting responsibility for this fiasco, we have the Prime Minister deflecting blame everywhere but where it lies: with the justice ministers responsible for the program.

Today, in an interview with *The Globe and Mail,* the Prime Minister said:

> We expected that the provinces were going to help us, and in some places they did not; they made it very difficult for us...The gun lobbyists, the people against it made sure it was difficult to operate and it cost more.

Honourable senators, this directly contradicts the Auditor General, who made it clear in her report that the Justice Department is responsible for the cost overruns. Who is right? The Prime Minister or the Auditor General?

• (1420)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest respect, the Minister of Justice and the Auditor General are in no conflict at all. In her report, the Auditor General indicated that a number of factors contributed to the cost overruns. She also indicated that the Department of Justice was under a heavy responsibility. The Minister of Justice has accepted that heavy responsibility.

Senator Stratton: Honourable senators, it would be nice to get an answer to the question.

We always worry about governments. References have been made to the cost overruns on gun control and the unknown costs with respect to the Kyoto Protocol. That is a large issue. If this government were a business such as WorldCom or Enron, those in charge of such gross financial mismanagement would be fired and, quite possibly, prosecuted for their incompetence.

The Prime Minister is intent on deflecting blame. However, all honourable senators know that the former Ministers of Justice Allan Rock and Anne McLellan, as well as the current Minister of Justice Martin Cauchon, have to answer for this spending.

Parliament was not made aware of these cost overruns. Honourable senators are wondering whether these circumstances were occasioned with malice aforethought, because it was consistent all the way through. Will there be an inquiry as to who signed off on the gun registry spending without informing Parliament of the true costs?

Senator Carstairs: The honourable senator raises the issue of accountability. Let us examine that. Since 1995, successive Ministers of Justice have reported to Parliament at least 57 times on the program and its cost through the Main Estimates, Supplementary Estimates and through the annual appearances before the Standing Committee on Justice and Human Rights. The Auditor General has stated, and I quote, "All of the spending was approved by Parliament."

Senator Stratton: Honourable senators, I do not disagree. Honourable senators examined the matter in this place, and we kept raising the issue. I kept raising the issue consistently, in this chamber, with the leaders on the other side, year after year, ever since 1995. It was brushed off. The other side saw it as not being a huge issue. They said they had things under control. Minister Rock told honourable senators not to worry and that he would guarantee the program would not cost more than $85 million, with a recoverability of $80 million.

The honourable senator cannot tell me that something is not rotten in the "state of Denmark," given the way the Justice Department has reported these costs.

We have to take the House of Commons to task for not doing an appropriate job here.

Senator Carstairs: I thank the honourable senator for his question. I appreciate the comments he has made about the estimate process in the other chamber.

If honourable senators look at today's issue of the *Ottawa Citizen,* it did its research with respect to finding quotations from ministers. One quotation cites the minister as saying, on May 5, 1999:

> Allan Rock...indicated that the startup costs...would be $85 million. Last year I indicated...

— this is Anne McLellan —

> ...that the startup costs had in fact increased and would be $120 million.
>
> The total costs over the five-year period from 1995 to 2000...

— she is quoted as saying on May 10, 2000 —

> ...are $327 million.

There were ample opportunities, I would suggest, for intervention from members of the opposition. It was clear that the minister was being forthright with Parliament, that these figures were getting higher and higher.

[*Translation*]

Hon. Roch Bolduc: Honourable senators, this is going too far. You are not answering the question. Parliament is the government on the other side. Yes, it is the government, and it is a majority government!

I want to go back to this fundamental issue. The Auditor General is proposing an improved definition of accountability. This is what it is all about. She insists on the means used and on the results achieved. The second point is that this improved definition includes obligations for all the parties, while the third point is that she insists on the fact that managers and Parliament

must examine performance and determine what the appropriate consequences for managers should be. In this case, the manager is the minister. It is Mr. Rock. He said firearm registration would cost $85 million, and we are now at $1 billion. No business would operate like that. People would lose their jobs, including the president, the vice-president and everyone else. In this case, the minister is quite comfortable. They are even promoting him. This is nonsense. When costs begin at $100 million and end up at $1 billion, it means that spending has increased tenfold. Parliament is the government, and the government has a majority. The minister should do his job. Not only Mr. Rock, but also Ms. McLellan, should resign and resign soon.

[*English*]

Senator Carstairs: Honourable senators, as an example of the fact that the minister is doing his job, the supplementary funds for the firearms program, in the amount of $72 million, has, as of today, been pulled from the Supplementary Estimates. It has been pulled because the honourable minister recognized that there were serious concerns. Yesterday, the minister indicated that he would take action and, as of this morning, he is taking action.

CRIMINAL CODE
FIREARMS ACT

DIVISION OF BILL—ACCURACY OF MESSAGE TO COMMONS—POINT OF ORDER

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I rise on a point of order arising from the Question Period. It is a point of order I wish to raise on behalf of His Honour and all honourable senators. It appears that Bill C-10 is still before the Standing Senate Committee on Legal and Constitutional Affairs and, therefore, did not accompany the message that was transmitted to the House of Commons yesterday. The bill cannot be in both places.

From what the Deputy Chair of the Standing Senate Committee on Legal and Constitutional Affairs has told honourable senators, the matter is still before that committee until, if I understand it correctly, the splitting which was approved in this chamber is agreed to in the House of Commons.

If my interpretation is correct, Bill C-10 is before a Senate committee and, therefore, His Honour's assurance, at least four times yesterday, that it was accompanying the message, might have been over-optimistic.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, we dealt with this issue yesterday. We are now going back door, front door, over the top and underneath.

It is totally inappropriate to challenge the Speaker on a ruling he made yesterday. If the Speaker's ruling was to be challenged, it should have been done so yesterday. Honourable senators chose not to do that, and the Speaker's ruling stands.

Senator Lynch-Staunton: There was no challenge of the Speaker's ruling. It is a question of supporting the affirmation and the hope that honourable senators will look into the possibility, based on a point of order raised here, that Bill C-10 is still before the committee and, therefore, did not accompany the message that the Clerk was instructed to transmit to the House of Commons.

It has nothing to do with the Speaker's ruling. It has to do with the facts as they were stated yesterday and the facts that are stated today, both of which are in contradiction to one another.

Senator Carstairs: Honourable senators, the report of the Standing Senate Committee on Legal and Constitutional Affairs which came before us last week clearly indicated that the remaining part of the bill, now classified as Bill C-10B, would remain with the committee.

Senator Lynch-Staunton: That is correct. However, on the notices of committee meetings and the agendas for yesterday and today, as well as next Wednesday and Thursday, it states Bill C-10, not Bill C-10A or Bill C-10B.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, if we reread the answer given by the deputy chair of the committee — given earlier today — we would find the answer to this question.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to underscore the fact that the opposition has not ever questioned or appealed a decision of the Speaker of this place in recent times, unlike our friends opposite.

However, there is a great line written by Shakespeare that states that when things are out of joint, oh! curse, it is in spite. The mismanagement of this bill by the government has placed things out of joint. Instead of simply allowing the committee to follow the instruction given by the Senate to split the bill in committee, bring that action back to the Senate and send the message over to the House of Commons, no, they were greedy. They wanted to try to slip in the third reading of one part of the split bill.

• (1430)

I accept, because I was watching the proceedings in the other place earlier today, that they have received the message. I believe, based on the evidence and the undertaking of yesterday, that the message was sent and that the attachments to the message included Bill C-10.

Honourable senators, the point is that Bill C-10 is not in the Senate. Therefore, it is inappropriate for the Senate committee to think it is seized of it. If anything is out of joint, it is the attempt in the Standing Senate Committee on Legal and Constitutional Affairs to think that it is seized of something that no longer exists in this house.

[*Translation*]

Senator Robichaud: Honourable senators, I cannot allow the comment from across the way, to the effect that they never appealed the Speaker's ruling, to stand. We appealed at one point. I myself appealed a Speaker's ruling, clearly, at the time of the ruling. However, I believe that, at one point, they tried to appeal a Speaker's ruling, or to question it, not by the front door, but by every other door available. They should not accuse us because we appealed a decision. If we did so, it was done clearly and directly.

[*English*]

Hon. Anne C. Cools: Honourable senators, this issue will remain muddled and unsettled. It seems to me that every single day we get more of the same.

Many of these questions have now been raised on many different occasions. I raised a question about under what authority was the Standing Senate Committee on Legal and Constitutional Affairs sitting yesterday. I raised that in the committee and got nowhere because the way of dealing with many questions around here is not to deal with them. The negative newspaper coverage that we are seeing on the firearms program costs is one of the grand results.

The fact of the matter is this Senate chamber referred Bill C-10 to the Legal Affairs Committee. The bill was committed to a committee, which means the chamber no longer had it. It was no longer in the possession of this house.

The committee divided the bill. It then reported that it had divided the bill and was holding on to a part of the bill.

The question comes back, again and again, to the fact that, out of the blue, without instruction from this chamber, without any decision of this chamber, without any judgment of this chamber to do so, a particular statement appears in the message to the other place.

Senator Robichaud: This is out of order.

Senator Cools: We talked about this yesterday.

The Hon. the Speaker: On the note that we talked about it yesterday, senator —

Senator Cools: I am not talking about yesterday.

Senator Robichaud: Order, order!

The Hon. the Speaker: I have been listening for something new. The honourable senator is getting into matters with which we have dealt. Accordingly, under the rules, I will exercise my privilege as the presiding officer on this particular occasion to indicate that I have heard argument on the point of order raised by the Honourable Senator Lynch-Staunton, which I take to be whether the proceedings of the committee is in order. Senator Lynch-Staunton read from the committee agenda.

The first matter to be dealt with is whether that is a matter for this chamber or whether the committee is seized of that exclusively.

I will take the matter under consideration and bring back a ruling to the chamber.

ABORIGINAL PEOPLES

BUDGET—REPORT OF COMMITTEE PRESENTED

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

Hon. Thelma J. Chalifoux, Chair of the Standing Senate Committee on Aboriginal Peoples, presented the following report:

Thursday, December 5, 2002

The Standing Senate Committee on Aboriginal Peoples has the honour to present its

SECOND REPORT

Your Committee, which was authorized by the Senate on Tuesday, October 29, 2002, to examine and report upon issues affecting urban Aboriginal youth in Canada, respectfully requests that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary, and to adjourn from place to place in Canada, for the purpose of its examination.

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

Respectfully submitted,

THELMA J. CHALIFOUX
Chair

(*For text of report, see today's* Journals of the Senate, *Appendix "F", p. 359.*)

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

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

ORDERS OF THE DAY

EXPORT AND IMPORT OF ROUGH DIAMONDS BILL

THIRD READING

Hon. Nick G. Sibbeston moved the third 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.

He said: Honourable senators, I am pleased to speak today on the third reading of Bill C-14, which will provide controls for the export, import and transit across Canada of rough diamonds and which will establish a certification scheme for the export of rough diamonds.

As I said at second reading, it is important to understand the international concern that persists about the link between the illicit international trade in rough diamonds and armed conflict, particularly in Angola, Sierra Leone and the Democratic Republic of Congo. While conflict diamonds constitute a very small percentage of international diamond trade, they have had a devastating impact on peace, security and sustainable development in affected countries.

The Kimberley Process is the principal international initiative established to develop practical approaches to the conflict diamond challenge. It was launched to address peace and security concerns, as well as to protect several national economies that depend on the diamond industry.

The process now includes 48 countries involved in producing, processing, importing and exporting rough diamonds. These countries account for 98 per cent of the global trade in and production of rough diamonds, and they include all of Canada's major diamond-trading partners.

Honourable senators, last month, the participating countries met in Switzerland and renewed their commitment to the certification scheme and to the target implementation date of January 1, 2003. The proposed international certification scheme includes the requirement that all shipment of rough diamonds imported to or exported from Canada be certified under the scheme. It bans trade in rough diamonds with countries that do not participate in the scheme. Bill C-14 establishes the trade regulation regime necessary to participate in the Kimberley Process rough diamond certificate scheme.

• (1440)

I would thank the members of the Standing Senate Committee on Energy, Environment and Natural Resources for reviewing Bill C-14. The committee examined the bill in the context of international trade and the structure of the diamond industry. At committee, we heard some of the points raised by Senator Bolduc at second reading debate. We were informed of Canada's approach to other countries to ensure that the Kimberley Process certificate scheme would not be open to challenge at the World Trade Organization. We also heard that the Canadian certification scheme would be audited, on an ongoing basis, for its effectiveness and with a view to introducing cost recovery measures. Finally, we were informed in committee of the measures that the diamond industry would take to extend the warranties on diamonds to polished stones and to jewellery.

Honourable senators, the exploration and mining industry, the diamond cutting and polishing industry, and the jewellery industry are dependent on access to the export markets and, therefore, on Canada's participation in the Kimberley Process.

Passage of Bill C-14 will put in place all of the authorities required for Canada to meet its commitments under the international Kimberley Process. The early passage of Bill C-14 will ensure that these authorities are in place by year-end, when the process is planned for international implementation.

In conclusion, honourable senators, I ask for your support in passing this important bill so that Canada can be in a position to implement the Kimberley Process, in concert with our global partners.

Hon. Senators: Hear, hear!

Motion agreed to and bill read third time and passed.

Hon. Anne C. Cools: Could all honourable senators hear the text of that message?

The Hon. the Speaker *pro tempore*: It is ordered that a message be sent to the House of Commons to acquaint that House that the Senate has passed this bill without amendment.

SPECIES AT RISK BILL

THIRD READING—DEBATE ADJOURNED

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

He said: Honourable senators, this is an auspicious day for me, for Canada and for the government because this is the beginning of a process by which we will put into place, after more than eight years of careful planning and deliberation, a national plan that is in the interests of endangered species in our country and, therefore, in the interests of all Canadians and of all people in the world.

The policies in this bill have been almost nine years in the making; this has not been a random process. It is fair to say that no other bill has received longer or more careful consideration, and no other bill has been created with a wider consensus, albeit grudging, but a consensus nonetheless. The bill follows nine years of listening, revising, and listening some more; nine years of rewriting, re-crafting and reworking. The result is an evolutionary process, which is a perfect word to apply to this bill, and it is the best possible result.

We heard from some that the provisions of Bill C-14 are draconian. They are not. We heard from others that this bill is toothless. It is not. It uses, at every turn, the incentive rather than the demanding initiative — the carrot rather than the stick. In the end, if all else fails, the stick is there. Great care has been taken by the government and by Parliament in developing this bill to its present state.

The first and most important thing about this bill is that science will be the basis of the initial determination as to whether a species is, in fact, at risk. The proposed act will establish the committee on the status of endangered wildlife in Canada, COSEWIC, as a legal entity. This action is welcome and long overdue. It is a compelling precedent.

COSEWIC will be the expert, it will be independent, and it will be at arm's length from the government. This proposed act will see 25 years of valuable advice from COSEWIC and its predecessors acted upon. COSEWIC's assessments will be the basis upon which species will be included in the list under this proposed act. That will be based on the best information. We will also have the advantage, at the same time and with equal importance, of traditional Aboriginal knowledge. These recommendations will be published. The minister must, under the proposed act, respond to those recommendations within 90 days. That response will also be a matter of public record.

The government must — not may, but must — respond further within nine months in the question of whether to add a species to the list, under the proposed act, as endangered. In the absence of a government response, species introduced by COSEWIC and by the Aboriginal committee will automatically be added to the list. On the day this bill is passed, 233 species will be on the new list. All will have been recommended by COSEWIC.

