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(HANSARD)

**Monday, December 9, 2002**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Monday, December 9, 2002

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

Prayers.

### USHER OF THE BLACK ROD

#### APPOINTMENT OF TERRANCE J. CHRISTOPHER

**The Hon. the Speaker:** Honourable senators, I have the honour to inform the house that I have received a certified copy of Order in Council P.C. 2002-2058, dated December 3, 2002, appointing Terrance J. Christopher, Usher of the Black Rod of the Senate, effective December 9, 2002.

On behalf of all senators I should like to thank the Deputy Usher of the Black Rod, Mr. Blair Armitage, who has been acting in this position for the past 15 months.

**Hon. Senators:** Hear, hear!

## SENATORS' STATEMENTS

### TENTH ANNIVERSARY OF NORTH AMERICAN FREE TRADE AGREEMENT

**Hon. James F. Kelleher:** Honourable senators, almost 10 years ago, on December 17, 1992, former Prime Minister Mulroney of Canada, former President Bush of the United States and former President Salinas of Mexico came together to sign the historic North American Free Trade Agreement, NAFTA.

**Hon. Senators:** Hear, hear!

**Senator Kelleher:** In doing so, those leaders committed their nations to remove those barriers to trade and investment that hinder economic growth and prosperity, helping to create a common market of some 360 million people.

There is no doubt that NAFTA has been a success, particularly because Canada has enjoyed a decade of economic growth driven by trade. Unlike the doom and gloom predictions of the protectionists who opposed NAFTA, we have not seen our culture destroyed. Indeed, our culture and our identity are stronger than ever. We have not seen jobs and investments disappear from Canada to Mexico. We have had strong job creation and record levels of investment. Very simply, we are a more attractive place to invest and the need to compete is driving us to become more productive.

Speaking today, December 9, at a conference to mark the tenth anniversary of NAFTA, former Prime Minister Brian Mulroney spoke of the challenges that lie ahead. These challenges include building an area of security in North America; making our

borders work for our shared interests, rather than sealing them off against each other as we succumb to false security; and ensuring that economic security is protected from political expediency.

As Mr. Mulroney pointed out, the arbitrary application of trade remedies can hurt consumers, communities and entire regions, while serving no one but special interests. NAFTA means assuring the movement across our borders of people, as the flow of services, technology and knowledge is the key to our shared welfare.

We need to ensure that, while our national system of regulation protects our citizens and fully respects our constitutions, it remains as compatible as possible to increase the efficiency of our economics and enhance our global competitiveness.

Honourable senators, there is the next stage, which is to create the free trade agreement of the Americas by 2005 — a trading zone that would extend from Montreal to Monterey, from Hawaii to Honduras and from Easter Island to Nunavut. This would create a trading zone that would constitute an economic powerhouse of some 800 million people. It would also improve the lives of people in all of our nations, while fostering greater stability and respect for democratic values throughout the Americas.

This will not be easy but as Mr. Mulroney observed today:

...the remarkable thing about the FTA and NAFTA is that success emerged despite heavy obstacles and fierce opposition. The leadership and perseverance that forged these agreements are paying dividends today for all three partners. The power of a good idea should never be underestimated. It could happen again; it should happen again.

### VIOLENCE AGAINST WOMEN

**Hon. Mobina S. B. Jaffer:** Honourable senators, human security remains a major challenge internationally, especially where it concerns the safety of women and girls. Violence against women continues to present barriers to the healthy development of communities worldwide.

[Translation]

Honourable senators, every year on December 6, Canadians are reminded that violence against women continues in this country. On the National Day of Remembrance and Action on Violence Against Women, we remember the 14 young women who were brutally murdered 13 years ago at the École polytechnique de Montréal. Equally significantly, we realize that violence against women remains a problem within our society.

[English]

Ms. Elaine Teofilovici of the YWCA of Canada stated that violence against women is a health and social epidemic. It requires a national response, not only adequate resources to address the needs of victims of domestic violence but also a substantial commitment to research and develop effective programs and services that help families move out of the cycle of violence.

• (1410)

Surveys of people across the country demonstrate that Canadians continue to believe that the problem of family violence is very real. There is much support for taking action to protect women from family violence and abusive situations.

[Translation]

Much remains to be done, honourable senators.

[English]

It is important that we, as parliamentarians, make every effort to help eliminate violence against women both at home and abroad.

[Translation]

## CLOSED CAPTIONING

### SERVICES AVAILABLE TO HEARING IMPAIRED USERS OF PUBLIC TRANSPORT

**Hon. Jean-Robert Gauthier:** Honourable senators, I recently visited two post-secondary colleges that give courses in computer-assisted stenotyping, which is the written interpretation that enables me to read what I cannot hear. I greatly appreciate the service the Senate provides me and would like to share it with others in the hearing-impaired community.

I went to Edmonton and to Vancouver and met with students and staff of the Northern Alberta Institute of Technology and Vancouver's Langara College. We discussed the training of captioners, a topic I shall be returning to in an inquiry sometime soon.

I flew with Air Canada. A person who is hearing impaired has serious trouble communicating during air travel. At the present time, boarding announcements or even safety messages on takeoff and during the flight are not available in real time. I have noticed, however, that there is closed captioning on the advertising messages shown to passengers. If it is possible to add closed captioning to ads, why not to the most basic of safety messages?

There are three million Canadians who are deaf or hearing impaired. If Air Canada decided to caption messages to passengers, flights would undoubtedly be more pleasant and safer for everyone. The instructions would be in both Canada's official languages, giving it the opportunity to comply with the Official Languages Act, killing two birds with one stone, and also demonstrating itself to be at the forefront on this issue. Air Canada often has passengers from the United States, where we know there are 28 million people who are hearing impaired. We are proud of the fact that we have two official languages in Canada. We should show this pride publicly. European

passengers would also appreciate the initiative since Air Canada often serves foreign countries.

The technology exists. All that needs to be done is to make the right decision so that all passengers can benefit from it and feel safe. Should Transport Canada change its regulations to require air carriers to provide this essential service? It could probably do likewise with marine transporters, such as ferries. Television screens are now found on ships, airplanes, trains and buses. It would not be expensive to run close-captioned messages on passenger safety.

[English]

## ROUTINE PROCEEDINGS

### BANKING, TRADE AND COMMERCE

#### BUDGET—REPORT OF COMMITTEE ON STUDY OF STATE OF DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM PRESENTED

**Hon. E. Leo Kolber,** Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Monday, December 9, 2002

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

#### THIRD REPORT

Your Committee, which was authorized by the Senate on Wednesday, October 23, 2002, to examine and report upon the present state of the domestic and international financial system, 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,

E. LEO KOLBER  
*Chair*

(For text of report, see today's Journals of the Senate, Appendix "A", p. 373.)

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

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

BUDGET—REPORT OF COMMITTEE ON STUDY OF  
THE ADMINISTRATION AND OPERATION OF  
THE BANKRUPTCY AND INSOLVENCY ACT  
AND THE COMPANIES' CREDITORS  
ARRANGEMENT ACT PRESENTED

**Hon. E. Leo Kolber**, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Monday, December 9, 2002

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

FOURTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, October 29, 2002, to examine and report on the administration and operation of the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*; 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 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,

E. LEO KOLBER  
*Chair*

(For text of report, see today's Journals of the Senate, Appendix "B", p. 379.)

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

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

BUDGET—REPORT OF COMMITTEE ON STUDY OF  
PUBLIC INTEREST IMPLICATIONS OF  
BANK MERGERS PRESENTED

**Hon. E. Leo Kolber**, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Monday, December 9, 2002

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

FIFTH REPORT

Your Committee, which was authorized by the Senate on Tuesday, October 29, 2002, to examine and report on the public interest implications for large bank mergers, 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 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,

E. LEO KOLBER  
*Chair*

(For text of report, see today's Journals of the Senate, Appendix "C", p. 385.)

• (1420)

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

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

[Translation]

OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO MEET DURING  
SITTING OF THE SENATE

**Hon. Rose-Marie Losier-Cool:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Official Languages have power to sit at 4 p.m. today, Monday, December 9, 2002, even through the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

QUESTION PERIOD

THE SENATE

KYOTO PROTOCOL ON CLIMATE CHANGE—MOTION  
TO RATIFY—REQUEST FOR REPRESENTATIVES OF  
PROVINCES AND TERRITORIES TO APPEAR  
BEFORE COMMITTEE OF THE WHOLE

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, last week during debate on the amendment to the Kyoto motion it was suggested by amendment that we invite premiers or their representatives from provinces and territories to appear before the Committee of the Whole prior to taking a decision on the government motion concerning the Kyoto Protocol. The Leader of the Government was adamant in refusing such an invitation. I want to tell her that before moving the amendment, I contacted every premier to alert

them that this amendment would be tabled, hoping for a positive reaction. Thus far, I have two responses in writing. I have more verbal reaction, but I will only present to this chamber the results of the written ones. One of the letters is from the Premier of Nova Scotia, the Honourable John F. Hamm. I will lift the pertinent paragraph from the letter. I can assure senators that I am not detracting from the main thrust of the letter. The premier writes that "should the Senate of Canada provide an opportunity for dialogue on Kyoto and climate change, the Government of Nova Scotia would be very much interested in making a submission."

Honourable senators, I am sure the Leader of the Government will be interested in the other letter, she having quoted last week the views of a member of the Alberta government on the Senate. This is from Halvar C. Jonson, the Minister of International and Intergovernmental Relations, who writes on behalf of Premier Klein that "Alberta would be willing to make someone available to meet with members of the Senate to provide them with similar information." That means information on their views on the Kyoto Protocol and its impact on their province.

I will not give myself the importance of having received formal replies; however, we now have from two provinces written expressions of interest in coming before the Senate to discuss their concerns with the Kyoto accord. I dare say that more expressions of interest may be forthcoming.

Will the Leader of the Government in the Senate, on behalf of the Government of Canada, react constructively to these interests in appearing before the Committee of the Whole prior to senators being called upon to vote on the government's motion on the Kyoto Protocol?

**Hon. Sharon Carstairs (Leader of the Government):** As I indicated to the Honourable Leader of the Opposition last week, the purpose of the debate taking place in Parliament, and particularly in this chamber, is to solicit from senators their views on the Kyoto accord. I believe we should continue with that process. I am not willing to extend invitations beyond those who sit in this chamber.

**Some Hon. Senators:** Shame!

**Senator Lynch-Staunton:** That means that the views of the provinces, the regions of Canada, which we are historically responsible to represent, are meaningless. Therefore, we are just to entertain ourselves with views mainly based on ignorance. Those who have deep concerns, one way or the other, on the accord will not even receive the courtesy of being invited to make a written submission. Is that the case?

**Senator Carstairs:** Honourable senators, it is not a matter of submissions because we are not dealing with a bill. It is quite likely that there will be an implementation bill that must go into force with respect to the Kyoto Protocol. Should the legislation appear before the Senate of Canada and should the honourable premiers or their representatives choose to voice their points of view with respect to that implementation legislation, we would be very pleased to hear from them. However, as the honourable

senator knows quite well, the ratification can be done simply by Governor in Council. The Prime Minister decided that there should be at least some active participation on the part of parliamentarians, both in this place and the other place. That is what this week's debate is about.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, is the minister telling the house that it is her view and the view of the Government of Canada that the government will be able to ratify and implement this international treaty without the collaboration of the provinces of Canada?

**Senator Carstairs:** The position taken by the federal government is that international treaties fall within the ambit and powers of the federal government. Yes, it has the right, the ability and the powers to ratify the treaty.

**Senator Kinsella:** Is the Government of Canada of the view that it will be able to implement this treaty without the collaboration of the provinces?

**Senator Carstairs:** I have indicated to the honourable senator all along that it will probably require some form of implementation legislation at that particular point. Clearly, as a chamber that has established as part of its rules that it should hear from the provinces and territories when legislation is expected to impact upon them, it would seem to me that honourable senators at that point would clearly want to hear from territorial and provincial governments wishing to appear.

**Senator Lynch-Staunton:** Honourable senators, I request leave to table the two letters from which I quoted.

At the same time, I wish to say that I am very upset by the extraordinarily rude reaction — and I use the word "rude" advisedly — from the Leader of the Government in the Senate. She does not show any concern over the wishes of two provinces to come before our chamber, which is responsible for protecting regional interests, to give us their views on this protocol.

**The Hon. the Speaker:** Is leave granted to table the two letters, honourable senators?

**Hon. Senators:** Agreed.

## NATIONAL DEFENCE

### POSSIBLE WAR WITH IRAQ— COMBAT TRAINING OF TROOPS

**Hon. J. Michael Forrestall:** Honourable senators, I am reminded of helicopters. I might ask the minister if she would convey my congratulations to the Minister of National Defence, the first minister with guts to come to the government of this country in recent years.

Honourable senators, I should like to ask questions surrounding the combat training of the Second Battalion of the Royal Canadian Regiment and its preparations to go to Iraq. I asked similar questions of the government leader on October 3, October 10, October 22 and November 20. Each time that I asked, I was brushed off to some degree and told that it was routine training. I also mentioned training being conducted by 3 RCR Petawawa and received the same kind of an answer.

In the *National Post* of December 7, 2002, we saw the headline "Battalion prepares for war." Lo and behold, the article detailed 2 RCR's preparations in Gagetown for war with Iraq. Can the Leader of the Government in the Senate confirm that Canada does have a contingency plan to deploy the Second Battalion of the Royal Canadian Regiment to Iraq, either as part of the initial invading force or as part of follow-up troops?

• (1430)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the honourable senator has asked this question before, as he indicated, and the answer is exactly the same as I gave him in October.

**Senator Forrestall:** Honourable senators, I am not on a need-to-know basis with the cabinet, and it is obvious that neither is the honourable senator. Join the crowd.

Can the government leader confirm that the Government of Canada has offered a battalion-sized ground force to the United States for a war on Iraq along with our Special Forces, CF18 fighter aircraft, and the ships that are presently in the Persian Gulf region?

**Senator Carstairs:** Honourable senators, so far, it has been an interesting afternoon. The Honourable Leader of the Opposition has called me "rude," and now the senator from Nova Scotia indicates that I am obviously not on a need-to-know basis with cabinet. Obviously, I do not have the knowledge to answer his question, and I will not.

**Senator Forrestall:** Honourable senators, in the spirit of Christmas, I will let that go by.

**Senator Carstairs:** Thanks a lot.

**Senator Forrestall:** I would not be too flippant with the members of this chamber.

The government of this country has misled me, through the government leader in this place, on probably as many as 70 different occasions. I do not particularly like being misled, not being told the truth; and I do not like the attitude of a government that thinks that that is quite all right.

There are families that would like to know what is going to happen to their loved ones. Are we going to send a battalion? Are we, in fact, training for that? Why was \$4 million worth of extra ammunition found for this training? It is not routine as the

minister suggests. It suggests much more than that. It suggests to Canadians that, with respect to training, we are preparing for a role in Iraq.

Would the minister confirm to this chamber that she has no knowledge of the training that the troops are undertaking? If she does have knowledge of it, could she explain to us why this high level of training is presently occurring at this extraordinary expense?

**Senator Carstairs:** Honourable senators, first, let me tell the honourable senator that I certainly have not lied to him.

**Senator Forrestall:** I did not say the Leader of the Government lied.

**Senator Carstairs:** Nor have I misled him.

**Senator Forrestall:** She has misled me.

**Senator Carstairs:** I have not misled the honourable senator.

**Senator Forrestall:** Then cabinet does not bother to tell the government leader what is going on. They cannot have it both ways.

**Senator Prud'homme:** Honourable senators, it is the Christmas season.

**Senator Carstairs:** The reality of the situation —

**Some Hon. Senators:** Order!

**Senator Carstairs:** Clearly, the honourable senator opposite believes that Canada is going to go to war. I hope we are not going to go to war.

**Some Hon. Senators:** Hear, hear!

**Senator Carstairs:** I deeply hope that the weapons inspectors who are presently travelling on our behalf, and on the behalf of all of the nations of the world who love and value peace, do not find anything of note in Iraq. I hope that there are no weapons of mass destruction. If there are, then that will have to be reported to the United Nations; and if it is reported to the United Nations, then the United Nations will have to make a decision.

**Senator Forrestall:** Only a fool hopes. A wise man prepares.

**Senator Carstairs:** Clearly, it seems to me we should be hoping for peace and not for war.

**Some Hon. Senators:** Hear, hear!

**Senator Forrestall:** I do not hope for war. I pray that there is no war.

I have no questions. What the heck would I ask a question for?

[ Senator Forrestall ]

## CUSTOMS AND REVENUE AGENCY

### AUDITOR GENERAL'S REPORT—ACCESS TO SPECIAL IMPORT MEASURES ACT PROCESS FOR SMALL AND MEDIUM-SIZED BUSINESSES

**Hon. James F. Kelleher:** Honourable senators, my question is for the Leader of the Government in the Senate and refers to Chapter 3 of the Auditor General's report, Special Import Measures Act.

We are a trading nation, but we are a fair trader. That means, like most other nations, that we do not allow other nations to unfairly subsidize what they sell to us or to dump our goods in the market at less than the cost of producing the goods. The Special Import Measures Act, or SIMA, sets out the legal framework to help us deal with unfair trading practices. The Auditor General has found that the process was becoming more difficult in general, and particularly so for small and medium-sized businesses faced with unfair trading practices. She noted:

In recent years there has been an increasingly heavy financial, time, and information burden associated in participating in the SIMA process. As a result, the process has become more difficult for users and the barriers to access may now be greater than they were before. Innovative ways need to be found to reduce these barriers wherever possible.

The government does tell us that it agrees with the Auditor General's recommendation, but it goes on to say that it will explore options to develop and implement measures to provide more support and assistance to small and medium-sized producers.

A promise to explore options is not a promise to take action. Does the government have a timeline or target date by which it will fully address the problems of access to the SIMA process by small and medium-sized businesses, not just by exploring options, but by acting upon them?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question referring to the Special Import Measures Act which protects against dumped or subsidized imports.

In 1996, two parliamentary subcommittees conducted a significant review of the SIMA and issued 16 recommendations to make it more efficient and responsive to Canada's economic needs. The Auditor General has indicated that almost all of those recommendations have now been put into effect, including legislation that has enhanced the process. It is also important to note that a telephone survey of users was conducted. It indicated that they were generally satisfied with the confidential information provided to the Canada Council by the Canada Customs and Revenue Agency and the Canadian International Trade Tribunal and that that information will remain protected. That was an important past concern that they had. The tribunal and the agency have guidelines and procedures to protect and control the release of that information.

As to the specific question of whether other actions will be taken, I would add that the government has indicated that they will move forward on this matter as quickly as possible.

**Senator Kelleher:** Honourable senators, the honourable leader certainly has a reasonably complete briefing book. I do recall that two parliamentary subcommittees looked at this question in 1996. Among the recommendations made at that time was a recommendation that the government take concrete measures to ensure fair and equal access to SIMA for small and medium-sized producers. However, this is where I depart from information the honourable leader has provided. My notes indicate that the Auditor General told us that the Canada Customs and Revenue Agency produced a plan in response to the recommendation, but implementation has stalled since 1998.

Why will the government not set a specific target date by which it will have taken concrete measures to ensure fair and equal access to the SIMA process to small producers?

• (1440)

**Senator Carstairs:** Honourable senators, I thank the honourable senator for his question. Senator Kelleher is correct — my briefing notes do not discuss the implementation of that particular initiative. Therefore, I shall make inquiries today to learn why it was stalled and what they intend to do to put it back into action.