The second key foundation of Bill C-5 is its objective to protect the critical habitat of species that will be listed under the proposed act. We already know that voluntary conservation efforts will be employed first. That will be the first response to protect the habitat of endangered species. Incentives will be presented to landowners and land users to encourage those voluntary efforts. That cooperative principle is the essential guiding principle of this bill.

We know that it will work because it is working already. We know that the opposite does not work. We know that a coercive approach does not work. We only have to look to the United States, where a coercive approach has been in place for over 25 years. The courts are plugged with cases that have arisen under it. It does not work, and its objectives are not being achieved.

The approach of Bill C-5 is to emphasize, in Canada, cooperation with landowners and land-users, while maintaining government accountability and having a "big stick" in its back pocket. The safety net provisions will be in place as a backup so that no species will fall through the cracks. If critical habitat is not protected through voluntary means, then the federal prohibitions will apply.

Immediately upon its proclamation, this proposed act will automatically and immediately protect any identified critically endangered species on federal lands, that is, in national parks, in marine wildlife areas, in migratory bird sanctuaries and any identified aquatic species.

On any other federal lands, if identified critical habitat is not protected within 180 days through the stewardship agreements that are contemplated in Bill C-5 or in other federal legislation, then the responsible minister must make an order applying those critical habitat protections.

• (1450)

The third key foundation of this bill is the way in which the proposed act respects the Constitution and that protecting endangered species and the habitat of endangered species is a shared responsibility in Canada. The safety net approach contained in this bill was deliberately designed to take into account the opportunity for protection under provincial or territorial jurisdiction, with a backstop built into the bill so that the Government of Canada can act where and if necessary. The safety net approach is based on cooperation as the first step. It is now our turn to show that we do not ask more of our provincial and territorial partners than we ask of ourselves.

The fourth key foundation element is the role of Canada's Aboriginal peoples in the formation of this bill and in its implementation. We must remember the importance that they place on this legislation and the important role they have had in developing this legislation and the important role they will have in the ongoing application of this legislation. We need their ongoing involvement and their significant contributions and their knowledge, which turns out often to be better based and more clearly thought out and more experientially based than the mere scientific knowledge. This bill will establish a national Aboriginal council on species at risk.

I also want to refer to farmers, landowners and land users and the prohibitions against the destruction of critical habitat, which I know is a question that has been brought to the attention of many honourable senators. It is a concern not just of landowners but also of land users, and not just in rural Canada. This bill contemplates fair and reasonable compensation being provided to anyone who suffers a loss from the extraordinary impact of the critical habitat provisions of the bill. We need a chance to apply practical experience in implementing the stewardship and recovery provisions of this legislation in dealing with those questions of compensation. The experience that we gain will be complemented by consultation with everyone who has a stake in building a system that works for species at risk and for the habitats of species at risk.

In the last few weeks, we heard, in committee, testimony from many Canadians, on all sides of this issue. We listened carefully to those witnesses. We listened to industry associations, miners, people in the agricultural industry, livestock operators, grain farmers and their associations, conservation groups, Aboriginal peoples, landowners and groups of farmers. We have heard diverse points of view. We have heard some say that the law is not strong enough and that it requires improvement. Others said that it is too strong. We also heard a lot of support for the stewardship approach. We had our own concerns, as well.

The committee has been assiduous in addressing those concerns. We debated among ourselves and with the witnesses issues such as compensation and the non-derogation clause, to which I will return in a moment. Our discussions have been, in those respects, very useful and interesting.

I believe that we, on the committee, my colleagues and I, are satisfied with the bill in its present state on the basis of the evidence given, and we are ready to pass this legislation without amendment. We are ready because the bottom line is that although this proposal is not perfect, it represents, as we have heard before, a balance. We believe it is appropriate legislation for Canada because it emphasizes a cooperative approach, an approach based on stewardship and incentives to do the right thing, and on the constitutional spirit of our country.

Honourable senators, the bill is flexible enough to meet the demands of endangered species, whether a fish or an animal or a plant. It is also flexible enough to enlist the participation of all the people concerned: farmers, industrialists, food processors, trappers, mining companies, private landowners, and each of the provinces and territories. Without the participation of all of those elements in Canada, this legislation cannot succeed. We believe the legislation will invoke their active participation.

There is overwhelming public support in Canada for the protection of the habitat of endangered species and of other species as well. We must get this legislative framework in place so that we may begin to apply it in a practical way.

A set of observations made by members of the committee will accompany this bill, and we hope it will accompany the bill for a long time. These observations were made based on the evidence the committee heard. They ought to ensure that a sharp eye is kept out with respect to the actual, practical application of this bill, the way in which it will work, and the way in which it will affect Canada's habitat and all people concerned.

There is also the question of the non-derogation clause. The government has undertaken to introduce legislation, later on, that would have the effect of removing the non-derogation clause from this bill and from other pieces of legislation as well. I want honourable senators to understand that the committee has debated long and carefully about this question, and not for the first time. This is the fourth piece of legislation that I can think of, off the top of my head, since I have had the pleasure of being here, in which this question has been addressed and in which reservations about it have been made known to us by our Aboriginal members.

The Government of Canada has placed the non-derogation clause into successive bills that touch in any way upon matters having to do with the Aboriginal peoples of Canada. They certainly have application to the National Parks Act, the National Marine Conservation Areas Act, the Nunavut Act and the present bill. It is a clause that is simply a flag. It reminds us that protection for Aboriginal peoples is provided for in the Charter of Rights and Freedoms in respect of things which are referred to in this bill.

The clause was intended originally to literally reflect the section of the Charter to which it calls attention. In a court case which is known colloquially as *Sparrow*, the Supreme Court determined, to put it most simply, that rights granted to Aboriginals and to anyone else in this country are never absolute and that there are circumstances in which the common will and the common public interest trump certain otherwise absolute rights. The non-derogation clause was changed a few years ago. The new, if I can put it that way, non-derogation clause began to show up in these bills, and it takes into account that Supreme Court decision so as not to be *ultra vires* of the Constitution.

The reservation that has been expressed first by our Aboriginal members and then by all of the members, I think it is fair to say, of our committee is that, to an extent, it may be that the present non-derogation clause actually does derogate from the provision contained in the Charter of Rights and Freedoms. Senator Sibbeston went to great lengths last year to inform the committee in respect of another bill on the reality of that, and we have heard almost *ad infinitum* from representatives from the Department of Justice and other departments in that respect. It came to the point that the committee — and I can safely say "the committee" — shared those concerns and made representations to the government that, not only in the present bill but in other bills in which the new non-derogation clause has been included, rather than take the chance of the non-derogation clause detracting from the guarantees contained in the Charter of Rights and Freedoms, it ought to be excised.

• (1500)

There is in place, now, an undertaking to me and, therefore, to the committee, by the Minister of Justice that a bill, which will be introduced in the next few months, will remove that non-derogation clause from the present act and from the three other acts to which I referred in this speech and maybe from some other acts as well. That is significant. This is particularly significant to Aboriginal members of that committee. However, I must reiterate that it became a concern of all members of the committee. It is referred to in the observations that will append the bill as it moves along.

Given those important considerations, honourable senators, I earnestly solicit your support for the passage of this landmark and important legislation.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I move the adjournment of the debate in the name of the Honourable Senator Spivak, who will speak next week. As the critic on environmental issues, I would like to reserve for her the right to have sufficient time to provide the critic's perspective.

To allow other honourable senators to speak now, however, I will not move the motion at this time, if it is acceptable that Senator Spivak be deemed the second speaker even though she will speak next week.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I agree with the request of the Honourable Senator Kinsella, that the Honourable Senator Spivak keep her right to be second speaker. This will give other senators the opportunity to speak to this today.

[*English*]

Hon. Lorna Milne: Honourable senators, I would prefer to speak today, and it will be deemed that the adjournment stands in the name of Senator Spivak for her full time.

Honourable senators, I cannot say how great a pleasure it is to stand in this place, after five years of defending and presenting reports as Chair of the Standing Senate Committee on Legal and Constitutional Affairs, to give my own reactions to a bill.

To start, let me say that this is a good bill. It is not a perfect bill. However, in spite of our collective efforts, I do not believe any bill passed in this place is perfect. Each bill serves as a foundation for better future legislation as we learn the final effects of forerunner legislation.

Bill C-5 is just such a piece of forerunner legislation. As Senator Banks has pointed out, it is the result of eight years of consultation between Aboriginal groups, politicians, bureaucrats, miners, foresters, landowners, hunters, fishers and farmers. Few bills have had as much study and scrutiny as this one has, and I believe the time for discussion is over.

To start with, there is a lot of content in this bill that is right. What is most important is that the science is right. All of the measures contained in this bill are triggered by a species being independently listed as threatened, endangered or extirpated. Once they are on this list, protection will be afforded. The science is provided by the Committee on the Status of Endangered Wildlife in Canada, known as COSEWIC. This council's scientific reputation is beyond reproach. They can be counted upon to provide a solid, scientific backbone for this legislation.

Under the procedures outlined in the bill, COSEWIC decides whether a species should be put on the protected list. Once that decision has been made, only a cabinet minister can step in to prevent a species from being listed. If the minister decides to do so, he must provide appropriate justification. This creates a framework where science drives the policy, but the minister and Parliament still retain the final authority.

The bill's focus on stewardship is also a bright light. There is no doubt in my mind that the people who care for Canada's species the most are those who make their living off the land: hunters, farmers, fishers and Aboriginal peoples. More than anyone else, these groups want to ensure that Canada's biodiversity is maintained for generations to come.

Under this act, broad opportunities are a given for landowners and animal users to work with Environment Canada to protect endangered species long before any punitive provisions kick in. I believe that those who are genuinely willing to work with the government will have more than sufficient opportunity to protect both our endangered species and their own way of life in mutually beneficial ways. The government's commitment to stewardship should be applauded.

However, when the time comes for the government to get tough with those who insist on abusing Canada's ecosystem, this bill has the ability to well protect federal lands. It makes it illegal for anyone to kill, harm, harass, capture or take any listed species on federal lands. It establishes harsh punishments, with fines of up to $250,000 and five years in jail for individuals, and fines up to $1 million for corporations. No one can say that the government proposes to treat lightly those who would destroy our endangered species.

On the other hand, there are some problematic areas in the bill, and these will have to be addressed as time goes on. First and foremost, I will address the issue of compensation. Frankly, there are many holes in the proposals. The legislation only provides compensation to those affected by provisions protecting critical habitat. I believe this legislation should go on to afford compensation of some sort to those who can no longer hunt and fish species that are endangered or those who lose the use of some of their land. Moreover, there are no principles outlined in the act to guide forthcoming regulations to govern compensation.

In order for compensation to be effective, the regulations must take the following into account, as the committee has suggested in the report: First, fair market value should be the starting point of the measure of compensation. Other factors may abrogate to or derogate from that value. Second, monetary compensation may not be the most appropriate form of compensation. Other forms of compensation should be available. Third, it is possible that the operation of this act could cause major disruption to a person's livelihood and reduction of their net worth. As a result, artificial limits should not be placed on compensation. Each of these issues can be handled directly in the regulations without amendment to the act. If the government chooses to do so, the bill will be significantly improved.

Another area of concern from the perspective of landowners is the issue of being forced to defend themselves in court. The offences under this act are "strict liability" offences. This means that the Crown only has to prove that an accused violated the act, not that they deliberately intended to do so.

In response to concerns about this provision, the government has made it clear that due diligence is a proper defence to any charges under this act. Unfortunately, the government has chosen not to define exactly what "due diligence" means. Many of the witnesses who appeared before the committee expressed concern about the amount of money they might have to spend themselves to have regular, thorough examinations or even environmental assessments of their land and practices in addition to having to keep abreast of which species are listed and which are not. Due diligence should be defined in the act, and there should be opportunities for landowners to have their plans validated in some way by the government.

There is also no doubt that the government has deliberately chosen not to use all of its present powers to protect endangered species. There are a few areas of federal jurisdiction that the government could exercise but has chosen not to. In particular, the federal government has exclusive jurisdiction over migratory birds. No one disputes this. In fact, former Supreme Court Justice Gerard La Forest recently studied this issue and found that the federal government has extended powers in this area. The federal government should eventually expand the scope of this bill to protect all threatened and endangered migratory birds wherever in Canada they are found.

• (1510)

Even more important, honourable senators, I believe that we should recognize that the federal government's power in this issue stems largely from its criminal law powers under the Constitution. Using its criminal law power, the government could extend the prohibitions against killing, harassing, harming and destroying the habitat of listed species throughout Canada, not just on federal lands. The species at risk regime could and should, I believe, apply throughout the country.

In response to provincial concerns, this bill applies largely on federal lands. However, the fact is that provincial protection for endangered species in Canada is woefully inadequate. Most provincial laws protect 40 per cent or less of endangered species listed by COSEWIC. No provinces — not one — cover all the endangered species. As federal laws develop in this area, the government should spread its wings and have the courage to cover all listed species everywhere in Canada.

Finally, honourable senators, over the past 200 years, those of us who have ourselves, or have ancestors who have, come from Europe, Asia and Africa have, as one of my old history books put it, opened up the land. We have felt completely free to shoot, plough under, chop down, and fish out everything in sight, and we have done so with great abandon. The realization of the results of our actions and of the need for conservation is a very recent notion.

Historically, the Aboriginal peoples of Canada, our Inuit and First Nation peoples, have been forced into increasingly smaller and more non-productive areas. As a result of what the rest of us have done, these reservations in traditional hunting areas are now home to an unfairly high proportion of Canada's species at risk. This bill provides for stewardship arrangements, but I believe the government's obligation to our Aboriginal peoples, who will bear a high proportion of the responsibility for that stewardship, goes far beyond the scope of this bill. The government already stands legally and constitutionally in a position of fiduciary responsibility for First Nations and Inuit Canadians. These people must be adequately and fully repaid for any further loss of their reservation lands and hunting lands already so constricted, now and in the future. As I have said, I believe the government already has the legal and binding requirement to do so.

With that said, honourable senators, I urge you all to support this bill. It is long overdue and it will provide the fundamental foundation of a regime to begin to protect those species that are in the process of dying out. The need for this framework has, to our shame, been ignored for too long.

Hon. Nick G. Sibbeston: Honourable senators, as many senators know, I, along with several colleagues, have been concerned with the matter of non-derogation clauses in federal legislation. Bill C-5 contains such a clause, clause 3.

Briefly, non-derogation clauses have appeared in federal legislation since the adoption of the 1982 Constitution. These clauses, modelled directly on the wording of section 25 of the Charter, were meant to provide assurances to Aboriginal peoples that their rights under section 35 were not being infringed either intentionally or unintentionally. This was the case until 1996 when, suddenly, different wording began appearing in legislation. This was done, apparently, unilaterally on advice from the Department of Justice. Although the wording changes seem minor, they are, in fact, significant.

Department of Justice officials admit the changes were made because they felt the wording of the original non-derogation clauses limited the ability of legislation to infringe Aboriginal rights. However, Aboriginal peoples should expect that their rights will not be infringed casually but only in exceptional circumstances where the will of Parliament is clear.

These changes in the wording of the non-derogation clauses have created uncertainty for Aboriginal peoples. They fear that their rights will be infringed because of these differently worded clauses. Given the history of Canada, they are justifiably afraid of the government's intentions.