## THE SENATE

### SELECTION COMMITTEE—REQUEST FOR REMOVAL FROM LIST OF MEMBERS ON ABORIGINAL PEOPLES COMMITTEE

**Hon. Gerry St. Germain:** Honourable senators, my question is directed to the chairman of the Selection Committee, Senator Rompkey.

Very briefly, I submitted a letter to the honourable senator asking that my name be removed from the list of members of the Aboriginal Committee. The honourable senator is nodding in the affirmative, I believe.

As to a reason for my request, honourable senators, it has to do with equal treatment. In this place, we are all supposed to be treated equally. Not every senator is a member of a committee. I never, ever agreed, honourable senators, after being stripped of my committee rights in 2000, to sit on any committee as an independent.

To me, this is not an issue of boycotting the Aboriginal Committee, because I think it does excellent work.

As a result of prorogation earlier this year, I lost Bill S-38, the proposed First Nations Self-Government Recognition Act. We are sitting on Bill S-9, the Louis Riel bill, on this side of the house. They refuse to debate a great bill about my political and quasi-spiritual leader.

Will the honourable senator please see that my name is removed from the list of members of the Aboriginal Committee. In order to best represent my region, honourable senators, I wish to attend other committees, relating to Kyoto, gun registration and cruelty to animals.

**Hon. Bill Rompkey:** Honourable senators, the honourable senator is free to attend any committee he wants to, as he knows. He does not need permission to do that.

With regard to his attendance at the Aboriginal Committee, the honourable senator did agree to attend that committee. There was an agreement between us that we would provide one of our spaces for him on the Aboriginal Committee, and, in fact, he did begin to attend that committee's meetings. However, honourable senators, I must say that his attendance has been less than stellar.

However, if Senator St. Germain wishes to have his name removed from the membership list of the Aboriginal Committee, we would be glad to take action to do that. However, that is a matter for the selection committee, because I, as government whip, cannot do it on my own. A meeting of the selection committee will be called in the near future, and, with the consent of my colleagues, we will remove Senator St. Germain's name from the membership list.

**Senator Lynch-Staunton:** Right away.

**Senator Rompkey:** No, we must wait.

**Senator St. Germain:** On a supplementary question, honourable senators, as much as the honourable senator says that I did agree, I have never, ever agreed to sit as an independent, but that is the position I was being put into. Honourable senators know that I wanted a reflection of the other place in this place in regard to the official opposition. Accepting independent status would defeat the purpose of what I was trying to accomplish when I asked that this place, under the leadership of Senator Austin, attend to Great Britain to see how it was done in the 1920s when the Labour Party came on the scene.

I never accepted in writing or completed any document to the effect that stipulated that I would sit as an independent. I would refuse to do that. If the honourable senator was misled by something I might have said, I want this place and the whole country to rest assured that I would never accept a position as an independent. I might have considered one sitting with my friends, the Tories, but that was not to be.

I would ask the Selection Committee to strike my name from the membership list of the Aboriginal Committee.

As to my committee attendance, it will be similar to what it is in this place, and it is stellar in this place, so let us get this record straight. The Leader of the Government in the Senate can attest to the fact that I am here to question her and maintain a high level of accountability from Western Canada.

**Senator Rompkey:** Honourable senators, the honourable senator is certainly here, I can see that. However, with regard to written agreement, certainly there was no written agreement. We do not always act in writing in this chamber. Sometimes gentlemen have agreements, but if the honourable senator refuses to be a gentleman, then so be it.

With regard to having a reflection of the other place in this chamber, that will never happen, and I hope it never happens.

**Hon. Marcel Prud'homme:** Honourable senators, in the spirit of Christmas, while we are still allowed to use the word Christmas, I wish to comment on this matter.

In all fairness to my colleague and neighbour, this is a very important matter. If the honourable senator's name is not removed from the membership list of the committee in question, and if, for reasons that he has so well expressed, he does not attend its meetings, then he becomes absent. Honourable senators are well aware that some of the press like to keep tabs on our attendance in this place and at committee. Therefore, in all fairness to the honourable senator, who has expressed strongly his wish to have his name removed, I think it should be removed. That will then allow him, as I do, to freelance and to go to committees that he feels are very important.

Likewise, I have never written any letter asking to be on the Banking, Trade and Commerce Committee. I have accepted — I think I am big enough to say that — and am very happy to sit under Senator Kolber. I am learning; I am a learner. Honourable senators all know that it was not my choice. Even though I did not apply, I made a private, verbal agreement with Senator Kolber. It became public.

I hope Senator Rompkey will acquiesce to the wish of Senator St. Germain.

**The Hon. the Speaker:** Senator Rompkey, I will not call on you. This process is more in the nature of a point of order than a question and exchange of information. I will hear it as a point of order at the end of Routine Proceedings. It is taking time from Question Period. I now intend to go on with Question Period.

## JUSTICE

### AUDITOR GENERAL'S REPORT—FIREARMS REGISTRY PROGRAM—COST OVERRUNS

**Hon. Donald H. Oliver:** Honourable senators, I have a question for the Leader of the Government in the Senate. Throughout the Auditor General's report on the gun registry, there was a recurring theme that Parliament was not properly advised as to the future costs of the gun registry program. We have already had one set of Supplementary Estimates for this current fiscal year for the registry amounting to some \$72 million more than was voted in the Main Estimates.

Can the government leader assure the Senate that we will not be asked to vote more money for this program next March through Supplementary Estimates (B)?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, neither I nor anyone else can inform the honourable senator of what will be in Supplementary Estimates (B).

We do know that, on Thursday, in the other place, a motion was introduced to withdraw \$72 million, which was included in those Supplementary Estimates from the firearms registry.

Minister Cauchon, who is responsible for the firearms registry, indicated that he was going to discuss and put into place an investigation of the future needs of that particular branch of government and that at that point he would report to Parliament.

The honourable senator began his supplementary question by asking if there had been reports to Parliament. It is quite interesting that today the Auditor General is quoted as indicating that certain blame has to be placed on parliamentarians. She made particular reference to members of the House of Commons, and in that reference she indicated that these had appeared, and I am informed that they have had 57 different notifications of changes related to this particular expenditure. Obviously, the other place did not give sufficient time and attention to getting to the bottom of what caused this, and the Auditor General urged parliamentarians, referring to members of the House of Commons almost in entirety, to start doing their job of estimate work.

• (1450)

**FIREARMS REGISTRY PROGRAM—WITHDRAWAL  
FROM SUPPLEMENTARY ESTIMATES  
OF REQUEST FOR FUNDS**

**Hon. Lowell Murray:** Honourable senators, I do have a supplementary question, but I cannot forbear to remark that the Standing Senate Committee on National Finance has been tracking the spending problems with this issue for more than five and a half years. I will refer to that in some detail when I get the opportunity to speak on the interim supply bill, which will be coming forward in due course.

My question, however, supplementary to that put by Senator Oliver, is to ask the Honourable Leader of the Government for an undertaking that the government will not try to recoup the money it has withdrawn from the Supplementary Estimates by resorting to Treasury Board vote 5, the contingency vote. To do so, I think she would agree, would be, on the part of the government, a very serious breach of faith with Parliament.

**Hon. Sharon Carstairs (Leader of the Government):** I must reply to the honourable senator that I have no indication from anyone that that approach would be used. I believe that public scrutiny is such now, having been carried out by the Senate for some time, although not in the other place, that the government would not try to avail itself of that particular vote.

**FIREARMS REGISTRY PROGRAM—INCREASE IN  
FIREARMS MURDERS—REQUEST FOR BREAKDOWN  
ON ABORIGINAL APPLICANTS REJECTED**

**Hon. Gerry St. Germain:** Honourable senators, my question is directed to the government leader in the Senate. She always uses the phrase “let us be honest.” This is her phrase. If we are to be honest, have I not stood here time after time telling her that this program would not work and that it would have a horrendous cost? It says here that since the registry opened, firearms murders in Canada have risen 13 per cent. It is strange that that little fact did not make the list of the Minister of Justice. It was this very minister who was saying that everything had gone down since the firearms registry was put in place. I believe that statistic to be accurate. I would not presume that anyone would print something that could not be supported.

At the same time, with regard to the 7,000 people whose applications have been rejected, could the Leader of the Government tell us how many of them were Aboriginals?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the statistic the honourable senator is using is not the statistic that I have. We can, of course, get into an argument about lies, damned lies and statistics if we want to, but the indications are that, in fact, the program is working. The costs are a totally different issue.

In terms of the question that the honourable senator specifically asks, to the best of my knowledge, there has not been a breakdown of who has not been registered on the basis of whether they are Aboriginal or non-Aboriginal.

**Senator St. Germain:** Can that information be made available?

**The Hon. the Speaker:** Honourable senators, I regret to advise that the time for Question Period has expired.

**CRIMINAL CODE  
FIREARMS ACT**

**DIVISION OF BILL—ACCURACY OF MESSAGE TO  
COMMONS—POINT OF ORDER—SPEAKER'S RULING**

**The Hon. the Speaker:** Honourable senators, last Thursday, December 5, Senator Lynch-Staunton rose on a point of order regarding the whereabouts of Bill C-10. He wanted to know whether the bill is still before the Standing Senate Committee on Legal and Constitutional Affairs or whether it was returned to the House of Commons with the message.

[Translation]

Several senators made some comments on this point of order before I closed the proceeding with a commitment to return to the Senate with a ruling. I am prepared to rule now.

[English]

Honourable senators, there seems to be little doubt that the proceedings on Bill C-10 have been somewhat difficult to follow. This is largely because dividing a bill has not been a frequent feature of our practice, though it is within our power to do it. Be that as it may, there have been few instances or attempts recorded in the Journals of the other place and, as all senators now know, the only previous attempt to divide a bill in the Senate occurred in 1988.

[Translation]

In describing the nature of the process, I will explain what in fact happened to Bill C-10 and why the committee remains in possession of Bill C-10B.

[English]

The Senate received Bill C-10 on October 10, 2002, and gave it second reading on November 20, when the bill was also referred to the Standing Senate Committee on Legal and Constitutional Affairs. At the same time, the Senate instructed the committee to divide the bill into two bills. This instruction allowed the committee to report its study of Bill C-10 on two separate bills. The committee reported on November 28 and, following the instruction of the Senate, it divided Bill C-10 and reported one portion as Bill C-10A without amendment. The balance of the original Bill C-10, dealing with cruelty to animals, now designated Bill C-10B, was retained by the committee for more study.

That same day, November 28, the Senate adopted the report of the committee. As of that date, therefore, for all intents and purposes within the Senate — and I must stress this point, from within the Senate — Bill C-10 existed as two bills, Bill C-10A and Bill C-10B. The Senate proceeded to debate Bill C-10A while leaving Bill C-10B with the Standing Senate Committee on Legal and Constitutional Affairs. The committee has yet to report the results of its work on this second bill, but as we know from the comments that were made on this point of order, the committee is continuing its hearings.

Consistent with our practice, the scheduling of hearings is a matter for the committee to decide. Once a committee has an order of reference from the Senate, it is master of its own agenda and procedure.

Bill C-10A was read a third time and passed on December 3. Following this decision, I read out to the Senate, as is our custom, the message to be sent to the House of Commons informing it of what we had done. The message indicated that the Senate was returning to the Commons its Bill C-10 as divided by the Senate, together with the information that the Senate has passed Bill C-10A without amendment and was continuing to study Bill C-10B.

Of particular importance, the message requested the concurrence of the House of Commons in the division of Bill C-10. This is highly significant. From the point of view of the House of Commons, only Bill C-10 exists. We in the Senate have elected to divide the bill, creating Bill C-10A and Bill C-10B, but as it is a Commons bill, the concurrence of the House of Commons is necessary to fully implement the actions taken by us in the Senate. In reality, this is no different than when we as the Senate amend a Commons bill. The agreement of the Commons is required in order to properly perfect the amendment.

In due course, the Senate will be advised of the Commons' decision by a return message. If the House of Commons agrees to the division and accepts Bill C-10A without amendment, Bill C-10 will cease to exist and Bill C-10A will proceed to Royal Assent. If the Senate completes its review of Bill C-10B without amendment, a message will be sent to the Commons informing it that we have passed Bill C-10B and it, too, will be placed on the list for Royal Assent. If the Senate amends this bill, it will have to be returned to the House of Commons, but as Bill C-10B this time, for the concurrence to any amendment.

[The Hon. the Speaker]

If the House of Commons does not agree to the division of Bill C-10, the Senate will have to decide whether it will insist on the division or whether it will accept the position of the House of Commons to keep Bill C-10 whole. If the Senate accepts the position of the House of Commons, Bill C-10A will be rejoined to Bill C-10B. One obvious way to do this would be to return Bill C-10A to committee with an instruction to combine it to Bill C-10B, thus restoring Bill C-10.

Of course, there may be different permutations and combinations, but this I believe is the general outline or sequence of events that can take place as we proceed to the final steps in our deliberation on what was received from the Commons as Bill C-10, out of which we made Bill C-10A and Bill C-10B.

Finally, with respect to the notice of the Standing Senate Committee on Legal and Constitutional Affairs, this is an administrative matter and is of no important procedural significance. It may be that the notice reflected the original order of reference relating to Bill C-10. It might have been preferable if the notice had read Bill C-10B which would have taken into account the consequences flowing from the decision of the Senate adopting the second report of the committee dividing Bill C-10, reporting Bill C-10A without amendment and retaining Bill C-10B for further study. As I indicated, this is an administrative matter and does not impact on the work of the committee.

• (1500)

If Senator Lynch-Staunton's point of order is that Bill C-10 is still before the committee, I am obliged to inform him that, based on my understanding of the proceedings that have taken place thus far, there is no point of order. Bill C-10B is still in committee, not Bill C-10.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I do not want to prolong this matter. However, as His Honour said in his original remarks, and lest I be told I am challenging his opinion, how can a committee examine a split bill to which the House of Commons has not yet agreed?

**The Hon. the Speaker:** Honourable senators, at this point I should reflect what our rules state regarding a ruling by the Speaker. That is to say, a ruling can be challenged, but it cannot be debated. I believe the rationale for that is that, inevitably, if debate occurs, then the matter of the ruling simply becomes a matter of argument among honourable senators and that might take away from the ruling.

Honourable senators, I have no problem trying to answer questions and so on. However, I believe that would have to be done with leave.

**Senator Lynch-Staunton:** Honourable senators, I am aware of the rules, and I know I am treading a fine line. However, I reserve the right to raise this matter tomorrow as a point of order.

### POINT OF ORDER

**Hon. Gerry St. Germain:** Honourable senators, I rise on a point of order.

His Honour raised the fact that the subject matter of the question I asked of the Chairman of the Committee of Selection should possibly be raised as a point of order. I seek His Honour's guidance as to whether he wants me to raise this matter as a point of order; or, in his view, have I placed my case adequately before the Senate?

**The Hon. the Speaker:** Honourable senators, in the exchange between Senators St. Germain and Rompkey, it seemed that a question had been put and answered and that something else, perhaps debate, was following, which is not within the context of what is envisaged by Question Period. I stated that the exchange should cease and that Question Period should continue because it lasts for only half an hour. To the extent we use up the time with matters such as those raised by Senator St. Germain, it does not leave enough time for questions. Indeed, today we ran out of time, which is one of the few times that has happened.

If the honourable senator wants to raise this issue as a point of order, I believe he can. However, by listening to the exchange during Question Period, I believe that the matter has been resolved in that the issue to which the honourable senator was objecting has been identified and addressed by Senator Rompkey as Chairman of the Committee of Selection.

**Senator St. Germain:** Honourable senators, so that there is no mistake as to the resolution of this matter, once again I go on record to indicate that I wish to have my name removed from the list of members of the Aboriginal Peoples Committee on which I was placed by the Liberal whip, who is Chairman of the Selection Committee.

I also wish to state that I would never have agreed to sit as an independent member. Honourable senators, we in this place have a choice. As I pointed out to honourable senators, we are all to be treated equally. Some senators do not sit on committees. My reasoning is very straightforward. I am trying to reflect the will of the official opposition in the House of Commons. By virtue of that fact, I cannot sit effectively on simply one committee because of the litany of issues that come across our table.

As well, the argument that I put forward in my attempt to seek recognition in the Senate was that I did not want to be treated as an independent senator. That is still my argument, one on which I was overruled. I accept that I was overruled. I accept the wisdom of the Senate at this time, in the hope that we may be able to reopen this case.

Honourable senators, as Senator Rompkey clearly stated, I would like to go forward on the basis of being able to sit on any committee that reflects the issues of my region, whether it be concerning the Kyoto Protocol, gun registration or whatever.

Honourable senators, I ask that this request be considered by His Honour.

**The Hon. the Speaker:** Honourable senators, all the points that the honourable senator wanted to make have been put on the record. I note that, perhaps, we are repeating some of them.

**Hon. Bill Rompkey:** Honourable senators, Senator St. Germain said that he wanted to set the record straight. He did not set the record straight. He and I clearly had a conversation, the outcome of which was that he would serve as a member of the Standing Senate Committee on Aboriginal Peoples.

**Senator St. Germain:** I disagree vehemently with the honourable senator.

**The Hon. the Speaker:** On points of order, honourable senators, the Speaker is entitled to rise when he or she thinks that enough argument has been made to clarify what is at issue. I rule, at this time, that I have heard and understand what is at issue. I do not consider it to be a point of order.

However, in the course of the discussion I believe that good information has been exchanged between Senator St. Germain and the Chairman of the Committee of Selection, Senator Rompkey, as to what he would like to have done with respect to being removed from the Aboriginal Peoples Committee.

**Senator St. Germain:** Honourable senators, this has turned into a question of privilege. The honourable senator has called into question my integrity. He talked about a gentleman's agreement. I say that this is Liberal majority bullying, and that is it.

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[Translation]

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I would like to call, under Government Business, Item No. 1 under Reports of Committees, continue with Item No. 4 under Bills, and then get back to the Orders of the Day as listed on the Order Paper.

[English]

### THE ESTIMATES, 2002-03

#### REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A)— REPORT ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Kinsella, for the adoption 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. Anne C. Cools:** Honourable senators, I rise to speak to the second report of the Standing Senate Committee on National Finance on Supplementary Estimates (A) 2002-03. I shall begin by looking at page 8 of this report.

The report cites Treasury Board official, Mr. Richard Neville, Deputy Comptroller General, in his appearance before the committee on November 26, 2002. In responding to committee members' questions about an additional and new \$72 million appropriation to the Department of Justice, he said:

From the Treasury Board Secretariat perspective, we are very concerned about this file....I will say that we are extremely concerned about this file.

This particular statement was in response to committee chair, Senator Lowell Murray's question, which was:

Is it fair to ask whether, at the official level, you are concerned about the growth of spending in that area?

A few days later, on November 28, 2002, the *Globe and Mail* article by Kim Lunman headlined "Gun Registry to cost around \$1 billion" reported this testimony about the additional and new \$72 million appropriation to the firearms program. A few days later the Auditor General's report on these extravagant costs of the firearms program formed national headlines from coast to coast.

Honourable senators, I wish to focus on the \$72 million requested by the Department of Justice for the firearms program, its current status in Supplementary Estimates (A) and the fact that this \$72-million request is before us now, despite the fact that the request no longer exists.