The 1982 Constitution, and particularly the inclusion of section 35 which recognizes and affirms existing Aboriginal and treaty rights, is viewed by many Aboriginal peoples as a high water mark. In the words of the Supreme Court of Canada in the *Sparrow* case, which was the first case dealt with by the Supreme Court of Canada after the Constitution Act, 1982, Section 35 "represents the culmination of a long and difficult struggle...for the constitutional recognition of aboriginal rights." It "...provides a solid constitutional base upon which subsequent negotiations can take place." This is the basis of all the advances Aboriginal peoples have made in the last 20 years. We are dismayed that the government would risk these gains.

I and others have raised this matter and tried to find a remedy. We wanted to go back to the original wording, which is nothing other than the wording of the Constitution in section 25. It was a struggle. However, we did manage to persuade our colleagues on the Standing Senate Committee on Energy, the Environment and Natural Resources that there was a problem and that something had to be done. We have persuaded the Minister of Justice, and indeed the government, that these variations in the wording of non-derogation clauses are a problem. They have caused uncertainty for Aboriginal peoples, for the courts and even for the government. The minister has promised to introduce legislation to address this issue in March of 2003.

This, I suppose, is progress of a sort. At least they admit that there is a problem and they have promised to do something, but the question remains: Will the government do the right thing? I am afraid, based on the minister's letters, that all we will get is the removal of all non-derogation clauses from existing and future legislation. This does remove the issue of inconsistency but, frankly, for Aboriginal peoples this would be a terrible loss, a step backwards, a betrayal, and they will be angry. As I said in the committee, I am horrified to think that, as a result of my attempts and the attempts of others to deal with the non-derogation clause, the government will decide to obliterate all non-derogation clauses.

Non-derogation clauses have a long and complex history. In some cases, such as the Sechelt Indian Band Self-Government Act, they were included as a result of negotiations directly with Aboriginal peoples. In others, such as the Migratory Birds Convention Act, the clause was included as a recognition and redress of past wrongs.

Non-derogation clauses are part of the solemn promises made to Aboriginal peoples and critical to the successes achieved under section 35. They cannot merely be swept aside or obliterated. Any new legislation must achieve the original objective, which was to ensure section 35 rights are not infringed and to assure Aboriginal peoples that this is the case. Any legislation must contain some other measure to achieve these objectives. We must persuade the government to do the right thing in the months ahead, and I will seek the assistance and support of my colleagues in this house in this.

For the long term, the right thing is to provide, in stand-alone legislation, that Parliament does not infringe these rights casually. We know, through a number of Supreme Court of Canada decisions, that Parliament has the capacity to infringe Aboriginal and treaty rights, but we also know that Parliament does not intend to do so other than in exceptional cases. The new legislation should provide that laws do not infringe Aboriginal and treaty rights unless this intention is clearly indicated.

• (1520)

Senator Lynch-Staunton: Bring the amendments.

Senator Sibbeston: I am very serious about this. I would prefer that we amend the non-derogation clause in this bill to refer to the original wording. I would have accepted from the minister a clear statement that the government will resolve this matter in a positive and satisfactory manner. Unfortunately, this has not been given. Therefore, I will, in my small way, register my protest by abstaining from voting on this bill.

Senator Kinsella: Abstain?

Senator Banks: Would Senator Sibbeston accept a question?

Senator Lynch-Staunton: He is abstaining.

Senator Banks: The honourable senator cannot abstain from a question. He can decline. Senator Sibbeston has the advantage on me. Senator Sibbeston is a lawyer and I am not. It is a simple question.

I believe, based on what we have heard and what I have been able to determine, that nothing that we can do here in any bill, and that nothing that Parliament can do in any bill, not only should not but cannot derogate from section 35 or any other section of the Charter of Rights and of the Constitution of Canada. In other words, neither this nor any other bill can derogate from rights that are guaranteed in the Charter of Rights or any other aspect of the Constitution of Canada.

I believe that neither the Senate nor the House of Commons or Parliament, if it were unanimous, can do that, that the protection to ensure that that will not and cannot happen exists in the judiciary, and that the absence of a reminder in this or any other bill — which is how I characterized the non-derogation clause in my speech — does not in any way lessen the effectiveness, efficacy and primacy of the Charter of Rights. Does Senator Sibbeston demur from that opinion?

Senator Sibbeston: Honourable senators, I would be pleased to answer that question.

Non-derogation clauses, as I stated, are there to remind courts and the general public that Aboriginal rights are, to a certain extent, sacrosanct and not to be impugned or intruded upon in any way. A number of Supreme Court of Canada cases, beginning with *Sparrow*, have dealt with this issue. The ruling of the Supreme Court is that Aboriginal rights are not absolute where certain conditions prevail, particularly in conservation matters, and that the court and government can indeed infringe on Aboriginal rights.

That is the law. My point is that the courts can decide that. The courts, of course, have the capacity to make decisions with respect to Aboriginal laws, particularly since the provision in section 35 is a general statement and not defined in any way. The courts over the years have been defining and determining what are Aboriginal rights. Non-derogation clauses are important because they remind Parliament and the public that Aboriginal rights exist and that they are not to be derogated or abrogated. My contention is that the courts will decide that issue. The courts will define what these rights are, and we, as a Parliament, should not make it easy. We should not open the door and say, "Help yourself," and basically give notice to the courts that government and society can help themselves to Aboriginal rights.

That is why these non-derogation clauses are so very important.

Senator Banks: I do not wish to be argumentative, but to continue the questioning I have a two-part question. Does Senator Sibbeston believe that the courts need to be reminded of the existence of section 35 of the Charter? As a corollary, if we were obliged to remind the courts of the provisions of the Charter in every bill that exists that touches upon the application of those rights, consider how long the Criminal Code would be in comparison with what it is now, and every other act that deals with rights that exist supremely under the Charter.

The reason I have supported this bill in the way it is and in the measures the government has undertaken, to which Senator Sibbeston referred, is that the Charter is supreme, that the courts do not need to be reminded of that fact, and that they are not reminded in any other bill of any other provision of the Charter of Rights. It is understood by everyone in the courts to be the thing that governs the laws we make.

Senator Sibbeston: Honourable senators, I do believe that section 35 and the non-derogation clauses used in legislation are part of the Aboriginal rights package that was provided and established in 1982 in the Constitution. I note that governments in a number of other jurisdictions have legislation with non-derogation clauses. Saskatchewan in particular has in its legislation a very positive statement in respect to the non-derogation matter. The Northwest Territories, where I practiced my politics for quite a number of years, has placed non-derogation clauses in legislation wherever the matters touched on the rights of people. It was a comfort and reminder to the Aboriginal peoples that this legislation, even though it may touch on Aboriginal rights, would not in any way derogate or abrogate their rights.

As to whether Canadians need to be reminded, I think it is a good thing that we be reminded of Aboriginal rights. Our country does not necessarily have a good history in its dealings with the Aboriginal peoples. The gains made in 1982 with section 35 were so positive. The federal government in its wisdom has been putting non-derogation clauses in its legislation, and has been doing so since then. Therefore, I do not think the answer lies in Minister Cauchon's intention to delete all non-derogation clauses from past legislation and as a matter of public policy not put them in future legislation. It is a step backward. This could be the start of serious deterioration in Aboriginal rights in this country.

Senator Lynch-Staunton: Bring in an amendment.

The Hon. the Speaker: I regret to advise that the time for Senator Sibbeston has expired.

Hon. Serge Joyal: Honourable senators, I would like speak in this debate following the comments made by Senator Sibbeston and the question of Senator Banks. However, I do not want to pre-empt other honourable senators who might be on the list of speakers for third reading.

The Hon. the Speaker: There is agreement that Senator Spivak will have the second speaker right of 45 minutes.

• (1530)

Senator Joyal: Honourable senators, I would certainly protect the right of Senator Spivak to speak as the first speaker from the other side. I stand up this afternoon on this issue because it is a very fundamental issue and one that is within the constitutional duty of the Senate. Honourable senators, the issue of the non-derogation clause appeals to something fundamental in our institutions in Canada. We are dealing with the status of the Aboriginal peoples in our country.

When the British Crown took over Canada in 1763, there was a Royal Proclamation. In the Royal Proclamation, the British Crown recognized the rights of the Aboriginal peoples to their own territory and their own hunting rights. This is confirmed by the first constitutional document of our country.

The courts have systematically interpreted that the Canadian Crown, which succeeded the British Crown, is the fiduciary of the rights of Aboriginal peoples. What does it mean to be fiduciary of someone or their rights? Essentially, it refers to the status of guardian of the rights of the Aboriginal people. In other words, the federal Crown in Canada is responsible to protect the rights of the Aboriginal peoples. However, at the same time, the Canadian Crown has the responsibility to legislate for each and every Canadian. In one way, we are asked to protect and stand for the rights of Aboriginal peoples while, at the same time, we are being asked to legislate for every Canadian.

What happens when we are legislating in a field or domain that pertains to the status of the Aboriginal peoples? We did that earlier this week. We amended the Firearms Act. Of course, we legislated with some particular provisions to regulate the rights of Aboriginal peoples to own a gun. This is linked to their constitutional hunting rights.

This morning we in the Standing Senate Committee on Legal and Constitutional Affairs discussed the subject of animal cruelty in relation to the traditional way of hunting of Aboriginal peoples. This afternoon in this chamber, we are asked to accept at third reading a bill to protect endangered species. Those objectives are valid to regulate the possession and use of firearms. It pertains to all Canadians.

The problem, however, is that when we legislate on those subjects, the first question we must ask ourselves is this: How will that impinge upon the constitutional rights of Aboriginal peoples? Not the question: Is it good for Canada? The question should be: How does it affect the rights of Aboriginal people?

This is fundamental, which is why 20 years ago, we adopted Section 35 of the Constitution which recognized the ancestral treaty rights of Aboriginal peoples, so much so that on implementation and management issues, there is a guide for managers in relation to the fiduciary relationship of the Crown with the Aboriginal peoples, a document published in 1985. It is addressed to each and every department. In other words, when they adopt programs and implement decisions, each person must ask himself or herself: How will this affect the rights of Aboriginal peoples?

Why are Aboriginal peoples in a different status from most of us here? It is because they were the first occupants of this country. They were here before us all. Because of that, and because they were ruling themselves, they have ancestral rights to manage their own affairs. Of course there are times when their interests conflict with the interests of the rest of Canada. That is why there must be arbitration. The first and foremost thing is to ask: How will this infringe on their ancestral rights of fishing and hunting?

The Supreme Court in many decisions confirms this point of view. Senator Sibbeston has quoted the *Sparrow* case. There was also the *Guerin* case, and at least ten other decisions in the last 20 years have pronounced on this issue.

The problem Senator Sibbeston has raised this afternoon is one that we must address because we are the chamber that protects minorities. If a minority has been badly treated through history and not in conformity with that fiduciary relationship, it may be because we as Canadians used our electoral weight, our majority rule, to impose things upon them, and we can do that. There is no doubt about it. Count the heads in this chamber and the other place. However, we would abrogating our fiduciary relationship with the Aboriginal peoples.

This is why I feel the problem raised by the Honourable Senator Sibbeston this afternoon is so important. I am standing this afternoon only to signal to honourable senators that if we have to address this issue in various bills, then it should form part of the report of the committee. Senator Banks and Senator Milne have competently reported such bills this afternoon. We cannot be everywhere. However, at third reading, the first thing we want to know is how they dealt with it.

Yesterday, we heard the representative of the Minister of Justice on the cruelty to animals bill. We asked that representative of the Minister of Justice: How did you consult the Aboriginal peoples before coming up with those provisions? They answered, and I do not want to caricature, "We have sent consultation documents to all of them. We did not hear anything." Therefore, they presumed to have been consulted.

According to this guide, which I spoke about earlier, and the *Sparrow* case to which Senator Sibbeston referred, the Supreme Court has a three-element test when we deal with an issue involving Aboriginal peoples. The first thing is to ask: Is the measure proportionate or the least intrusive in relation to the rights of Aboriginal peoples? The second test is: Are they compensated? The third test is: Have we negotiated in good faith? Those are the tests of the *Sparrow* case.

Honourable senators, this is an important issue. I see my colleague, Senator Gill, who has exactly the same preoccupation, and he is torn apart each time he has to vote for a measure which is good for all of Canada, but is not that good for Aboriginal peoples. There are five such members in this chamber. If we use our majority, we can always overrule them, as we can overrule the rights of French Canadians because the majority is the speakers of the other language. We know that. However, we have in our Constitution principles to protect minorities.

That is the fundamental difference between our country and our neighbour to the south. It is why we are Canadian. We devised institutions in 1867 to protect minorities. This institution reflects that as does our composition and as do our regions. My seat as a district senator reflects that. My colleagues who represent Aboriginal peoples reflect that and try to ring the bell each time we have a report such as we do today, to ask us to think about it.

In view of the discussion we might have later on the letter of the Minister of Justice, it is important that we ask ourselves: How will we approach this issue?

I see Senator Chalifoux here as well as Senator Kinsella who appeared before the committee I co-chaired with the late Senator Harry Hays. We had to ask ourselves if we were protecting the Metis? We did that. We did the right thing.

There are hundreds of difficult problems in relation to territory with the Metis. We all know that. However, we did the right thing.

With regard to this issue, we must do the right thing by the Aboriginal peoples. They rely upon us in a way. We are their trustees. We answer for their rights. That is what a fiduciary relationship means. We in this place are all trustees of their rights.

I do not like to vote in favour of legislation when I feel my responsibilities as trustee for the Aboriginal peoples are not well served.

• (1540)

I was not supposed to speak to this issue this afternoon, but in listening to the debate today, I must tell honourable senators that we must think about how we will react to those issues which are so important, as Senator Banks has said, for the protection of endangered species. We must do so in relation to and in respect of the rights of the Aboriginal peoples. There is no doubt that no one is opposed to that view. We are trustees for the Aboriginal peoples, and they must maintain this trust in us.

[*Translation*]

Thank heavens! If there is one group in the history of our country that has been deceived for a long time, that has been under trusteeship for a long time, it is this group. Today, we have the opportunity to define the basis of our action on principles that appear to me to be much more humane, and much closer to what we, as a country, represent.

[*English*]

The Hon. the Speaker: Will the Honourable Senator Joyal take a question?

Senator Joyal: Yes.

The Hon. the Speaker: Senator Sibbeston.

Senator Sibbeston: Honourable senators, I wanted to come forth with an amendment at this time.

The Hon. the Speaker: Your time has expired, Senator Sibbeston. I cannot give you the floor now. However, there may be an opportunity for you to take the floor if there is another amendment.

Hon. Anne C. Cools: If honourable senators were asked, I am sure they would happily grant leave to allow Senator Sibbeston to move his amendment.

The Hon. the Speaker: Are you asking for leave, Senator Sibbeston?

Senator Sibbeston: Yes.

The Hon. the Speaker: We will deal with Senator Nolin first and then Senator Cools. Senator Nolin will ask a question of the Honourable Senator Joyal.

[*Translation*]

Hon. Pierre Claude Nolin: Honourable senators, I ought perhaps to have held on until the amendment was moved. It might provide me with the answer to this question.

Does Senator Joyal feel, as I do, that the Aboriginal peoples of Canada, as defined in section 35(2) of the Constitution Act of 1982, were not properly consulted on this bill? Is that your reading of the situation?

Senator Joyal: I do not conclude that the Aboriginal peoples were not subjected to what I call "the Sparrow test," the three conditions in the *Sparrow* case. These are, first of all, that the measure must be as non-intrusive as possible. Second, that a system has been put in place that is satisfactory as far as the status of the Aboriginal peoples is concerned and, third, that it has been negotiated in good faith. I am not in a position to state that this is not the case.

[*English*]

The Aboriginal peoples are mentioned in the preamble of the bill. Line 35 of the preamble states that "the traditional knowledge of the Aboriginal peoples of Canada should be considered in the assessment of which species may be at risk." Clause 3 of the bill is the non-derogation clause to which Senator Sibbeston referred.

Further on in the bill, as Senator Milne has mentioned, clause 16(1) states:

> COSEWIC is to be composed of members appointed by the Minister after consultation with the Canadian Endangered Species Conservation Council and with any experts and expert bodies, such as the Royal Society of Canada, that the Minister considers to have relevant expertise.

Clause 16(2) calls upon the knowledge and expertise of the Aboriginal peoples.

I see that the Aboriginal peoples are referred to in the bill. If they are referred to in the bill, one can presume that they have been consulted and have agreed to that. I did not hear from Senator Sibbeston that Aboriginal peoples did not agree with those essential provisions of the bill. On the contrary, from his own words, I think they have been involved.

Honourable senators, when we adopt legislation or we are asked to ratify legislation from the other place that touches upon Aboriginal status, we have to ask ourselves those questions. Today, having heard what I have heard from honourable senators, I understand that participation in the implementation and objective of this bill is shared by Aboriginal peoples.

The problem, as was raised by Senator Sibbeston, deals more with the language of the non-derogation clause. That is where I feel there is a future issue.

The Hon. the Speaker: Senator Joyal, I regret to advise that your 15 minutes have expired.

Senator Nolin: When will Senator Sibbeston be allowed to move an amendment? Will we be allowed to ask him questions on it?

The Hon. the Speaker: I think we are getting ahead of ourselves, honourable senators.

Does the Honourable Senator Sibbeston want the floor to request leave to speak?

Senator Sibbeston: Honourable senators, I request leave to move an amendment.

Senator Carstairs: No.

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

Some Hon. Senators: No.

Senator Kinsella: In rising to move the adjournment of the debate in the name of Senator Spivak, I wish to put on the record that we need some specificity. Section 25 of the Charter of Rights and Freedoms deals with Aboriginal rights and non-derogation. The Charter itself stops at section 34. There is another part, part two, where section 35 deals with Aboriginal treaty rights.

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

KYOTO PROTOCOL ON CLIMATE CHANGE

MOTION TO RATIFY—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Banks:
>
> That the Senate call on the government to ratify the Kyoto Protocol on Climate Change,
>
> And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Murray, P.C., that the motion be amended by substituting for the period after the word "Change" the following:

", but only if, after the Senate has heard in Committee of the Whole from all federal, provincial and territorial government representatives who wish to appear, the Senate determines that there is a substantial measure of federal-provincial agreement on an implementation plan."

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I rise not to speak so much of the accord itself but to the amendment, which has been raised by the honourable Leader of the Opposition.

The Hon. the Speaker: Senator Carstairs, you were the first speaker, so I must ask if this is a right of reply.

Senator Carstairs: I am speaking on the amendment moved by the Leader of the Opposition.

The Honourable Senator Lynch-Staunton introduced an amendment the other day to the effect that the discussion of this place should not come to its conclusion until such time as the Senate has heard in Committee of the Whole from all federal, provincial and territorial government representatives who wish to appear. He and I have a fundamental disagreement as to what this discussion is about in both the Senate and in the House of Commons.

As the chamber knows quite well, there is no compelling reason for the government to have such a discussion in this place before ratifying the treaty. The treaty is signed by the government in its narrow meaning of the word, the Governor in Council.

The Prime Minister believed fully that we had been consulting for five years with a number of the players. We had been consulting with provinces and territories. We had been consulting with members of industry. However, until just two weeks ago, we had not consulted with members of the other place and members of the Senate of Canada.

The Leader of the Opposition in the Senate gives as his argument one of the *Rules of the Senate* which makes reference in its appendix that:

> The Standing Committee on Standing Rules and Orders recommends that the following be observed by committees of the Senate as a general practice:
>
> That, whenever a bill or the subject-matter of a bill is being considered...in which, in the opinion of the committee, a province or territory has a special interest, alone or with others, the government of that province or territory...should, where practicable, be invited to the committee to make written or verbal representations.

Honourable senators, this is not in committee. This is not a bill. This is not even the substance of a bill. At such time as an implementation bill comes before this chamber, then it would be entirely appropriate that we hear from members of territorial or provincial governments should they choose to come and speak before us. However, when we do that we should remember some words put on the Hansard of the Province of Alberta, on November 20, 2002, by the Attorney General and the Government House Leader, when, in reference to the Senate, he said:

> The basic concept of a balance of the Senate, which it's supposed to provide to the House of Commons, is not there because it is not effective, it is not equal, it is not elected, and it does not have accountability to the people.

• (1550)

Senator Kinsella: Your point is?

Senator Lynch-Staunton: Do you agree?

Senator Carstairs: If that is the view of the Province of Alberta, as expressed by their Attorney General and their Government House Leader, so be it. However, one wonders why this particular chamber may, in its due consideration, want to hear from a government that clearly holds this chamber in disdain.

When we have a bill on the Kyoto accord, should this chamber decide it wishes to invite representatives from the Province of Alberta, then I will be in full agreement with having them come here.

The other issue is that we have had a situation in which the federal government has been negotiating with the provincial and territorial ministers for five years. In recent days, it is fair to say that that communication has taken place not only in closed meetings but also at meetings that have been covered by the media on the front pages of most of our newspapers and on our national news broadcasts on radio and on television. Therefore, the communication is clear.

What we are deliberating here today, honourable senators, is how senators feel about the Kyoto accord. I offered the presence of the Honourable Minister of the Environment. I did so because I felt that senators might have wanted to have some specific questions that he might be able to answer whereas I would not be in a position to answer them since I am not the Minister of the Environment. I wanted to be forthcoming with that suggestion. However, if it is not the desire of this chamber to hear from the Minister of the Environment and it is the preference to have the discussion just among members of this chamber, then that is my wish as well.

Honourable senators, the decision we are making with respect to the Kyoto Protocol — and I used this comparison before — is a bit like giving second reading approval in principle. Many specific agreements will have to be worked out in the future. Just as we generally do not hear from witnesses at second reading debate of a bill, we hear them when the bill goes to committee, so we shall have the opportunity to call witnesses when we have any form of implementation legislation before us that will give force and effect to the Kyoto Protocol.

With the greatest of respect to the Honourable Leader of the Opposition, I must indicate that I oppose his motion.

Hon. Pierre Claude Nolin: Honourable senators, I am convinced that the minister wants the chamber to adopt the motion after being properly informed. I assume that is her wish. Senator Lynch-Staunton's amendment is to ensure that the level of information of colleagues will be adequate to take a fully informed decision. Does the honourable senator not agree?

Senator Carstairs: Yes, honourable senators. That is why I tabled the Canadian plan, the Kyoto Protocol, and letters of engagement from the provinces and territories to the federal government indicating the 12 principles. I believe that honourable senators have the information necessary to provide the government with their point of view — not the provinces' point of view, or the territories' point of view or the Government of Canada's point of view, if you are using it in its narrow interpretation, but the point of view of those gathered in this chamber.

Senator Nolin: I am sure the honourable senator does not have to be reminded of the wording of section 92(a) of the Constitution Act. It deals with non-renewable natural resources, forest resources and electrical energy. It also deals with the exclusive rights of the province.

Before we are asked to vote on the motion, does the honourable senator not think it would be proper to hear from those who have the exclusive responsibility to deal with those matters?

Senator Carstairs: As I indicated in my comments, honourable senators, when we are faced with a situation where we will change legislation that would bring some of those things into force and effect, by all means.

Senator Nolin: The honourable senator is asking us to call on the government to ratify a protocol that undoubtedly begs the legislative authority of our provincial partners. I repeat my question: Does the honourable senator not think it would be proper for all honourable senators who have been asked by the minister to ratify this protocol to at least hear from those provincial and territorial partners about how they intend, in their exclusive jurisdiction, to implement the component of that protocol which deals with their exclusive rights?

Senator Carstairs: I have answered that question, honourable senators. The actual responsibility of the ratification still lies with the Governor in Council, but we have been asked for our opinion on this matter. We are not the house of the provincial governments, with the greatest of respect. We are representatives of our various provinces to deliberate on issues of importance to Canada. We have a point of view and we should be expressing it in a fulsome debate.

Senator Nolin: Why does the honourable senator need our opinion, then? Our opinion is not needed.

Senator Kinsella: It is a charade!

Senator Nolin: What is the purpose of asking the opinion of honourable senators if the authority to make the decision is already in place? I agree that the government has that authority, so it does not need to hear our opinion. If the minister wants to hear it, however, we should be able to give an informed opinion. I assume that is what the minister wants, namely, an informed opinion from honourable senators.

Senator Carstairs: With the greatest of respect to the honourable senator, we have heard a lot of talk about accountability, transparency and democratic deficit. The very fact that the Government of Canada has asked the members of the Senate of Canada for their opinion is a step forward in the participatory process, which is of value to each and every one of us.

Hon. Joan Fraser: Honourable senators, this is a question that I would have put to Senator Lynch-Staunton, but I had to be out of the chamber when he proposed his amendment. I will put the same question to the Leader of the Government in the Senate, because it is one that must be put to someone with long political experience.

This amendment suggests that we should determine that there is a substantial measure of federal-provincial agreement on an implementation plan. I do not suppose anyone in this chamber would disagree with the proposition that it would be wonderful if we could achieve that agreement now, if not yesterday. However, it has occurred to me, as I have watched the political events unfolding and the dynamic that has built up, that we may now be caught in a situation that one sees happen not infrequently in politics, in government and in other fields of social activity such as labour negotiations, where the disagreement that has been expressed has been so vehement that what is required to break the log-jam is a change in the situation. That change would be the ratification of the agreement. Once the agreement is ratified, then we will all be able to proceed afresh with an implementation plan.

As the Leader of the Government has already pointed out to this chamber, there is already more substantial degree of agreement than some critics would tend to admit. It occurs to me that perhaps what we need to do now is ratify and then say, "All right. Back to the table!" What does the leader think of that?

• (1600)

Senator Carstairs: I thank the honourable senator for her question. In reality, that is exactly what happened when the Prime Minister announced in Johannesburg that he would put it before the Parliament of Canada. At that point, the conversations, discussions and debates between the provinces, the territories and the federal government, and between industry and the federal government, were not proceeding as rapidly as everyone wanted.

All of a sudden, when the gavel came down and a time frame was outlined, people became more engaged on the issue. I agree entirely with the honourable senator that the engagement will continue. It will be more proactive as a result of the decision taken by the government.

However, before the government is prepared to do that, it wants to hear from individual members of Parliament both in the other place and here. We have a number of choices. If we agree that the government should go forward and ratify, then we say yes. If we do not believe that the government should go forward and ratify, we say no. If we believe that the government does not need our opinion, we can abstain.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I do not know how the Leader of the Government expects us to give the government an informed opinion when there is no agreement on a federal-provincial implementation plan. There is no breakdown of costs. There is no general industry support. There is no enabling legislation. With those elements missing, how can honourable senators provide an informed opinion? We are confirming here what the Honourable David Kilgour said the other day in Alberta, that this vote is a meaningless vote.

Senator Carstairs: Honourable senators, with the greatest respect, I believe it is a meaningful vote. It is an example of the kind of thing honourable senators should be doing more often, giving advice to government before government acts, instead of following the other pattern, which we so often do, such as when government proposes legislation and parliamentarians are expected to accept it as is. Honourable senators do not often do that in this chamber.

I did a study of the last session. We proposed 64 amendments. Good for us. However, it does not necessarily follow that way. I believe that to do it in reverse is a very positive thing.

Senator Lynch-Staunton: What is our opinion worth given that Mr. Anderson, in opening the debate in the House of Commons, has said the government was committed to ratification, and when all government spokesmen in the other place have committed to ratification, including the Prime Minister? What does our opinion matter? The decision has already been taken.

Senator Robichaud: We want to hear from you.

Senator Lynch-Staunton: What do you want to hear? We are making a suggestion that some of the principal parties affected, such as premiers, be invited, or have their representatives appear before us.

What would happen if I or the Leader of the Government in the Senate received a call from a premier or a minister of the environment saying, "Yes, I would like to appear before your Committee of the Whole. I will come any time you want, because I feel there are facts that I can bring to your chamber which would help you have a more informed opinion"? Would she agree to that?

Senator Carstairs: I would not agree to that. That is why I am opposing the honourable senator's amendment. The reality is we have not heard from any of those people.

Senator Lynch-Staunton: I would be glad to arrange for someone from one of the provinces representing either its premier or his department to contact the Leader of the Government. Would the leader be willing to hear from either him or her before the Committee of the Whole of this chamber?

Senator Carstairs: The reason I am opposing the motion is that I believe the debate should be between senators.

Senator Lynch-Staunton: That is why it is meaningless.

Hon. Anne C. Cools: Senator Carstairs has cited certain western persons making some less-than-flattering remarks about the Senate and essentially asked why honourable senators would wish to hear from them.

To the Leader of the Government in the Senate, I would ask: Is it not common that many members in other legislatures and governments have made less-than-flattering statements about the Senate, many of whom have later come here to sit among us? In this regard, I can recall the comments of Senator Taylor. I believe Senator Carstairs, before she became a senator, used to have quite a bit to say about the Senate.

I wonder if Senator Carstairs could tell honourable senators whether those remarks were thought to be relevant to the discussion before us. The senator, in moving his amendment, thought it would be both useful and helpful for a proper consideration of the motion if honourable senators could hear from the provincial governments.

I wonder if the Leader of the Government in the Senate could advise this chamber on that matter, because it is not unusual for many individuals to change their perception of the Senate once they have an opportunity to come into contact with it.

Senator Carstairs: Honourable senators, to answer the last part of Senator Cool's question, I probably have had more contact with the Senate than most senators in this place, since I first arrived here in the gallery when I was 13 years old and watched my father over the next 25 years. I then came in my own instance in 1994. I have now been here for a period of more than eight years.

If the honourable senator was referring to me in her general statement, let me indicate that I have not changed my view of the Senate. It is a view that I have had for a very long time.

Do I think that this house should consider the view of the Government of Alberta when it is one of our potential guests? What I clearly said was that I questioned whether honourable senators would want to hear from a government that clearly had an attitude of that nature about the Senate. However, if we got to the stage of legislation and honourable senators wanted to hear the views of the provinces on it, I would welcome them.

Senator Cools: Senator Carstairs has said that the government has been consulting and there is no need for any further consultation.

As I understand the motion in amendment, the Senate, which is supposedly calling upon the government in the main motion, is asking to hear some of the premiers.

Perhaps Senator Carstairs could tell us how she describes this motion as a consultation with the Senate when at no time at all in this motion is the Senate's opinion of the Kyoto Protocol being sought. This motion does not ask the Senate to approve the Kyoto accord.

I have said this before and I will say it again. This motion is a prayer from the Senate asking the sovereign to exercise its Royal Prerogative in respect of treaty-making. Could Senator Carstairs explain this conundrum?

Senator Carstairs: That is the honourable senator's view, not mine. We in this place have been called upon to give our opinion without doing away with the government's authority in any manner, and even senators opposite have recognized that the Governor in Council has the right to enter into treaties.