• (1510)

That is a curious thing, honourable senators. Just last week I was talking about the Minister of Justice, and I said that he has the ability to make bills appear, disappear and reappear. It now seems that appropriations appear, disappear and reappear.

### POINT OF ORDER

**Hon. Anne C. Cools:** Honourable senators, what I shall do is articulate my concerns in the form of a point of order. I am now raising a point of order.

Honourable senators, if we were to look at Supplementary Estimates (A), 2002-03, which is contained in this Blue Book, the particular appropriations that we are speaking about are contained at page 109. They are in the forms of vote 1a and vote 5a.

Last Thursday, December 5, during Question Period in this chamber, Senator Carstairs, Leader of the Government in the Senate, responded to a question with the following words:

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 has taken action.

Honourable senators, one would believe from those comments that the Minister of Justice was taking action in the House of Commons or somewhere else to pull that \$72 million out of the Supplementary Estimates, so I looked at the record to see what the minister himself had to say.

I noticed that in the House of Commons on December 5, 2002, last Thursday, during Question Period, the Minister of Justice, Mr. Cauchon, gave the following but different statement:

Having said that, through supplementary estimates, we have obtained an additional amount of money. We are getting ready to vote on \$72 million tonight, which we will postpone to give us the time to have access to the audit, if we have unanimous consent of the House.

On the floor of the House of Commons, the Minister of Justice did not pull anything; rather he said that he was hoping to postpone a vote on this \$72 million.

A few minutes later the same afternoon on the floor of the House of Commons, he said again:

...I said that we want to postpone the vote on the \$72 million but that we need the unanimous consent of the House.

Honourable senators, this is all very curious because from what was said here in debate last Thursday on the floor of the chamber, we were led to believe that the minister would withdraw or pull the \$72 million out of the Estimates. At the time, I remember remarking to myself that this is extraordinary. I have never heard of a minister moving a motion to amend his own Estimates in that way.

That is why, honourable senators, that day I chose to take the adjournment of the debate so that I could look to the record myself in order to read and to discover what really happened. Obviously, there is something wrong since the account of Senator Carstairs does not tally with the account of the Minister of Justice. I went to the record and discovered that what happened tallied with neither account. I looked up the record of the House of Commons that same day, and I read. I noted that the following motion was carried. I would like to quote the Speaker of the House of Commons, Mr. Milliken, who said:

Then I will put the question again. The motion is as follows:

Mr. Peter MacKay (Pictou—Antigonish—Guysborough, PC) seconded by the member for Yorkton—Melville, moved:

That the Supplementary Estimates (A) be amended by reducing vote 1a under Justice by the amount of \$62,872,916 and vote 5a under Justice by \$9,109,670 and that the supply motions and the bill to be based thereon altered accordingly.

The Speaker continued:

The House has heard the terms of the motion. Is it the pleasure of the House to adopt the motion?

Some hon. members: Agreed.

(Motion agreed to)

That is the record of the House of Commons debate of that day.

Honourable senators, in parliamentary terms, the minister did not pull \$72 million from the Estimates. Nothing was withdrawn from the Estimates in these terms. What happened on the floor of the House of Commons, in parliamentary terms, is a stunning defeat for the government and the minister. What happened is that a Conservative member of the opposition, Peter Mackay, moved a motion to reduce the Estimates of the department by \$72 million, and, in point of fact, that motion carried. It was adopted.

Honourable senators know that in other days such a dramatic and stunning defeat would have led to a ministerial resignation. I wish to put on the record here that the minister did not pull anything. He did not withdraw anything. He was defeated. The House of Commons moved and carried a motion to reduce the Estimates by \$72 million.

Honourable senators, my question then becomes: If the House of Commons carried a motion to reduce the Supplementary Estimates (A) by \$72 million, why are we voting today on that same \$72 million? Why are we voting on the Supplementary Estimates today as still including that \$72 million?

Honourable senators, as I said before, let us look to the Estimates at page 109. We see that the Supplementary Estimates are asking for new appropriations for the Department of Justice through vote 1a and vote 5a, and the two of them together total \$179 million, which still includes the \$72 million for the firearms program. This motion is asking us, the Senate, to approve these Supplementary Estimates in these amounts.

Honourable senators know that a vote and approval of the report of the National Finance Committee in the Senate is the Senate's process for approving Supplementary Estimates (A). This is something that I have felt pretty strongly about over the years, that, in point of fact, the process in the Senate is quite different from the process in the House of Commons. In fact, the vote and the debate in the Senate chamber on the Senate committee's report is, in point of fact, the debate on the Estimates. In other words, the vote on the question that is before us is the Senate's process of getting Senate concurrence for the Supplementary Estimates. That concurrence, an agreement to Supplementary Estimates (A), then, is the signal, in turn, to bring on the Appropriations Act.

As honourable senators know, I have endeavoured to keep those two elements in that order. I should like to take a second to read Beauchesne's sixth edition, paragraph 968(1):

The concurrence by the House in the Estimates is an Order of the House to bring in a bill, known as the Appropriation Bill, based thereon.

Now, honourable senators, there is a problem with this motion before us. Perhaps we have forgotten the motion, but essentially the motion states:

Resuming debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Kinsella, for the adoption 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.

Honourable senators, very clearly this motion is not abreast of the current state of affairs. The problem is that this motion is asking us to approve an amount contained in Supplementary Estimates that is no longer valid, no longer true and no longer accurate. In addition, it is an amount that has already been repudiated by the House of Commons and has already been removed from the Estimates by a motion in that place.

• (1520)

The Senate cannot now vote to approve that amount — particularly that \$72 million. It simply cannot. The Senate cannot concur in these Estimates and vote on this motion without taking cognizance of this \$72-million reduction.

In point of fact, honourable senators, there should have been an equivalent action to ensure that that number was revised in a committee of this place and by this chamber. In actual fact, the Supplementary Estimates (A) no longer include that \$72 million. It is not good enough to say that this report was adopted in a committee before that other action was taken — and I do not dispute that at all — but once such an event occurs in the House of Commons, then the Senate has the duty to take cognizance of that fact and to correct the situation. It must either refer the bill back to the same committee with the new information, deal with it in Committee of the Whole, or move an amendment to the current motion that is before us asking us to concur with the actions of the House of Commons.

Honourable senators, the Senate simply cannot ignore this situation and act as though it has never happened. As I said before, the Senate must take cognizance and consider the removal of the \$72 million from Supplementary Estimates (A), 2002-03.

Honourable senators, in the House of Commons, the minister Lucienne Robillard, President of the Treasury Board Secretariat, moves particular separate and independent motions for concurrence in the Estimates, but in the Senate the process is different. Here, the motion for concurrence of the Estimates is the motion for the adoption of the committee report on the Estimates, the very motion which is before us now.

The fact is that Supplementary Estimates (A) 2002-03 are now reduced and no longer reflect the quantum when this report was adopted in the Senate committee, and the Senate has a duty to make those corrections here on the floor of the chamber. The new quantum must be included in this debate, and it must be considered in this vote. The new quantum must be a part of this vote on Supplementary Estimates (A) because Supplementary Estimates (A) were substantially and substantively amended a few days ago in the House of Commons. There is no doubt that the Senate can accept or reject these Supplementary Estimates, but the Senate cannot vote on a quantum of dollars that is no longer accurate or true and is now fiction. The Senate and honourable senators must not be misled in this way. It is misleading for senators to vote on these Supplementary Estimates on the basis of the old quantum in the full knowledge that the old quantum is no longer valid.

Honourable senators, it is also a well-known maxim that the Speaker or the chair should not put a question that has been demonstrated to be inaccurate, defective or invalid, and for that reason I have asked His Honour to rule on this question, saying that this motion before us is defective and out of order. It is defective because it no longer reflects the current reality, which is that that \$72 million has been removed from these Supplementary Estimates in the Commons and that should be removed in the Senate before the Senate makes a final decision on these Estimates. Supplementary Estimates (A), as they exist now, are not the same Supplementary Estimates (A) that were before our committee. There has been a dramatic change.

**The Hon. the Speaker:** Senator Cools, I should like to give other honourable senators an opportunity to speak to your point of order. I will give you an opportunity to make some concluding remarks when we have heard from other senators.

I should not enter into the debate now, but it would be helpful to me to know what happened in the other place and what ability we have in this place to deal with what happened in the other place.

I should also like to know why this was raised as a point of order under Reports of Committee rather than under the order dealing with the bill itself.

I should like to give Senator Cools a full and fair opportunity to be heard, but I would invite other honourable senators to comment, if they wish. Senator Cools will have an opportunity to make some concluding comments before I give my ruling.

**Senator Cools:** I would love to be able to finish my remarks, Your Honour. I only have a little bit left. These are very difficult and complex matters.

**The Hon. the Speaker:** Please complete your remarks.

**Senator Cools:** Honourable senators, I was just about to say that we are not, in point of fact, trying to deal with what happened in the House of Commons. I am proposing that we deal

with here the real state of the Supplementary Estimates (A), 2002-03, and the actual dollar numbers that we are being asked to vote upon. We have a duty to ensure that the information before us is accurate and reflective. That is my first point.

The second item is, in point of fact, that this is the stage of the debate where we are considering Supplementary Estimates (A). As I said before, this rubric, which many of you do not know very well, is the actual item that is being debated now, and the change made in the House of Commons is a change to this blue document. Debating this when Bill C-21 comes before us later this day will not be particularly helpful because the amendment that was made in the House of Commons was to the Supplementary Estimates (A), not to the bill itself. As a matter of fact, the bill was reprinted. It was never amended at all. It would not be particularly helpful to debate these issues when Bill C-21 is before us in a few moments.