Senator Cools: Since it is Senator Carstairs' opinion that we have been asked to give our opinion, perhaps she could rewrite the motion to say the Senate of Canada expresses its support for the Kyoto accord. That would be a clearer way to proceed.

Senator Carstairs: Well, Senator Cools, you have your way of doing things and I have my way of doing things. We often do not see eye to eye.

The Hon. the Speaker: Senator Cools, I would like to point out to you that time is passing, and there are other senators who wish to speak on this matter.

• (1610)

Senator Cools: Honourable senators, I am not too sure that it was in order for His Honour to cut off a senator speaking merely to point out the time. The time is quite in order, and I was putting a question to Senator Carstairs.

I was trying to say that the motion before us is not as Senator Carstairs is describing. The motion before us is, essentially, the Senate of Canada petitioning the government to take a particular action.

If another motion were required and if a different opinion were required, the motion should precisely say that. Based on what Senator Carstairs has said, an amendment to this motion is in order. It should be brought forward by the government and represent what the government wants the motion to state. In other words, the motion should say what it means, and it should mean what it says.

The Hon. the Speaker: Honourable senators, I have risen because occasionally we repeat the same question again and again. It may happen unconsciously. However, when that happens, it is incumbent on me to observe that there are senators awaiting an opportunity to speak.

Hon. John G. Bryden: My question to the Leader of the Government stems from her statement that the motion presents an opportunity for parliamentarians in the Senate to express our views on the Kyoto accord, just as it is happening in the other place on the part of the members of the House of Commons.

This place exists because at the time of Confederation the region from which I come —New Brunswick and Nova Scotia — refused to join Confederation unless there was such a place as this in which our region could be represented equally with the other regions in Canada. It was recognized that there would always be a majority of views coming from Upper Canada and Lower Canada — Ontario and Quebec.

I will take the other page out of Senator Joyal's understanding of the constitutional provisions that established this place. There was specific direction that this place be the defender of minority rights. There was also the responsibility of the persons who represent the regions from which we are appointed to represent the interests of those regions in the Parliament of Canada.

Senator Lynch-Staunton: Question!

Senator Bryden: Honourable senators, I am getting there. When the honourable senator indicated that the government is really interested in getting the views of parliamentarians, it was to give to people such as Senator Kinsella, Senator Banks and me the opportunity to be able to represent, to the government, our views of the position of the regions that we represent on this very important issue.

The others mentioned in the amendment have other avenues such as the federal-provincial conferences that have been on-going for years.

Honourable senators, we should carry into this debate the duty that we understand as senators to represent our region on this particularly significant national issue. Would Senator Carstairs agree with that?

Senator Carstairs: Absolutely, honourable senators.

Hon. Lowell Murray: Honourable senators, I rise to intervene because of the quite troubling exchange I heard a few moments ago between Senator Fraser and the Leader of the Government in the Senate.

I heard Senator Fraser suggest, and Senator Carstairs concur in, a most reckless approach to federal-provincial relations. I wish I could say it was a novel approach on the part of this government, but it is not. It is a most reckless approach to federal-provincial relations in an area where we must have the cooperation of the provinces.

That which the Kyoto Protocol, the government and most of us here would seek to achieve with respect to greenhouse gases cannot possibly be achieved without legislative and other action at the provincial level. That is my starting point.

Yet, we have heard that the way to get that action at the provincial level is to present the provinces with a fait accompli. Is it force majeure? Should we put the accord in front of them and say, "There. Now act"?

Honourable senators, I do not wish to rub salt into an all too open wound, but this is what the government did with the ill-fated gun registry. We the Parliament of Canada have the power to legislate, and the responsibility to legislate criminal law. However, we know that in this country the provinces must enforce and administer criminal law. It must have been obvious to the federal government early on that there were problems with the provincial law enforcement authorities with regard to the gun registry, but they went ahead and passed the law any way.

How many provinces and territories are not administering that law now? It is most of them. We have provinces refusing to administer. We have a checkerboard approach to enforcement, and I will speak to that on another day. We also have horrendous cost overruns. In short, it is a fiasco. This is also what is happening with the Kyoto accord.

The other day I attended a meeting arranged for Progressive Conservative senators and members of the House of Commons with some of the proponents of the Kyoto accord. They were there to urge us to vote in favour of ratification of this accord. Among those there, I do not think she would object to my using her name, was Elizabeth May, who is head of the Sierra Club.

In the course of the discussion she said that the Kyoto accord targets can be met by the federal government acting alone using "federal levers." That is a very big statement. She did not agree with me that that would require the exercise of the peace, order and good government power, or a carbon tax, or, perhaps, the use of the environmental act that would enable the federal government to simply declare a substance toxic and then tell the provinces what to do. The Sierra Club group was not specific about what it would entail. I do believe that the government, once it ratifies, will be in the position where, failing provincial action and provincial cooperation, will have only its own powers to fall back on.

• (1620)

Then we will be facing all of those unthinkable courses of action, such as invoking peace, order and good government, carbon taxes, and the excessive use of the power to declare certain substances toxic. That is what the government is letting itself in for.

Honourable senators, what does ratification mean? We had an exchange about this the other day. The Prime Minister has signed the Kyoto Protocol; we know that. The Governor in Council can now ratify the protocol. Surely it is open to Canada to choose whether to ratify, and if to ratify, to choose the timing of the ratification. There is no magic to the date December 31, if that is the date that the Prime Minister has in mind. However, once the government ratifies, what are the implications?

I tend to think that it means we are committed as a country to implement. If we do not implement, whatever sanctions there are in the agreement can be brought to bear against us. There is a difference of opinion about these sanctions. One opinion offered by the aforementioned Elizabeth May is that the sanctions are a wet noodle; they do not amount to much. An opinion suggested to me by business people is that if we fail to implement, the European countries that have much less at stake than we have could go before the WTO and state that our failure to implement constitutes a hidden subsidy to our industry and that therefore trade sanctions should be brought to bear against us. I do not know, but I place those two opinions on the table for the consideration of honourable senators.

I come back to this point: If ratification is a commitment to implement and we do not have an implementation plan agreed to by the provinces, then the federal government is left on its own, to its own resources, to achieve the Kyoto targets. In my opinion, that would entail such extreme action on the part of the federal government, and perhaps Parliament, that it would constitute a truly divisive situation in the country. It does not need to be like this. It did not need to be like this with the gun registry. Perhaps, in due course, a way will be found involving the provinces, belatedly, that will put that exercise back on the right track.

Honourable senators, I keep thinking about the Free Trade Agreement. There were eleven first ministers' conferences in respect of that agreement between Canada and the United States. There were numerous meetings of federal and provincial trade ministers. After every negotiating session with the Americans, there were conference calls between officials at the provincial and federal levels. At the end of the day, two provinces were not on side — the Government of Ontario and the Government of Prince Edward Island — but the federal government felt confident enough to proceed and to ratify. All of the provinces, including Ontario and Prince Edward Island, went forward and took the actions that were necessary within their respective jurisdictions to ensure that they were compliant with the free trade agreement.

My friend the Leader of the Government in the Senate talks about five years of consultations, and I heard this from the proponents at the meeting the other day. It appears that all people imaginable were in the room for these consultations and, to that extent, it could be considered a great democratic exercise. However, in a matter such as this, negotiations are needed between the federal and provincial governments that are directed to achieving an agreement on an implementation plan. Of course, the private sector could participate just as it did during the free trade negotiations with the sectoral advisory committees, involving all of the economic and industrial sectors in the country.

The achievement of an inter-governmental agreement is absolutely paramount and vital to achieving the goals of the Kyoto Protocol. If serious discussions had been held over a period of five years that were directed to achieving agreement on an implementation plan, I cannot believe that they would not have succeeded.

We can discuss the Kyoto Protocol and the scare stories that have been floated on both sides of the house. It reminds me of the stories about the Free Tade Agreement and about Meech Lake. One can be in favour of achieving the goals of the Kyoto accord. One can accept the science, as I certainly do because I am a layman with no alternative, and one can accept Kyoto. However, it is futile for us to egg the federal government on to ratification when there is no federal-provincial implementation plan to ensure that we will achieve the targets that we signed on to at Kyoto.

I have no difficulty, obviously, in supporting Senator Lynch-Staunton's amendment that would, perhaps, allow us to do some of the spadework with the provincial governments that ought to have been done long before this.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise in support of the motion in amendment by my honourable colleague Senator Lynch-Staunton. I should like to begin by articulating my view that I am a complete supporter of the United Nations Framework Convention on Climate Change. I am also a complete supporter of the protocol arrived at by the party states in Kyoto that provides for the implementation machinery for the party states.

However, honourable senators, consider the damage that Canada will bring upon the international community by the federal government ratifying the protocol when it has no guarantee at all that it will be able to implement or to meet the international treaty obligations that it will assume. Canada will not be able to meet those commitments without the participation of the provinces.

What does this mean? Some people in this town are saying that it is okay; that the federal government, using its executive authority, can ratify this treaty; and that it does not matter if we cannot implement it because we will work that out in the future. Is there no longer any respect for the rule of law? The rule of law principle applies not only to domestic law but also to international law. How can domestic legislation be enacted or the instruments of ratification under international treaty law be deposited by those who will not obey that law?

Honourable senators, Canada will do great harm to the desire of the international community to come to grips, as we must, with our environment. It is one of the new generations of human rights. The environmental right is one of the solidarity rights. I am certain that all senators in this chamber support that objective.

Earlier this afternoon I heard a comment made that there has been consultation with the provinces for the past five years. In 1966, the United Nations opened up for ratification two international treaties in the field of human rights: the International Covenant on Civil and Political Rights with its optional protocol and the International Covenant on Economic, Social and Cultural Rights.

• (1630)

The Prime Minister of the day, Prime Minister Pearson, recognized that there was provincial jurisdiction involved and that Canada would only be able to meet its obligations if the provinces would concur. It took 10 years, which saw numerous federal-provincial meetings of officials and ministers responsible for human rights. Indeed, I cannot recall whether our colleague Senator Joyal was Secretary of State at the time. If he was, he attended one of those meetings.

At the end, in March 1976, all provinces agreed, in writing, that, yes, the federal government should exercise its executive power and deposit the instrument of ratification, which it did. Three months later, in August 1976, three important international treaties in the field of human rights came into force for Canadians. They are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and, attached to that latter one, the Optional Protocol to the International Covenant on Civil and Political Rights. Honourable senators, those international human rights instruments, concurred in by all jurisdictions across Canada, are one of the reasons why we have made such significant progress in the sphere of social justice in our country.

There was the wisdom of a liberal prime minister who knew that all it took was respecting the jurisdiction of the provinces, that it would take a lot of hard work. Indeed, it did, and the result has been salutary to the effect that the very wording of section 15 and the existence of section 27, and I suggest section 28, of our Charter of Rights and Freedoms are written the way they are because of a successful case taken by a Canadian under the Optional Protocol to the United Nations. Canada was found not to be in compliance, and Canada changed its law. I speak of the *Lovelace* case and the old section 12(1)(b) of the Indian Act. There is where Canada benefited domestically from being party to an international human rights treaty.

I am just as convinced, honourable senators, that we as Canadians will benefit from being party to the Kyoto Protocol provided we have collaboration, because only with the collaboration of the provinces will we be able to meet the obligations that we would be assuming.

Frankly, I do not understand why this government has been so unsuccessful in reaching agreement — not unanimous agreement, but substantial agreement. That is the principle that the court spoke of in the famous patriation case. It was not necessary that every province agree, but there had to be substantial and considerable agreement. The fact that we did not have unanimous agreement has been the source of difficulties in our country that speak to our national unity and headaches over the years.

Let me ask this question, honourable senators: What is wrong with having a national plan agreed to by the Government of Canada based upon principles such as those articulated by the provinces and territories, principles like the following: that all Canadians must have an opportunity for full and informed input into the development of a domestic implementation plan? What is wrong with that principle?

What is wrong with the second principle: the plan must ensure that no region or jurisdiction shall be asked to bear an unreasonable share of the burden, and no industry, sector or region shall be treated unfairly, and that the cost and impact on individuals, businesses and industries must be clear, reasonable, achievable and economically sustainable? What is wrong with that as a principle?

What is wrong with the principle that the plan must respect provincial and territorial jurisdiction? Since when is there something wrong with that as a principle in Canada?

What is wrong with the principle that the plan must include recognition of real emission reductions that have been achieved since 1990 or will be achieved thereafter? What is wrong with the principle that the plan must ensure that no province or territory bears the financial risk of federal climate change commitments?

What is wrong with the principle that the plan must maintain the economic competitiveness of Canadian business and industry, considering the reality of where we are located, north of the largest economic industrial community in the world, namely, the United States of America?

What is wrong with the principle of developing, provincially, federally and territorially, a plan based on the principle that Canada must continue to demand recognition of clean energy exports? What is wrong with the principle that a plan be developed, federally and provincially, that would include incentives for all citizens, communities, businesses and jurisdictions to make the shift to an economy based on renewable and other clean energy, lower emissions, and sustainable practices across sectors?

Finally, honourable senators, what is wrong with the principle underlying a federal-provincial action plan for implementation, that the implementation of any climate change plan include an incentive and allocation system that supports lower carbon emission sources of energy such as hydroelectricity, wind power generation, ethanol and renewable and other clean sources of energy?

Honourable senators, I submit there is nothing wrong with those principles, and indeed there is everything right with those principles. These are the 12 principles that the provinces have committed to working with the federal government on to build a national implementation plan. Such a plan would bring pride to Canada. Such a plan might very well in its implementation find Canadian industry, with its ingenuity and creativity, identifying whole new economy areas for development, whether through the IT sector, the engineering sector, the architectural sector. The opportunities here for Canada and Canadians in every corner of our great land are innumerable.

That, honourable senators, is the atmosphere, the milieu, within which a real confederation would work together, bringing our best minds and energies together collaboratively to lead the world, not to meet a minimum standard, recognizing the fact that we share along the border with the United States a corridor that produces so much of the pollutants that enter the atmosphere and do damage that needs to be corrected.

Speaking of our friends to the south, it is important that we recall that the five eastern premiers, meeting with the governors of the north-eastern part of the United States, have reached an agreement on the principles that would be applicable in the development of a program of implementation that would speak not only to Canada but to the United States. They agreed that climate change is a serious global issue that requires leadership and collective and sustained long-term action to reduce Canada's greenhouse gas emissions. All Atlantic premiers are committed to addressing climate change and are signatories to the New England Governor's and Eastern Canadian premiers' regional climate change action plan, which they concurred in at their conference held in Westbrook, Connecticut.

I regret that this particular motion has arrived in this chamber under such a cloud.

• (1640)

The Prime Minister, who I find has nothing but good motive, has a desire to see Canada ratify and, hopefully, implement this protocol. However, the reality is that it cannot be done. He will become a deficit to the kind of social democracy and environmental right development for which the world needs leadership and not "followership."

One does not want to cast aspersions upon the level of leadership or followership that we have seen in this country domestically, but internationally, if countries such as Canada do not provide leadership, the world community will be the poorer for it.

Honourable senators, the debate we are having is a shallow one. The Prime Minister says that Canada will sign this protocol before the end of the year. He brings in a resolution. The Honourable Leader of the Government in the Senate said that the Prime Minister did not have to bring this resolution into the two Houses for debate. Executive power exists; we all know that. Therefore, the question is why did he bring it into the two chambers? Is this a spin-doctor exercise where the band-aids are simply members of Parliament and senators?

Honourable senators, I do not like using the words "charade" or a "mirror exercise"; however, I am afraid that others who would use those words would not be inaccurate in describing the situation that way.

Some Hon. Senators: Oh, oh!

Senator Kinsella: It seems to me that Senator Lynch-Staunton's motion is a reasonable one. Perhaps we can hear from the minister, the government side, but let us also hear the other side. What kind of a debate is it when only one side of the argument is brought forward?

Senator Cools: It is called a Senate debate.

Some Hon. Senators: Oh, oh!

Senator Kinsella: It would be a debate, to use Maritime metaphors, that would be listing quite badly, and I should think listing to the right.

Honourable senators, I do not want to be party to this charade. Let us do it right.

Senator Robichaud: You said you would not use the word "charade."

Senator Kinsella: Let us bring in some witnesses next week. Let us hear from the provinces that have indicated they are prepared to appear. We might get a few premiers. Certainly, a number of officials are prepared to come here to represent their provinces. Let us hear from the minister, and at least hear both sides of the story so that we can conclude this debate.

Hopefully, we will have made the point to the government that in principle it is not a bad idea to ratify this protocol. The provinces are necessary to make it work. They are the *conditio sine qua non*.

With that, honourable senators, let me suggest that we adopt Senator Lynch-Staunton's motion.

Some Hon. Senators: Hear, hear!

Hon. Tommy Banks: Will the Honourable Senator Kinsella accept a question?

The Hon. the Speaker *pro tempore*: I should inform the Senate that the time for speaking has expired.

Is the honourable senator requesting leave to continue? Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Banks: Senator Kinsella mentioned an agreement that was signed between the premiers of some Atlantic provinces and the governors of some American states, an agreement that would at least have international complications and implications. Does the honourable senator know the extent to which the premiers of those provinces have consulted with the Government of Canada in signing that agreement, since he suggested that this sort of thing is necessary?

I was involved in negotiations of one kind or another before I came here. They were much smaller than what are doing; however, I always understood that negotiations did not consist in saying, "Here is my list of demands, and unless you meet them, the negotiation is not satisfactory."

The honourable senator read a laundry list of 12 items from the provinces. As I understand it, the Government of Canada has agreed with nine. Is there a specific number above 75 per cent that would constitute, in his view, substantial agreement?

Senator Kinsella: With reference to the New England governors and the Eastern Canadian premiers, they adopted resolution 27-7 during their conference in Quebec City held August 25 to 27, 2002. The official title of the document is "Climate Change Action Plan." The premiers of Quebec, New Brunswick, Prince Edward Island, Nova Scotia, and Newfoundland and Labrador met with the New England governors.

With regard to the honourable senator's second question concerning the issue of the principles, it is my understanding that the federal government has not worked collaboratively with the provinces on the last two or three principles. Because I am uncertain, perhaps I can get that information. I think all of the principles are valid. However, principle number 11 of the provincial-territorial agreement states that:

> The plan must include incentives for all citizens, communities, businesses and jurisdictions to make the shift to an economy based on renewable and other clean energy, lower emissions and sustainable practices across sectors.

My goodness. I cannot see why that principle would not have to be in the heart of any agreement. It seems to me that I had heard it was the last two, and that was one of them. For fear that the nine principles were not the first nine, let me inquire into that, and I will get back to the honourable senator.

Senator Banks: I remind the honourable senator that the Government of Canada has, as I understand it, agreed to 75 per cent of the requests of the provinces, nine out of 12.

In respect of the international resolution to which he referred, could the senator also tell me whether the provinces felt obliged to consult with the Government of Canada about what they were doing?

Senator Kinsella: It is an excellent case study of a difficult international treaty clearly affecting provincial jurisdiction and federal jurisdiction. The officials worked hard, as did the ministers, in reaching a memorandum of understanding as to how those conventions would be implemented in Canada. Because it involved a mechanism of periodic reporting, all party states have to periodically report. There has been an acceptance of the jurisdiction of the Human Rights Committee of the United Nations to adjudicate on cases.

Let us examine Senator Murray's question about what are the sanctions. As to the sanctions under the UN system, I cannot recall when the UN has gathered together an army of nations to invade a country because it did not comply with an international treaty. However, to use the example of Senator Murray, economic regional groupings might well use other vehicles, such as the WTO, as a lever, which may be more damaging to Canada than the party states management mechanism under the protocol.

• (1650)

Senator Bryden: Honourable senators, I should like to speak to the amendment. I was reminded of another international treaty by words that Senator Murray used. Ten or 15 years ago, Canada was in negotiations on the Canada-U.S. Free Trade Agreement, and there was a huge amount of controversy over that. People would lose billions of dollars and hundreds of thousands of jobs would be lost. There was much debate in this place. It was very difficult, and from what I heard in the media, there was a great deal of acrimony. Finally, there was an election in 1988, the primary theme of which was the so-called free trade debate.

While then Prime Minister Brian Mulroney won the majority of the seats, if that election had been a referendum on that question, it would have been lost. The majority of Canadians who voted in that election voted for parties that were opposed to the Free Trade Agreement.

My point is simply that the demand being made now by the other side that we cross all the "T"s and dot all the "I"s before proceeding with this international agreement flies in the face of something I remember the Prime Minister of that day saying. He said that although Ontario and Prince Edward Island were opposed, and although the government was not sure that it would all be for the best, it was time for us to take a leap of faith.

Some Hon. Senators: Hear, hear!

Senator Bryden: We took that leap of faith and a number of people who were on the other side of that issue voted for parties —

Senator Stratton: Question!

Senator Bryden: I am making a statement.

There comes a point when we must take a little step of faith and say that if we ratify the agreement we can probably be in a position to finish the last negotiations and get this done.

I believe that we are in very good hands. When I look across and think of the confidence that the people on the other side had in the ability of the Government of Canada to find a way to make something so controversial as the Free Trade Agreement work, I believe that we will surely be able to make the Kyoto accord work.

Some Hon. Senators: Hear, hear!

Senator Murray: I wish to ask the Honourable Senator Bryden a question, if I may. In fact, I will put several questions and the honourable senator may wish to deal with all of them at one time.

First, will the honourable senator not agree that his memory is playing some tricks on him and that the term "leap of faith" was not Mr. Mulroney's but that of the Honourable Donald Macdonald, the former Liberal minister who chaired the Royal Commission on Canada's economic prospects?

Second, will the honourable senator also agree that, unlike the present Kyoto situation, the federal government, the provinces and the private sector knew down to the last detail the actions that would be required of them to implement the Free Trade Agreement?

Third, will the honourable senator refresh his memory and tell us what the position of the Liberal government of New Brunswick was on the free trade treaty at the time?

Senator Bryden: I thank the honourable senator for the questions. The answers are "yes," "no," and "I will have to check."

Some Hon. Senators: Hear, hear!

Senator Stratton: We have confidence in the ability of the government to bring it in under budget, as it did with the gun registry.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would repeat my invitation of last week for honourable senators to speak as promptly as possible to this motion before us, so that we can make some progress on it and refer it to the committee for consideration and report.

On motion of Senator Stratton, for Senator Spivak, debate adjourned.

CRIMINAL CODE
FIRE ARMS ACT

THIRD READING—NOTICE OF MOTION FOR TIME ALLOCATION WITHDRAWN

On the Order:

> That, pursuant to rule 39(2)(*d*), not more than a further six hours of debate be allocated for third reading of Bill C-10A, An Act to amend the Criminal Code (firearms) and the Firearms Act;
>
> That when the debate comes to an end or when the time provided for the consideration of the said motion has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the said motion; and
>
> That any recorded vote or votes on the said question be taken in accordance with rule 39(4).

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, there is no longer any justification for the motion of which I gave notice, and I do not intend to move it. I believe it ought to simply be dropped from the Order Paper.

Motion withdrawn.

[*English*]

THE ESTIMATES, 2002-03

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A)— DEBATE ADJOURNED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on National Finance (Supplementary Estimates (A) 2002-03) presented in the Senate on December 4, 2002.

Hon. Lowell Murray moved the adoption of the report.

He said: Honourable senators, as you know, it has been the practice in the Senate for many years to refer the government spending Estimates and Supplementary Estimates to the Standing Senate Committee on National Finance.

It is also something in the nature of a convention here that the Senate does not proceed with the appropriation act based on those Estimates until it has a report from the Finance Committee on them. What is before honourable senators at the moment is a report on Supplementary Estimates (A) 2002-03.

I was about to say that there is nothing terribly unusual about the Supplementary Estimates, but perhaps I should amend that to say that there was nothing unusual about those Estimates when they were considered by the Senate Finance Committee. They amount to some $6 billion, of which $2.2 billion is statutory and $3.8 billion require parliamentary approval.

As the Treasury Board officials assured us when they appeared before the committee, this amount of $6 billion is provided for in the Minister of Finance's October 2002 economic statement and fiscal update. Therefore, there was nothing that was of great surprise to the committee when we received the Supplementary Estimates and discussed them with the Treasury Board officials.

There are several matters that I will flag for honourable senators as briefly as I can. It is, as honourable senators know, consideration of this report that would pave the way for us to consider the interim supply bill, which I presume will be along presently.

• (1700)

I flag for you first the references in the report to the famous or infamous Treasury Board Vote 5. That is the contingency vote, which we have reported on in the past. It is fair to say that the committee is of the view that the wording of the vote and the guidelines passed by Treasury Board to ministers and officials for the way in which this vote may be used provide rather too much latitude to ministers and officials — latitude that has been used.

In any case, the government has taken our previous report seriously. We were told that a proposed new policy statement and refined guidelines are to go forward to Treasury Board ministers for consideration early in the new year. There the matter rests. If changes are made, we will see them reflected in the Main Estimates that will be tabled in March.

There was one new matter — it is new, at least, in my memory — that was canvassed by members of the committee, and it refers to what I might call international events that are hosted by Canada. For the sake of discussion, I divide these into two categories. There are those events that are held at the initiative of nongovernmental organizations. Those include the World Youth Day that the Roman Catholic Church sponsored, for example, or the failed Olympic bid from Toronto several years ago, and the new Olympic bid by Toronto and another bid for the Winter Olympics by Whistler. That is one category of international event that the federal government is called upon in various ways to support. It is the one that interests us mostly.

There are also those other events that flow from our international responsibilities, such as the G8 meeting held in Alberta, and previously held in Halifax, Toronto and Ottawa over the past 20 years or so.

The principle is the same. What concerns the committee is how the federal government gets involved in those events that are the initiative of nongovernmental organizations. I recall that, with regard to World Youth Day, there had been one in Rome three or four years ago, and at the end of it His Holiness the Pope stood up and said, "We will see you in Toronto in three years' time." How did the federal government get involved? Is it the nature of a bid? Were we supporting the City of Toronto? Likewise with the Olympics: How do we get involved and do we operate on the basis of a budget?

I see in yesterday's *Globe and Mail* an indication that, with regard to the bid by Whistler for the Winter Olympics of 2010, Prime Minister Chrétien and British Columbia Premier Gordon Campbell "...will confirm the long-anticipated expansion in the inner harbour of the Vancouver Convention and Exhibition Centre, a key element of the bid blueprint." The article reported that negotiations on the $500-million expansion were reported close to completion yesterday.

Farther down, the article refers to a man by the name of Jack Poole, chairman and chief executive officer of the Vancouver 2010 Bid Corp. It reads:

> Poole added that the bid corporation already has a binding agreement with the city, Whistler, the provincial and federal governments and the Canadian Olympic Committee, meaning everything is in place to support the bid.

We want to know how this process works. Is there an overall budget relating to what is going to be spent by various departments and agencies of government?

We were confronted in the Supplementary Estimates with sums of money being voted — that we will vote, I presume — to various departments to pay the costs of holding World Youth Day in Toronto.

The officials from the Treasury Board assured us that all the accounts were in order, that they were all legitimate and so on, but that was not the question. The question was: Was there a budget? How does this relate to some overall fiscal planning by the government? That is a matter to which we intend to devote a meeting during the month of February.

I will not go into the firearms program except to say that this is an old story. It forms headlines today, but our committee has been on this for three or four years. Read our previous reports. I have no intention, and the committee has no intention, of piling on the matter at this point because we do know that an internal review is being carried on at the Department of Justice. The Auditor General has reported. The officials from the Treasury Board told us they are extremely concerned about this file. The official added: "I do believe if we were to discuss this in a few months we probably would have additional information to provide."

The steering committee has come to the conclusion that the contribution that our committee might make to this issue is to wait several months and then examine the adequacy or otherwise of the reviews and the steps that have been taken to try to correct this situation. As I indicated in an earlier debate, there must be a way that the approach can be changed to involve the provinces more closely and have a more effective and certainly a more cost-effective program; but I hasten to say that that is a personal opinion.

Honourable senators, the same holds true for a matter that Senator Ferretti Barth has raised on numerous occasions. That is Canada's exposure, because of its large territory and the number of flights that pass over it, to paying the full costs of expenses of investigations such as the Swissair investigation. It is the Chicago Convention that requires the country where the accident takes place to assume the liabilities for this.

The honourable senator has raised this issue, and the committee wonders if some change cannot be made to the Chicago Convention to make the international carriers assume some of the liabilities for these investigations. This is a matter we will pursue again.

Finally, honourable senators, the committee wondered what had happened to several recommendations we had made concerning the National Capital Commission and, in particular, the Treasury Board Real Asset Management Funding Strategy. Honourable senators may recall that, under this strategy, the National Capital Commission is permitted to dispose of lands surplus to its needs and to keep the proceeds from the sale for its own capital purposes. The committee was of the view last June, and it said so in a report, that the National Capital Commission should be like any other agency or department of government. When it needs money, it should go to the government and justify its proposition and get the money. Giving it the right to dispose of properties for its own needs constituted perhaps a perverse incentive for it to sell off lands that perhaps it should not be selling off.

The Treasury Board officials before us were not able to give us a satisfactory or, indeed, any answer about what had happened to our recommendation. We have decided to call Ms. Copps, who is the minister who reports to Parliament for the National Capital Commission. She has indicated some willingness to come after the new year. We will try to do that during the month of February. We have scheduled four meetings in February: one with Ms. Copps as a witness; one to hear from the Auditor General; one to deal with international events hosted by Canada; and one to resume our consideration of these arm's-length foundations that the government and Parliament have set up.

We have been around the track on this one. I do not think there is much more we can say about it. We are now in search of best practices, and whether there are not one or two foundations that have a better accountability regime to government and Parliament.

• (1710)

What we are in search of is a happy medium, a compromise, a way to accommodate both the need for some autonomy on the part of foundations and the paramount need to ensure accountability to government and Parliament.

With those few words, honourable senators, I suppose I cannot ignore the fact that the Leader of the Government in the Senate told us earlier that some $72 million will be withdrawn by the government from the appropriation bill. I assume the appropriation bill will be some $72 million less than we might have expected it to be. This represents the supplementary estimate in respect of the Canadian firearms registry. We shall see the situation when the interim supply bill arrives. I am not sure whether that withdrawal has been effected as yet. The last I heard from people watching the deliberations in the other place was that it was still being argued over. We shall see when the bill arrives, assuming it does, in a few days.

In the meanwhile, I do commend this report to your favourable attention and support.

On motion of Senator Cools, debate adjourned.