One must understand what is really happening here. We are now being asked to vote on this Blue Book which is called the Supplementary Estimates (A), and I would submit that the vote as articulated and the motion as articulated no longer reflect the reality. The final numbers, particularly the \$72 million that we are being asked to vote on, are now out of date and, quite frankly, inaccurate if not false.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I feel that there is no point of order here. The committee did its job on a series of supplementary estimates that were presented to it. They were analyzed. I attended the meetings. Questions were asked, and certainly a great many qualms were expressed regarding one particular expenditure. However, respect was given to the right of the House of Commons to determine the expenditures. We can only analyze and suggest.

The Estimates as presented to the committee remained the same when the committee reported. Changes have been made in the supply bill. It will be up to us to decide whether we support the supply bill. However, I believe that the committee did its job properly and well.

Again, I take advantage of my standing on this point of order to thank the officials at Treasury Board who appeared before the committee to give us such a precise and intelligent analysis. It is unfortunate that the House of Commons does not get the benefit of the same wisdom.

**Hon. Lowell Murray:** Honourable senators, Senator Cools has raised some matters that have been raised before in this place and which I believe need to be clarified and resolved.

The honourable senator has always contended, and I respect and appreciate this, that the Senate should deal with the report of the Finance Committee on the Estimates before proceeding to deal with interim supply.

**Senator Cools:** Absolutely.

**Senator Murray:** She has gone so far as to suggest that we should adopt the committee report before we proceed to deal with interim supply.

I agree with the honourable senator to the extent of saying that that is, I believe, wise and prudent parliamentary practice. Where I disagree with the Honourable Senator Cools is that I do not believe that we are obliged, necessarily, to proceed in that order.

That was my position when I sat on the other side, and I have not changed my mind on that matter. Perhaps the honourable senator can cite some convention or rule or authority in the Senate to the contrary.

• (1530)

More serious, however, is her contention that adoption of the report of our committee is approval of the Estimates. I do not believe that is the case. In no report that the committee has brought forward in my memory, and certainly not in the one before us now, does the committee recommend that the Senate concur in the Estimates. The Senate is not asked to concur in the Estimates. The Estimates are sent to a committee. Officials appear or are sent for and we discuss the Supplementary Estimates. We make our comments, which are fairly substantive and speak for themselves. The report is adopted, and then we proceed, normally, to deal with the interim supply bill.

The question that should only be asked when the interim supply bill is before us is: Does the interim supply bill reflect the withdrawal, if that is what it was, of \$72 million, if that is what the amount is? That is the question that will have to be answered at the appropriate time. I do not agree that adoption of this report in any parliamentary sense is concurrence in the Estimates. We are not asked to concur in the Estimates. We comment on them. We ask the Senate to look upon our report favourably and, in this case, to adopt it.

The question that my friend raises is, at least, premature. I hope that when a ruling is made, we might profit from the occasion and settle the matter to which I referred, that is, whether the adoption of the committee report is imperative before we proceed to the interim supply bill and, second, whether Senator Cools is right that adoption of the report is concurrence in the Estimates or whether I am right that it is not.

**Hon. Herbert O. Sparrow:** Honourable senators, the Standing Senate Committee on National Finance has presented its report, but new information has arisen. Should the committee then re-examine those Estimates? There are new Estimates out there. I am reluctant to refer to Bill C-10 again, but where are the Estimates now that should be going back to the committee? The Estimates refer to certain facts that have now been changed by the other House. The Estimates have been reduced by \$72 million.

Do we just ignore that development? Do we accept the Senate committee's report and then proceed to pass the supply bill without recognizing the fact that there has been this change in the Estimates?

**Senator Murray:** Honourable senators, the committee is in the hands of the house. If the house wishes to refer the Estimates back to us, we would take them on board. It must be clearly stated that it is not necessary for the committee to recommend concurrence in the Estimates and it is not necessary for the Senate to concur in the Estimates.

As I have suggested, if the interim supply bill reflects the reduction of \$72 million, if that is the amount we are talking about, then that is the opportunity for the Senate as a whole, if not the committee, to debate that issue.

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have very little to add to the comments already made by the honourable senators who are against the point of order. As Honourable Senator Lynch-Staunton said, the Supplementary Estimates (A) were referred to the committee. The committee reviewed them, it held consultations and it put questions to the appropriate witnesses. The committee then drafted a report on its study.

At this point, we are not being asked to vote on the amounts but, rather, on the study made by the committee. The amounts will be before us along with Bill C-21, the appropriation bill.

I fully support Senator Murray when he says that this bill clearly reflects the fact that the \$72 million was withdrawn, since the bill before us comes from the House of Commons and, as you will see, reflects accurately what occurred in the other place. We will then have to vote on the amounts authorized for the government to conduct the business of the country.

I do not see how this point of order could be defended. We should continue, adopt the report, and then move on to the appropriation bill.

[English]

**Hon. Joseph A. Day:** Honourable senators, I rise to go on the record to agree with the Chair of the Standing Senate Committee on National Finance, Senator Murray, that we are asking, in this motion, for the acceptance of the report of the Standing Senate Committee on National Finance, not to approve the Supplementary Estimates, but merely to accept the report of the committee.

With respect to Senator Sparrow's point, surely he is not suggesting that our committee spend a little more time considering an item that now might not appear in the appropriations bill and, therefore, make our deliberations invalid. The fact that the deliberations of the National Finance Committee included something that might not appear later on should in no way render the report invalid.

**Senator Cools:** Honourable senators, I share in Senator Lynch-Staunton's admiration of this committee's work, particularly the quality of work done by Treasury Board officials and the thoroughness of their testimony before National Finance Committee year after year. I think very highly of these gentlemen, and I am not shy to say it. I have great respect for them. I have enormous admiration for how they handle the questions we pose.

However, I think there is a misunderstanding that the committee report is nothing other than just a simple view of the committee. It is the view of the committee, but the fact is that committee report of that committee study represents the totality of the study done by the Senate. For Senator Day to present the view that he did is to grossly underestimate the work that the Finance Committee has been doing and the real task that the Senate entrusts to the Finance Committee. I point out that most of these reports are adopted, but the Senate has the duty to approve or disapprove the reports. I would suggest to Senator Day that it would be dangerous, indeed, deadly if the Senate were to reject one of those committee reports because that would be a huge judgment on the Estimates themselves. The honourable senator does not seem to appreciate that. I hope, for his sake, that it does not happen too often in this house.

• (1540)

Honourable senators, the acceptance or the rejection of the opinion of the committee is important, indeed, critical. It is a well-known fact, which I have stood by for years, that the order to bring forward the supply bill is the concurrence with the Estimates. For example, at page 2356 of the *House of Commons Debates* of December 5, 2002, under "Supply," the Honourable Lucienne Robillard, President of the Treasury Board, moved that Vote 5a, in the amount of \$44,411,117 in the Supplementary Estimates (A) for the fiscal year 2002-03, be concurred in. We do not follow that kind of practice in this house.

We must remember, honourable senators, that with various amendments and corrections to the rules of Parliament over the years, many processes have been shortened in that they are now considered to be inherent in other processes. For example, there was a time, after third reading of a bill, when the Speaker would rise to put the question that the bill be now passed or adopted. We no longer do that because we now take the position that the bill is adopted by the actual third reading. The same process occurs in respect of the concurrence with the Estimates. I pray that the government never has to face a time when the Senate would not concur with one of those reports. Senate concurrence with these Estimates is obtained through the adoption of the committee's report.

With all due respect, honourable senators, to dispel any misunderstanding, which can grow like Topsy in this place, there are two different processes. The consideration of the Estimates is a totally different process than that of consideration of the bill. They are related processes and they employ much of the same subject matter, but they are two different processes. What can be done in one process cannot be done in the other process; it simply does not work that way. If honourable senators were to look to the House of Commons' process, they would see that much of the process is done in Committee of the Whole. However, we do not do it that way.

Make no mistake, honourable senators, in the vote on the motion to adopt the committee's report, the Senate is being asked to give its concurrence with the Estimates. To alter that connection, I think, is a dangerous proposition. The house may proceed down that road if it so wishes.

[ Senator Cools ]

Honourable senators, I wish to state clearly that the concurrence of this house in the report is an Order of the House to bring on the bill. Bill C-21, which will come before us later this day, does not even contemplate what we are talking about. After the Honourable Lucienne Robillard's motion was carried in the House of Commons, the Treasury Board individuals, with their usual speed, goodness, hard work and industry that they are so accustomed to rendering to this place, were able to reprint the bill. Thus, the bill has never been amended and, as introduced in the House of Commons by Minister Robillard, it does not contain —

**Some Hon. Senators: Order!**

#### SPEAKER'S RULING

**The Hon. the Speaker:** As honourable senators have heard me observe before, the presiding officer must make a decision as to when he or she has heard enough on a point of order to be able to deal with it. With respect to this point of order, I thank honourable senators for their assistance. Of course, we are not unfamiliar with such a matter being raised by Senator Cools and so I will deal with it now.

The honourable senator's point is: Is the current proceeding in the house in respect of the second report of the Standing Senate Committee on National Finance in order or out of order? Senator Cools has expressed her concerns about the way in which proceedings occurred in the other place. With respect to that, we have no control over what happens in the other place. The Senate communicates with the House of Commons by message. As it happens, with respect to this matter, we have a message from the Commons on Bill C-21, which is now on our Order Paper. I do not find that to be a matter that we can even inquire about because the orderliness in the other place is a matter for the other place.

The issue has arisen as to whether the adoption of the report equates with the adoption of the Estimates. If it were to equate, then this would be improper because the Estimates that were studied by the committee do not contain all of the changes that Senator Cools has described, which, according to her, were made in the other place. Other senators commented on that fact.

My view is that the study of the Estimates is simply that. What is available to the committee in its study and in the preparation of its report is within the power of the committee to determine. The committee has, as Senator Murray commented, discussed the Estimates, made recommendations and reported on them. That is all. The Supplementary Estimates are not the report of the Senate committee studying them; rather, the Estimates concurred in by the House of Commons are contained in Bill C-21. In that regard, I do not consider anything to be out of order with respect to what has happened in the other place and what is happening here.