PUBLIC SERVICE WHISTLE-BLOWING BILL

SECOND READING—DEBATE ADJOURNED

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

Hon. Fernand Robichaud (Deputy Leader of the Government): I would ask for an explanation, please. I do not want to be caught as I was a few days ago.

On motion of Senator Kinsella, debate adjourned.

FEDERAL NOMINATIONS BILL

SECOND READING—DEBATE ADJOURNED

Hon. Terry Stratton moved the second reading of Bill S-4, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions.

He said: Honourable senators, it gives me great pleasure to rise today to speak in support of Bill S-4, a bill that I tabled shortly after this session began.

The long title of this bill is: An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions. The short title is easier to understand and deal with. It is the Federal Nominations Act.

As many honourable senators will know, this is a bill I introduced in the first session of this Parliament. I have spoken to the bill and to a number of senators about it. Therefore, as there have been no major changes in the context, I do not intend to explain in great detail today the effect of its individual clauses. I will address, generally, the subject of parliamentary reform and some of the comments made about this bill in the last session.

The overarching purpose of the bill is to let some sunshine in upon the federal appointment process to ensure transparency and objectivity in the selection of individuals for certain positions filled through the use of Order in Council. A result of this process becoming more public than it is now will be a reduction in the power and authority of the Prime Minister's Office.

It was just over a month ago that the former Minister of Finance crossed the rubicon in relation to parliamentary reform. Who can forget his words on the process ascribed to the PMO? Those words were:

> We have permitted a culture to arise that has been some thirty years in the making. One that can be best summarized by the one question that everyone in Ottawa believes has become key to getting things done: "Who do you know in the PMO?"
>
> This is unacceptable. We must change that reality.

While Mr. Martin presented a six-point plan for parliamentary reform, one of the parts of the plan concentrated around the process of government appointments.

While no details were provided by the former Finance Minister as to how it should be done, he did say, "...a healthy opportunity should be afforded to the qualifications of candidates to be reviewed, by the appropriate standing committee, before final confirmation."

Honourable senators, Bill S-4 helps to fill in the details missing from the former minister's speech.

Under Bill S-4, a committee of the Queen's Privy Council for Canada would be formed to develop public criteria, to devise a process to identify and assess candidates, and to provide for parliamentary review of those appointments through appearance before the Senate Committee of the Whole. As I said in the last session:

> I decided that the review in Committee of the Whole by the Senate was preferable to any other alternative. The Senate is less political than the House of Commons, represents the regions of Canada and has proven in the past to be very effective when dealing with federal officials appearing in the Committee of the Whole, especially in relation to their annual reports.

I think we would all agree with that.

If we should have a similar situation occur in the House of Commons, as we all know, it would become virtually like the U.S. system, which I do not think any of us would enjoy.

[Senator Stratton]

Ministers intending to fill Order-in-Council positions would choose from among candidates recommended as eligible. Note that not all federally appointed judges would be subject to review, but those listed in the schedule, Part 1 of the bill would be, provided they were required by the Senate.

We have even provided a mechanism by which appointments which must be made can quickly proceed with a hearing held after the appointment has been made.

It is my intent that those nominated to serve on the Supreme Court of Canada would be subject to scrutiny. As I stated in my speech on this bill in the last session, I believe this to be appropriate given the role that the Charter has given judges in our society. In other words, to put a face to a name and a personality to that face. I think Canadians need to see that.

When I introduced this bill in the last session, the response from the public in Western Canada was overwhelming. They felt that this was a very positive step. They would really like to see it. I put that out as food for thought for those senators from the West.

Critics of this bill believe it unduly interferes with the Crown's prerogative. It was argued that Royal Consent must be given before the bill is dealt with further.

• (1720)

The Speaker made it clear that this can happen at any time before the bill becomes law. Others were concerned that this bill should not move to study in committee because this would mean approval in principle had been given to the bill. Given that the purpose of this bill is to move along our discussions on parliamentary reform, I believe study in committee is crucial. Therefore, I would not object and, in fact, I would support the idea that the subject matter of this bill be sent to committee for study prior to its receiving second reading.

We should take a look at it. I look forward to discussions on this bill and to its review by the Senate Standing Senate Committee on Legal and Constitutional Affairs.

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

SCRUTINY OF REGULATIONS

FIRST REPORT OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the first report of the Standing Joint Committee for the Scrutiny of Regulations (permanent order of reference and expenses re rule 104) presented in the Senate on November 26, 2002.—(*Honourable Senator Hervieux-Payette, P.C.*).

Hon. David P. Smith, for Senator Hervieux-Payette, moved the adoption of the report.

Motion agreed to and report adopted.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

CONSIDERATION OF FOURTH REPORT OF COMMITTEE

The Senate proceeded to consideration of the fourth report of the Standing Committee on Internal Economy, Budgets and Administration (CRTC decision re CPAC's licence renewal application) presented in the Senate on December 3, 2002. —(*Honourable Senator Bacon*).

Hon. Lise Bacon: Honourable senators, the purpose of this report is to give an update on the negotiations with CPAC for the renewal of the broadcasting agreement. Because we were unable to come to an agreement, the Internal Economy Committee recommended that the Senate make intervention in the CPAC licence renewal application before the Canadian Radio-Television and Telecommunications Commission. In that intervention, we expressed concerns about CPAC's television coverage of Senate committee programming and other related matters.

On November 19, 2002, the CRTC released its decision concerning CPAC's application. The summary of that decision as it relates to the Senate intervention is provided in the report before you today.

We must recognize that the CRTC has sent a clear message to CPAC, and the CRTC expects that CPAC will improve its coverage of Senate programming.

[*Translation*]

The CRTC decision means real progress for the Senate. The CRTC found that it was important that CPAC reflect the bicameral nature of the Parliament of Canada through the broadcasting of the proceedings of the upper house and the lower house.

[*English*]

Accordingly, the CRTC changed the title of the exemption order to "Parliamentary and Provincial or Territorial Legislature Proceedings Exemption Order," instead of "House of Commons and Provincial or Territorial Exemption Order." Previously, the order did not include any reference to the Senate, and the CRTC stated that in the future, the programming service provided by CPAC should reflect the bicameral nature of Canada's Parliament by a fair coverage of both the House of Commons and the Senate.

[*Translation*]

So, from now on, the debates of the Senate should be covered in their entirety, and this coverage will be from the beginning to the end of the sitting.

[*English*]

The coverage will be gavel to gavel — from beginning to end. The control over the programming is retained by the committee responsible for broadcasting matters, which, in the Senate, is the Standing Senate Committee on Internal Economy, Budgets and Administration.

The CRTC stated in its decision that it expects to schedule Senate committee proceedings equitably in relation to its televised proceedings of the House of Commons and to work with the Senate to find a mutually satisfactory solution to the scheduling of such programming. The onus is clearly on CPAC to contact the Senate with the proposal of scheduling matters. CPAC should, according to the CRTC, give the implementation of the recommendation regarding the Senate its highest priority. However, the CRTC did not impose specific conditions of licence that would have created a legal obligation to broadcast a minimum amount of Senate programming.

We must recognize that the decision constitutes an important victory for the Senate. The CRTC has created a solid foundation upon which to better access CPAC's broadcast of Senate programming in the future. As our report indicates, the steering committee has been authorized to continue negotiations with CPAC for a renewed broadcasting agreement and to report thereon to the full committee.

[*Translation*]

In conclusion, I want to thank all those who worked on this issue for their precious cooperation.

The Hon. the Speaker *pro tempore*: If no other senator wishes to speak, the debate on this issue is concluded.

[*English*]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

SIXTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the sixth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (amendment to rule 86(1)(o) — Fisheries Committee) presented in the Senate on December 4, 2002.—(*Honourable Senator Milne*).

Hon. Lorna Milne moved the adoption of the report.

She said: The explanation is very short and very concise. This simply adds four words to the standing orders of the standing *Rules of the Senate*. It adds the words "and oceans," so that the rule will read:

> (o) The Senate Committee on Fisheries and Oceans, comprised of 12 members, four of whom shall constitute a quorum, to which shall be referred on order of the Senate, bills, messages, petitions, enquiries, papers and other matters relating to fisheries and oceans generally.

This merely brings the mandate of the committee in line with what it has actually been doing for many years, and it also brings it in line with the name of the department with which it deals.

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

Motion agreed to and report adopted.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FIFTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fifth report of the Standing Committee on Internal Economy, Budgets and Administration (committee budgets) presented earlier this day.

Hon. Lise Bacon moved the adoption of the report.

She said: Honourable senators, I should like to take just a few minutes to explain the contents of this report.

Internal Economy recognizes the commitment that senators have to committee work.

• (1730)

Every effort has been made to get the budget process underway quickly so that committees can organize their work for the remainder of the fiscal year. However, given that several budgets have not yet been received and that there may be further budgetary demands later in the fiscal year, the committee wanted to ensure that funds were released in a responsible manner.

[*Translation*]

The committee chairs appeared before the Subcommittee on Budgets, to present various items of their budgets.

After taking into consideration the observations made by the chairs and a number of guiding principles, the subcommittee made recommendations to the Standing Senate Committee on Internal Economy, Budgets and Administration regarding the funds that should be allocated now.

Following a debate, the Standing Senate Committee on Internal Economy, Budgets and Administration adopted the subcommittee's report on legislative budgets and special studies budgets.

[*English*]

According to the Procedural Guidelines for the Financial Operation of Senate Committees, special study budgets are to be reported to the Senate by the committee requesting the funds, while legislative budgets are to be reported to the Senate by the Internal Economy Committee.

This fifth report of the Internal Economy Committee recommends the release of funds for the legislative work of six committees, as well as the budgets for the Standing Committee on Internal Economy, Budgets and Administration and the Standing Committee on Rules, Procedures and the Rights of Parliament, in the following amounts: the Standing Senate Committee on Aboriginal Peoples, $5,000; the Standing Senate Committee on Banking, Trade and Commerce, $15,000; the Standing Senate Committee on Energy, the Environment and Natural Resources, $11,500; the Standing Committee on Internal Economy, Budgets and Administration, $3,000; the Standing Senate Committee on National Finance, $3,000; the Standing Committee on Rules, Procedures and the Rights of Parliament, $7,400; the Standing Senate Committee on Social Affairs, Science and Technology, $2,500; and the Standing Senate Committee on Transport and Communications, $10,000.

[*Translation*]

According to the board, these amounts will allow the committees to conduct their legislative agenda at least until the end of the current fiscal year.

[*English*]

I urge honourable senators to support the adoption of this report.

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

Motion agreed to and report adopted.

[*Translation*]

OFFICIAL LANGUAGES

MOTION AUTHORIZING COMMITTEE TO STUDY REPORT ENTITLED "ENVIRONMENTAL SCAN: ACCESS TO JUSTICE IN BOTH OFFICIAL LANGUAGES"—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion, as modified, of the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser:
>
> That the report entitled "Environmental Scan: Access to Justice in Both Official Languages," revised on July 25, 2002, and commissioned by the Department of Justice of Canada, be referred to the Standing Senate Committee on Official Languages for study and report;
>
> That the Committee review the issue of clarifying the access and exercise of language rights with respect to the Divorce Act, the Bankruptcy Act, the Criminal Code, the Contraventions Act and other appropriate acts as applicable; and
>
> That the Committee report no later than May 31, 2003. —(*Honourable Senator Corbin*).

Hon. Eymard G. Corbin: Honourable senators, I would like to explain why I took adjournment of the debate on Senator Gauthier's motion, as modified. The Standing Senate Committee on Official Languages is a new committee. The members of this committee decided to work as a team. The Standing Senate Committee on Official Languages will, on Monday, examine different issues as well as the proposed work for the next months.

The effect of Senator Gauthier's motion would be to set a deadline for the Standing Senate Committee on Official Languages, when it is just examining its work schedule. That is why I have taken adjournment on the senator's two proposed studies, which also require that the Standing Senate Committee on Official Languages report by May 31, 2003. The committee is entitled to set its own priorities. It has no choice but to start with an examination of the annual report and the special reports of the Commissioner of Official Languages.

Senator Gauthier understands the reasons for my taking adjournment of the debate last week. Moreover, the two matters in this motion are already on the list of subjects proposed for study by the Standing Senate Committee on Official Languages at its meeting next Monday.

I do understand Senator Gauthier's good intentions, but the committee on which he himself sits needs the opportunity to organize its calendar. I am therefore asking that the debate be adjourned.

On motion of Senator Corbin, debate adjourned.

MOTION TO AUTHORIZE COMMITTEE TO STUDY OPERATION OF OFFICIAL LANGUAGES ACT WITHDRAWN

On the Order:

> Resuming debate on the motion, as modified, of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Wiebe:
>
> That the Standing Senate Committee on Official Languages be authorized to study and report from time to time upon the operation of the Official Languages Act in Canada in general and in the federal public service in particular;
>
> That the Committee table its final report no later than March 31, 2004.—(*Honourable Senator Corbin*).

Hon. Eymard G. Corbin: Honourable senators, last week, when we reviewed the motion presented by Senator Losier-Cool, a number of senators rose to make suggestions. I then took adjournment of the debate to allow interested senators, including the members of the Standing Senate Committee on Official Languages, to take into consideration the comments that had been made by Senator Gauthier, Senator Kinsella, Senator Murray and Senator Joyal.

The committee met on Monday afternoon to hear the Commissioner of Official Languages. Agreement was reached on a motion to replace Motion No. 68.

You will find this new motion, which Senator Losier-Cool moved yesterday, under No. 77, on page 17 of the Order Paper. This motion reflects the views that were expressed last week.

Strictly speaking, Motion No. 68 is now irrelevant, and I am asking for the unanimous consent of the Senate to have it dropped from the Order Paper.

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

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, must we not have leave from the person who proposed this motion to withdraw it?

Hon. Rose-Marie Losier-Cool: Honourable senators, I am asking leave from the Senate to withdraw Motion No. 68 on the Orders of the Day.

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

Hon. Senators: Agreed.

Motion withdrawn.

[*English*]

TRANSPORT AND COMMUNICATIONS

MOTION TO AUTHORIZE COMMITTEE TO STUDY MEDIA INDUSTRIES—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Gauthier:
>
> 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 no later than Wednesday, March 31, 2004.—(*Honourable Senator Kinsella*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I am prepared to move the adjournment of the debate until Monday, but I made a commitment to my colleague Senator Fraser that I would speak today. Therefore, I am in your hands.

Some Hon. Senators: Agreed.

Senator Kinsella: I will abbreviate my remarks, honourable senators.

The need to have a full debate on this motion will be followed in the future when we receive a motion from a Senate committee that it proposes to undertake a study on a given topic. Whether Senate committees can afford to undertake studies is the responsibility of the Standing Committee on Internal Economy, Budgets and Administration. However, the chamber must give some guidance to senators on the Internal Economy Committee so that they have a sense as to the priority that they would see in a given order of reference.

• (1740)

Honourable senators, in the recent past, in fact it has been on the scroll for a number of sitting days, we have seen two excellent reports, one by the Standing Senate Committee on Social Affairs, Science and Technology and one by the Standing Senate Committee on National Security and Defence.

I believe the perception across Canada is that the Senate has conducted a study on these two areas, one was health care and the other was the security issue. As honourable senators know, the Senate has not adopted either of the reports. The word on the street is that these are the reports of the Senate.

I am sure that both reports will be embraced at the end of the debate on them. However, the bottom line is that no debate has taken place. If there is not going to be a debate after a report is tabled, perhaps honourable senators will have to have a debate at the front end.