Senator Day expressed the view that the report is an opinion of the committee; and that, with respect to changes as time has passed since the Supplementary Estimates were tabled, referred to committee and studied. The study does not render the work of the committee invalid. I find that there is no point of order in this instance, honourable senators.

I make no comment on Bill C-21. That will be dealt with at a later time.

Honourable senators, the house now resumes debate on the second report of the Standing Senate Committee on National Finance.

Is the house ready for the question?

**Some Hon. Senators:** Question!

**The Hon. the Speaker:** It was moved by the Honourable Senator Murray, seconded by the Honourable Senator Kinsella, that this report be adopted. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**Senator Cools:** On division.

Motion agreed to and report adopted, on division.

### APPROPRIATION BILL NO. 3, 2002-03

#### SECOND READING—DEBATE ADJOURNED

**Hon. Joseph A. Day** moved the second reading of 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.

He said: Honourable senators, I rise to speak to Appropriation Bill No. 3, 2002-03 that is before us. Bill C-21 deals with and proposes to provide for the release of \$5.7 billion, which represents the total of the amount set out in the Supplementary Estimates (A) for 2002-03, less funding for the Canadian firearms program of \$72 million.

We have had an extensive and protracted debate with respect to the issue of the \$72-million figure for the firearms registry program, which was in the Supplementary Estimates (A) when they were referred to the Standing Senate Committee on National Finance. I do not intend to debate that issue further at this time other than to assure honourable senators that that amount is not in the schedules attached to Bill C-21.

• (1550)

Supplementary Estimates (A) were tabled in the Senate on October 31, 2002, and referred to the Standing Senate Committee on National Finance. These are the first Supplementary Estimates for the fiscal year that ends March 31, 2003. Supplementary Estimates are provided because not sufficiently developed or known amounts were available at the time of the Main Estimates. Therefore, better defined amounts are brought forward at this time in the Supplementary Estimates.

The 2002-2003 Supplementary Estimates (A) seeks Parliament's approval to spend \$3.7 billion of the \$5.7-billion expenditures. These are voted appropriations that were provided for within the \$169 billion total of planned spending announced in the October 2002 economic and fiscal update.

Honourable senators, the amounts upon which we will be voting were included in the budget announced by the Minister of Finance. That is the important point. The balance that appears represents information to Parliament on adjustments to statutory spending — that is, other pieces of legislation that already include previously authorized authority to spend.

[Translation]

These Supplementary Estimates (A) were discussed in detail with officials from the Treasury Board Secretariat when they appeared before the Standing Senate Committee on National Finance, on November 26. Senator Murray has already presented the committee's report. That report was adopted a few moments ago.

[English]

Honourable senators, some of the major items in these Supplementary Estimates for budgetary spending of \$2.7 billion of the \$3.6 billion for which parliamentary approval is sought relate to the following major items. The first category relates to items affecting more than one organization. There is an amount of \$584.4 million to 71 departments and agencies for the operating budget carry forward; \$202.7 million to 18 departments and agencies for public security and anti-terrorism initiatives; \$190 million to 14 departments and agencies to discharge their responsibilities in organizing events related to international summits in Canada. Honourable senators will recall Senator Murray advising that the National Finance Committee would like to look into that particular item in more detail later.

Other major items included in these Supplementary Estimates include \$147 million to 15 departments and agencies to fund projects related to the Government On-line strategy, the government's initiative to provide Canadians with information and services on the Internet by 2005; and \$55 million to the Department of Justice and Federal Court of Canada for additional costs related to unique legal cases.

The second category relates to items affecting a single organization. They include \$631.6 million to the Treasury Board Secretariat to supplement other appropriations on behalf of other departments and agencies regarding compensation for collective bargaining; \$195 million to the Canadian International Development Agency to meet additional grant requirements for international development assistance; \$183 million to the Canadian Institutes of Health Research to continue to build on the capacity of the Canadian Institutes of Health Research to create and translate new knowledge for improving health; \$162 million to Human Resources Development Canada for operating costs to administer the new direct financing arrangements for the Canadian Student Loan Program, \$70 million to increase loan recovery activities and \$91 million to help alleviate and prevent homelessness; \$135 million to National Defence for pay comparability for Canadian Forces and pay adjustments and environmental allowances for officers and non-commissioned members; \$92 million to Veterans Affairs to cover increased disability pension costs for veterans and their dependents; \$85 million to the Canada Mortgage and Housing

Corporation to help stimulate the production of affordable housing in urban areas and remote communities; \$75 million to Health Canada for sustainability of the Non-Insured Health Benefits program for First Nations and Inuit in the 2002-2003 fiscal year; and \$52 million to the Canada Customs and Revenue Agency to implement six initiatives, including the reporting of federal construction contracts, the Air Travellers Security Charge, First Nations taxation and tax on income.

Honourable senators, the remaining \$895 million of that particular category is spread among a number of other departments and agencies. The specific details are included in the Supplementary Estimates.

Honourable senators, as I have already indicated, statutory spending is that spending that has already been approved under other legislation. The figures are merely being provided as a matter of information. In excess of \$2 billion of the \$5.7 billion referred to in the Supplementary Estimates is statutory spending. The Supplementary Estimates represent adjustments to projected statutory spending that has been previously authorized by Parliament and are provided for information purposes only.

Honourable senators, \$1.9 billion of the more than \$2 billion for statutory spending in the Supplementary Estimates relates to the following major items: \$542 million to Agriculture and Agri-food Canada to help farmers manage challenges such as the current drought and make the transition to a new generation of risk-management programming under the APF, the Agriculture Policy Framework; \$230 million to the Department of Finance to increase payments to the International Development Association under the Bretton Woods and Related Agreements Act; and \$1.2 million to Export Development Corporation's non-budgetary funding for export transactions supported under the Canada Account that are determined by the Minister of International Trade to be in Canada's national interest.

The remaining \$57.8 million is spread among a number of other departments and agencies. The specific details are included in the Supplementary Estimates.

Should honourable senators require additional information, I have a number of publications and documents here to try to answer those questions. I would ask honourable senators for support in adopting this legislation.

**Hon. Lowell Murray:** Honourable senators, first, I thank my colleague, the deputy chair of the Standing Senate Committee on National Finance, for his quite detailed exposition of the provisions of this interim supply bill.

With the indulgence of the house, I intend to make half a speech then propose the adjournment of the debate in order to conclude my speech tomorrow. I take this approach because I spent part of this morning preparing a number of spontaneous and unrehearsed bon mots for the debate, then left my notes at home, which is 60 kilometres to the west of here. I would not want to deprive honourable senators of my thoughts on a number of matters.

However, I shall begin today. Supply bills traditionally afford parliamentarians maximum latitude to deal with everything from

soup to nuts, and that is what I intend to do in the time that I have. Since I am the first speaker on the opposition side on this bill, I intend to take advantage of the time latitude also.

There are three or four matters on which I wish to comment today and tomorrow. Honourable senators, there is much discussion of codes of ethics for parliamentarians. Indeed, we are debating a proposed code of ethics under another rubric at the present time. I do not intend to go into that in detail in this debate.

• (1600)

I acknowledge that I have had to overcome my own skepticism about the efficacy of these codes of ethics. However, I have come to the conclusion that parliamentarians ought to be willing to accept for themselves what they are often so anxious to impose upon ministers and officials.

On that score, honourable senators, I accept and endorse the notion of a code of ethics in principle. Having a code of ethics will be a worthwhile contribution in terms of the relationship between parliamentarians and the public.

Not to put too fine a point on it, but I sometimes find that the attitude of the public to the proper exercise of ministerial and other political discretion by parliamentarians tends to be a bit ambivalent. Certainly, some of the supplicants who come before us, individually and collectively, tend to take quite a liberal or permissive attitude toward the exercise of political discretion when their own interests or the interests of their favourite lobby are concerned, but a rather more restrictive approach when someone else's interests are concerned. Therefore, I believe that having a code of ethics may serve some educational function in terms of our relationship with the public.

All of this has been an introduction to my opinion that a thoroughgoing reform of political financing would do more to clean up our politics and to build confidence in our system than a dozen codes of ethics.

I am aware, as are all honourable senators, that there have been worthwhile and substantive reforms in the past 25 or 30 years. Parliament has enacted legislation to put limits on campaign spending and to make political contributions more transparent.

Experience has shown, however, that these provisions have serious weaknesses. For example, with regard to limits, the cost of public opinion polling is not included in the campaign spending limits that are applicable to candidates and political parties. That is absurd and almost indefensible when one considers the amounts of money that parties and candidates spend on public opinion polling and the centrality of public opinion polling to our political culture and to political campaigns today.

I have lost track of where this stands in the judicial and legislative process, but over a period of years, political and campaign spending and other activities by special interest groups and lobbies have acquired special status by reason of various court decisions. Whereas political parties and candidates have been subject to limits, these other groups have been subjected to no limits as a result of court decisions. These are obvious weaknesses in the regime that would impose spending limits during election campaigns.

Regarding the transparency of the process, I believe that all honourable senators know that one of the principal weaknesses, which has been pointed out in various reports from the Chief Electoral Officer, is that contributions to constituency associations between campaigns are not required to be reported. A further and growing problem is the fact that contributions to leadership campaigns, which now amount to many millions of dollars, are disclosed only on a voluntary basis. These are weaknesses that must be studied.

I had resisted for a long time the approach of our friend Senator Di Nino to the effect that we should let the public purse carry the freight for the political process. I resisted it for all kinds of reasons. However, I must say that as time goes on and in the light of experience, the honourable senator's argument is becoming more and more difficult to resist. We have, for example, situations such as the infamous sponsorship program, where taxpayers' money was spilled to organizations for work that was never done. The public record shows that those various companies spilled money back to the party. That practice is corrupt; there is no other word for it. The fact that it is transparently corrupt does not make it any better.