Therefore, I have looked at what is before the chamber at the moment, that the Standing Senate Committee on Transport and Communications wants to have the authorization of the Senate to examine and report on the current state of the Canadian media industries, emerging trends and developments in these industries, the media's rules, rights and responsibilities in Canadian society, and current and appropriate future policies relating thereto. Honourable senators, frankly, if this were a master's thesis proposal looking for approval, I do not think that any graduate school would give it its approval, because it lacks direction.

What is being proposed is a broad study of several issues relating to the Canadian media. These issues, while not completely unrelated, are separate issues. Each of them may be worthy of a separate study but, combined, they would clearly, as is articulated here on the Order Paper, result in an unfocused and unorganized study. A study about everything, honourable senators, in general is a study about nothing in particular.

Consider the Davey committee, a study on the media; it had a focus, and its concentration was on media ownership. It was circumscribed. It also occurred in an era when those kinds of issues were around an industry at its state of evolution. Since the time of Senator Davey's committee, the evolution, technological and otherwise, in that industry has been remarkable.

Another study was conducted in 1981, the Kent commission, which was a study on aspects of the media. That study had a focus. It was a concentrated study on newspaper ownership. That focus was very circumscribed whereas the language of the motion before us is somewhat Orwellian: "The media's role, rights and responsibility in Canadian society."

While the media is a peculiar case, in that it is the only profit-oriented industry granted constitutional freedom from excessive governmental intervention, freedom of the press, why does the committee imply that it has responsibilities in Canadian society over and above the responsibility to obey the law, as any other corporation or corporate entity should?

If this motion is taken at its face value and, as I suggest, in the unfocused manner in which it is crafted, I would like to try to be helpful and suggest that the committee go back and attempt to identify their research question.

What in particular does the committee want to study? What particular issue concerns the committee? The rise of the Internet as a journalism medium could be an interesting focus of the study. The potential loss of sovereignty posed by technological advances could be the basis of a very interesting and focused study. It could become even more focused if the committee looked at direct-to-home or the so-called grey market satellite dishes, or the Internet. Perhaps the issue could be the concentration of media ownership or convergence of media technology, or the relationship between the press and the state in Canada.

The answers to these questions would result in some kind of a proposed statement for a focused study. Therefore, I must ask this question: What preliminary work has the committee done to prepare this proposal? Other than the Davey study, what have honourable senators read? Who has the committee heard from in gathering its preliminary data to form the research proposal? What resources does the committee need? Why does the committee need to do its study at this particular time? Are honourable senators concerned about a particular issue; if so, what is it?

When honourable senators look at the time line that is put into a study, the focus of which I cannot determine, it will take us to the year 2004. With a time frame of 15 months to study this issue, the scope of which is already overly broad and unfocused, the length of study may magnify the inherent problems with the scope of the study. What the committee studies in early 2003 may be found to be obsolete in the year 2004 in one sector of the fast moving communication or media world.

What is the solution, honourable senators? Given the public interest in the subject, a full debate should be held in this chamber to facilitate direction development for the committee. This was done for the Special Committee on Illegal Drugs, the result of which was that that committee conducted a focused study on cannabis and marijuana. I suggest it might be helpful if the committee were to define its question for research so that it can provide direction identify its methodology.

On motion of Senator Stratton, debate adjourned.

AMERICA DAY IN CANADA

MOTION—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Grafstein, seconded by the Honourable Senator Kirby:
>
> That the Senate urge the Government of Canada to establish September 11 of this and every year hereafter as a commemorative day throughout Canada, to be known as "America Day in Canada."—(*Honourable Senator Bryden*).

Hon. John G. Bryden: Honourable senators, I wish to take a few moments to make some comments on the motion of the Honourable Senator Grafstein that was moved on October 8 last.

To remind honourable senators, the motion cites that the Senate urge the Government of Canada to establish September 11 of this and every year thereafter as a commemorative day throughout Canada, to be known as America Day in Canada.

If we were to adopt this motion, honourable senators, we need to be more specific in identifying the country that would be celebrated so that at no time, no matter how far into the future, there would be no confusion as to which America is meant. Honourable senators should make it clear that this day would not apply to other Americas, such as North America, Central America, South America or Latin America, for example.

• (1750)

Make it clear that this special day in Canada refers only to the United States of America. Since "United States of America Day" may be a somewhat cumbersome title, we could use the shorthand version that I understand is preferred by our Poet Laureate George Bowering when referring to the United States of America — "U.S. America." This would require that the motion be amended to change the designation to "U.S. America Day in Canada."

It is interesting to note that this motion was made almost two months ago. Since that time, there has been very little public comment about it. It would appear that at least to this point it has not fired an enthusiastic response by Canadians, even though the *Globe and Mail*, our national newspaper, devoted virtually all of its inside front page to the matter in one of Roy McGregor's well-read columns. In his column, Mr. McGregor opined that perhaps Canadians should consider such a designated day, if the gesture was reciprocated by the United States and they designate a "Canada Day" in the United States. The two designations would thus recognize the historical symbiosis between our two great nations, generally, and in particular, it would allow the United States a way of expressing its gratitude for Canada's unquestioned acceptance of all U.S.-bound flights on September 11 without knowing who or what might be on those flights, and the courageous welcome Canadians in small communities such as Moncton, Gander and Whitehorse extended to thousands of terrified U.S. citizens and others. It would help to make up for the fact that the President of the United States did not include Canada in his list of friends, even though we were the only nation to have provided help at substantial risk to our citizens on that terrible day, and the fact that our continuing support of the "war on terrorism" has certainly earned Canada a place on the enemies list of Osama bin Laden.

Intriguing as Mr. McGregor's suggestion of a Canada Day in the United States is, in my view, we should not go there. Why open ourselves to even further abuse by talk show hosts and late-night TV hosts who might prefer "Soviet Canuckistan Day," which would satisfy Pat Buchanan, or "Northern Wimps Day." I know that such terminology is the product of sensationalist commentators and entertainers, including those on CNN's *Crossfire*, who will do and say anything for notoriety and ratings. I am a bit surprised that there has been no counterspin of which I am aware representing the views of the silent majority in U.S. America.

I, like the vast majority of Canadians, have great respect for the United States and a continuing affection for our neighbours to the south. In the 1960s, my wife Lorrie and I spent six years in Philadelphia. Unlike Bob Hope's old joke that he was in Philadelphia once and it was closed, we found the city and its citizens open, welcoming and friendly.

Our two oldest children were born there. Lorrie nursed at the University of Pennsylvania Hospital. I attended graduate school and later worked with the Prudential Insurance Company of America and Hallmark Cards Inc. in Kansas City, Missouri, and you cannot get much more American when you care enough to send the very best.

We were there during the race riots, the Cuban missile crisis, and I was standing at a bar in a bocce club in South Philadelphia when the TV anchor announced that John Kennedy had been shot, and like so many others in that room, I wept.

It was during this period that I began to understand the strength, resilience and determination of the institution that is the United States of America. What other nation could withstand the assassination of its leaders: John Kennedy, Martin Luther King and Bobby Kennedy to name just three? What other country could go through the gut-wrenching tragedy of the Vietnam War and the shame of Richard Nixon, and then go on to win the Cold War and become the wealthiest and most powerful nation that the world has ever known?

This most wealthy and powerful nation is our next door neighbour, and as someone said, "Our best friend, whether we like it or not."

A recent discussion of the risks and rewards of living in this neighbourhood is the cover story in the November 25, 2002, issue of our national magazine *Maclean's*. It presents two entertaining and opposing points of view in essays entitled "America Lite. Is that our future?" Yes, says Jonathan Gatehouse. No, says Douglas Coupland.

Even Gatehouse, whose argument is that we are already internationally, culturally, commercially and politically "America Lite," has some reassurances for Canada. He writes, "Nobody in Washington gets up in the morning and thinks about how to take over Canada." Some might add that nobody in Washington gets up in the morning and thinks about Canada at all.

On U.S. concern over Canada's defence spending, he quotes John Pike, one of America's leading defence analysts: "The United States is quite capable of blowing up anybody that needs to be blown up without anyone else helping." While that is reassuring, I nevertheless was pleased to read that Defence Minister McCallum told the U.S. ambassador and others that Canadian defence policy and spending will be decided in Canada by Canadians.

Douglas Coupland, for his part, takes the position that Canadians and Americans have never been more different. In his opinion, "What the Americans want is most likely our water, our power grid and, most of all, our natural resources not to compete with theirs in an open market." He says, "Americans have lately been upset by the tiny size of Canada's military, and our nation's reluctance to dive-tackle whatever scenarios have emerged from Washington." He then points out that more people live in Illinois, Michigan and Ohio combined than in Canada. They would think you were nuts if you were to tell them to protect everything north of the 49th parallel, from the Atlantic to the Pacific to the Arctic Oceans — but this is exactly what Canada has to do.

He goes on to say, "From a military standpoint, Canada is succulently, juicily, deliciously invadable."

• (1800)

Theoretically, if Canada were invaded, the United States would come to our aid, but what if it is the U.S. doing the invading? Why has the U.S. not taken us over yet? One supposes that they could do it in 30 minutes. It is simply cheaper and easier to let Canada take care of itself. An uninvaded Canada is a cost-effective good buddy — how depressing. However, it is not just Canada. The U.S. could take over anyone, really — New Zealand, Denmark and Ghana. We just happen to live next door.

The nationalists in Canada have often fretted over Canada's loss of sovereignty to the United States and that we might become the 51st state.

The Hon. the Speaker *pro tempore***:** Honourable senators, it is now six o'clock. Is it agreed that we not see the clock?

Hon. Senators: Agreed.

Senator Bryden: Honourable senators, I can only imagine the relief among the nationalists when the cover of the November issue of the American magazine, the *Atlantic Monthly,* shows Uncle Sam holding Iraq on his shoulders with the caption "The Fifty-First State." We are off the hook.

Finally, is creating a "U.S. America Day in Canada" going to add to the mutual respect between our two countries? Is it, for example, going to address the high-handed treatment of Canadian citizens by their immigration services or the denial of even a modicum of due process to them? I do not think so. I believe Canada will serve our people best, and indeed will serve our closest neighbour best, by continuing to be and to appear to be confident in ourselves, our values and our role on the international stage. What I know of the United States is that it is not impressed by anyone reminding them how great they are or how much they are loved. They know that already.

The gesture in this motion, no matter how well-intended, will be taken by some in the U.S, if indeed any notice is taken at all, as a sign of forelock tugging and sucking up to our rich and powerful neighbour. Rather, Canada should continue to insist on the rule of law internationally as well as nationally. As examples, the equal adherence and enforcement of UN Security Council Resolutions, the acceptance of adjudicative decisions of disputes in International Trade and the North America Free Trade Agreement, whether it be potatoes or softwood lumber.

We should continue to promote the International Court of Criminal Justice, the Land Mines Treaty and the Kyoto Protocol on global warming to our neighbour to the south and perhaps they will continue to participate internationally. We should continue to urge the rich and powerful nations of the West — Canada and the U.S. included — to spend as much money and expertise on a war on world poverty and pandemic diseases as would be spent on a war against Iraq, for example.

Canadians, by being ourselves and doing the right thing as defined by us, have punched above our weight both militarily and diplomatically, ever since Vimy Ridge and Suez. We owe it to our country, to our neighbour and to the world to continue to do that. I do not believe this resolution enhances our ability to support the United States, when appropriate, and attempt to influence and counterbalance them when necessary. I will not be voting for this motion.

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

[*Translation*]

APPROPRIATION BILL NO. 3, 2002-03

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message has been received from the House of Commons with Bill C-21, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003.

Bill read first time.

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

On motion of Senator Day, bill placed on the Orders of the Day for second reading two days hence.

NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE WITHDRAWN

On the Order:

> That the Standing Senate Committee on National Security and Defence have power to sit on Monday next, December 2, 2002, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Hon. Joseph Day: Honourable senators, I move, with leave of Senator Kenny, and pursuant to paragraph 30, that this motion be withdrawn with leave of the Senate.

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

Hon. Senators: Agreed.

Motion withdrawn.

[*English*]

COMMITTEE AUTHORIZED TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Joseph A. Day for Senator Kenny, pursuant to notice of November 28, 2002, moved:

> That the Standing Senate Committee on National Security and Defence be empowered, in accordance with rule 95(3), to hold meetings between Monday, January 6, and Friday, January 10, 2003.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I have a question for those of us who may want to attend. Are these meetings to be held in Ottawa?

Senator Day: Yes, they will be held in Ottawa. I cannot tell you the precise location, but they are usually held in the Centre Block and they will commence on January 6, 2003.

Hon. Eymard G. Corbin: Honourable senators, Senator Kenny gave notice that he would be seeking permission to table a certain report during the Christmas adjournment. Does that Notice of Motion have anything to do with what the honourable senator is seeking to accomplish now?

Senator Day: Honourable senators, I understand that will be one of the items of business that we will deal with during that week of sittings.

• (1810)

Hon. Serge Joyal: Honourable senators, other than the report, is there any other pressing business that compels the members of that committee to sit in the week after the celebration of Christmas and the new year?

Senator Day: Honourable senators, the members of the Standing Senate Committee on National Security and Defence consider issues of national security to be compelling, and we are all in agreement that we should get on with our hearings as expeditiously as we can. We have all agreed to meet during that time frame, subject, of course, to the consent of the Senate pursuant to rule 95(3).

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like to clarify the answer given to the Honourable Senator Lynch-Staunton. Will all of the meetings that will be held between January 6 and 10 be held in the national capital?

Senator Day: All of the meetings will be held in Ottawa during the week of January 6 to 10, 2003.

[*English*]

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

Motion agreed to.

[*Translation*]

OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO STUDY OPERATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

Hon. Rose-Marie Losier-Cool, pursuant to notice of December 4, 2002, moved:

> That the Standing Senate Committee on Official Languages be authorized to study and report from time to time upon the operation of the *Official Languages Act*, and of regulations and directives made thereunder, within those institutions subject to the *Act*, as well as upon the reports of the Commissioner of Official Languages, the President of the Treasury Board and the Minister of Canadian Heritage.

Motion agreed to.

ADJOURNMENT

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

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

> That when the Senate adjourns today, it do stand adjourned until Monday next, December 9, 2002, at 2 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Monday, December 9, 2002 at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(2nd Session, 37th Parliament)
Thursday, December 5, 2002

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30		

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0			
C-8	An Act to protect human health and safety and the environment by regulating products used for the control of pests	02/10/10	02/10/23	Social Affairs, Science and Technology					
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	divided			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	–	–	Legal and Constitutional Affairs	02/11/28	0	02/12/03		
C-10B	An Act to amend the Criminal Code (cruelty to animals)	–	–	Legal and Constitutional Affairs					
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0			
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3rd 02/12/04			
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05		
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	02/12/05							

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-300	An Act to change the names of certain electoral districts	02/11/19							

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02							
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02	02/10/08	Legal and Constitutional Affairs					
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							
S-7	An Act to protect heritage lighthouses (Sen. Forrestall)	02/10/08							
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications					
S-9	An Act to honour Louis Riel and the Metis People (Sen. Chalifoux)	02/10/23							
S-10	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	02/10/31							

PRIVATE BILLS

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

CONTENTS

Thursday, December 5, 2002

PAGE

SENATORS' STATEMENTS

ROUTINE PROCEEDINGS

PAGE

QUESTION PERIOD

ORDERS OF THE DAY

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