To come back to Senator Di Nino, he was able to show in his argument that the public purse already pays much more than people realize for the political process. If we take the very generous tax credits for political contributions that certainly do not apply to any other charitable donation, the ability of companies to deduct contributions to the process as a legitimate business expense, and the rebates that are made to candidates and national parties after the election, this amounts to a very considerable amount of money. I believe that Senator Di Nino, who can obviously speak for himself, has estimated that 60 per cent or more of the process is now paid for out of the public purse one way or another.

I know, honourable senators, that we are told Prime Minister Chrétien was planning to bring in a bill to ban corporate and union donations. This is a regime that exists, I believe, in Quebec and in Manitoba. Skeptics say that ways have been found to get around these rules, and that may be the case. However, I believe that we can devise ways to block loopholes. If all else fails, we could impose such severe penalties as to put the fear of God into anyone who was thinking of contravening the law.

It is said that the Prime Minister has met with considerable resistance in his caucus. I cannot speak to that matter, but I would hope that he would bring in the bill to ban corporate and union donations anyway. If the bill were defeated, the defeat would reflect badly not on its author but on those who defeated it, in my opinion. I would hope that he might bring it in because there is a lot of talk about his legacy. He is fond of pointing out that he has been in public life for almost 40 years. The Prime Minister came here in 1963. I have not been in Parliament as long as he has, but I started my first political assignment in Ottawa two years before that, in 1961. I have seen, as have the Prime Minister and many senators, the not always benign and sometimes quite insidious influence of money on the process.

A speech by Prime Minister Chrétien, based on his 40 years of experience and the role of money in politics, would be quite a legacy in itself. In my opinion, it would outlive him by many generations, just as President Eisenhower's valedictory speech on the military-industrial complex in the 1950s outlived him.

• (1610)

The one other subject I would like to refer to today, honourable senators, is health care and, in particular, I would like to take the occasion of the reports on health care that were recently made public, one by the Royal Commission headed by Mr. Romanow, and one by the Standing Senate Committee on Social Affairs, Science and Technology chaired by our friend Senator Kirby. Not to go into details on the recommendations of these reports, but I would like to say, however, that I came to the conclusion some time ago that block funding of the federal cash transfer is an idea whose time has come and gone. I emphasize again that I am speaking for myself here.

Honourable senators, I was a political advisor to the New Brunswick government at the First Ministers meeting in, I believe, 1977 when Prime Minister Trudeau unveiled this block funding proposal. Mr. Trudeau, who was at his best when discussing theories of federalism as distinct from its practice, went on at great length to vaunt the merits of this block funding. He told the premiers that this would be so much more respectful of their jurisdictions, and, what is more, that they would have so much more flexibility in how they spent the money. He urged them to sign on, and sign on they did to what became established program financing.

To be fair, there have been some positive results out of block funding. One of the positive results soon after signing on was that the provinces, freed from the limitations of the previous cost-sharing regime on health matters, were able to experiment and innovate more than they had done on health matters such as prevention programs and home care. This was an area that New Brunswick got into very early on under the leadership of the Honourable Senator Brenda Robertson, who was then the Minister of Health in that province.

However, I must say, honourable senators, that I am at a loss to know why some provinces continue to cling to this concept of block funding. It seems to me, that block funding of the cash transfer for these social programs has allowed the federal government to get off scot-free when it is responsible for huge cutbacks. Honourable senators will remember the cutbacks that took place, most notably, in the 1995 budget.

However, it was not to the lawns of Parliament Hill that the protesters came to express their indignation about all of this; it was in front of the provincial legislatures of the country that the protesters came because of the cutbacks, notably to health and hospitals. It is the provincial governments that have the responsibility to negotiate with doctors, nurses, hospitals and all the rest of it. One wonders, at a political level, what advantage the provinces are deriving out of this block-funding concept. The main winner, politically, in all of this seems to be the federal government.

In terms of accountability, the people properly hold the provinces responsible. However, everyone knows that the cutbacks in most provinces, the reductions in services and the problems have been the result of severe federal cutbacks in the transfer, notably in 1995.

Should we designate that part of the cash transfer must be devoted to health care? The lack of a designated sum at present has led to these sterile arguments between the federal government and the provinces being played out on television advertising as to whether the federal government is now paying 14 per cent of health care, as the provinces say, or closer to 40 per cent as the federal government claims. If we do designate part of the overall cash transfer to health care, that would leave post-secondary education and social assistance in the CHST, and it seems to me that these cash transfers should also be designated on the basis of a federal-provincial negotiation and agreement. That would have to happen.

I believe that there is a great danger that the critical needs in post-secondary education are being lost sight of because of the preoccupation and concern of people and their governments about health care, and quite understandably so. We must not allow that to happen. We must not allow post-secondary education and the needs of those entering post-secondary education to become an afterthought to our deliberations on social policy. The Association of Universities and Colleges of Canada put out a document entitled "Trends," which is, I believe, quite revealing of the dimensions of the challenge that we will face in this country in post-secondary education in the coming years.

I believe it is obvious to honourable senators that, in recent years, the federal government, while not doing much at all by way of improving the cash transfer to the provinces so that they can carry out their responsibilities in post-secondary education, has tended to favour the use of the federal spending power by way of direct payments to individuals and institutions, notably in the field of research.

Some of you know Brian Fleming who is now heading up the federal agency in the transport field, I believe. He is also a newspaper commentator. He has had some experience in higher education and is on the board of the University of King's College in Halifax. He wrote a column in the the *Halifax Daily News* expressing concern that the result of the federal government's use of the spending power and its direct assistance on research matters is creating a two-tier framework in higher education. In his view, what the federal government is doing tends to confer a disproportionate advantage on larger universities in larger provinces. That is something that I believe honourable senators have to consider.

What it says to me is that, while the direct payments to individuals and institutions may be well motivated, I believe we have to take in the needs of the entire higher education sector, and that that can only be done in very close consultation with the provinces.

Honourable senators, to come back to the document entitled "Trends" that was put out by the Association of Universities and Colleges of Canada, it contains a lot of interesting material, but is one of the documents that I left at home, so I will return to it tomorrow.

[ Senator Murray ]

I sent a copy of it to our friend Senator Moore in Halifax because he, as you know, has experience as a governor of St. Mary's University and a considerable interest, as he has demonstrated in the Senate, in this whole field of the financing of higher education. It was he who persuaded honourable senators in the National Finance Committee to undertake a study of the accumulated deferred maintenance costs at Canadian universities. The committee prepared a report on that, and we have some reason to believe that the concerns that we expressed are meeting with some response on the part of the federal government.

There is some very interesting material in that document about the challenge that we face in the field of higher education in the coming years. As soon as I retrieve my notes at home, I will resume this speech tomorrow. At the same time, if time permits, I may have a comment or two to offer on Kyoto and on the gun registry, as well. Until then, honourable senators, I move the adjournment of this debate.

On motion of Senator Murray, debate adjourned.

• (1620)

## COPYRIGHT ACT

### BILL TO AMEND—THIRD READING

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

Motion agreed to and bill read third time and passed.

## SPECIES AT RISK BILL

### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Corbin, for the third reading of Bill C-5, respecting the protection of wildlife species at risk in Canada.

**Hon. Mira Spivak:** Honourable senators, Bill C-5 comes before us, as you have heard, with observations but unamended. That is because a majority of the committee members believe that the bill could be lost entirely if it were amended. That is a pity. It would certainly have been a stronger bill, as almost all of our witnesses told us, if we had pursued amendments put forward by the House of Commons Environment Committee but not approved by the House. However, as a poor second best, we have set the table for future amendments. I am not alone in this view. It was a consensus opinion. As the committee's observations say right off the bat:

...we firmly believe that passage of this legislation marks only one step in the work that needs to be done to adequately protect species at risk in this country. Future amendments to this legislation should address outstanding concerns and further strengthen it.

Some of the observations address matters that should be considered in the course of the five-year review that the bill mandates. Some of them address matters that we believe should be addressed much sooner. The committee expects the minister to change one of them immediately upon proclamation.

Scratch any of the observations and we find a matter that a majority of committee members feel uneasy about. I should like to consider some of the major concerns as detailed in the observations.

Foremost is the bill's limited scope. Honourable senators have heard that it takes a safety net approach to protect species at risk. The federal government will only take action to protect species at risk outside federal lands or federal waters if a province or territory does not act. That raises the question: How often will the provinces or territories fail to provide protection?

The committee heard that some provinces, notably British Columbia and Alberta, do not have stand-alone legislation to protect species at risk and do not intend to. Among those provinces that have legislation, only Nova Scotia's act provides legal protection for all the species found in the province that will be listed under this bill as endangered or threatened. Provincial laws currently protect only one third of the species listed by COSEWIC, the Committee on the Status of Endangered Wildlife in Canada. Some two thirds are not listed.

As the committee observed:

...since no province can take steps to protect any species it has not listed —

— we are talking about legal protection, not voluntary measures —

— your Committee believes that the Minister of the Environment should regard provincial failure to list a Committee on the Status of Endangered Wildlife in Canada (COSEWIC) listed species as the early warning sign of provincial/territorial inaction that should necessitate invocation of the federal safety net provisions.

In addition, the bill does not require the government to set out the criteria it will use to weigh provincial action or inaction before stepping in. The Commons committee included the requirement; the government and the House removed it.

Criteria would serve two very important functions. They would be an accountability mechanism. Legislators and everyone else could examine federal action or inaction against them. Perhaps, more important, they would provide some certainty for the provinces and territories, our partners in the safety net approach. They and the public in any given province or territory would know, perhaps not where the federal government will draw the line in the sand, but at least what beach it will stand on.

Again, honourable senators, to cite our observations:

Your Committee believes that the federal government should establish and make public specific criteria that will be used to assess the adequacy of provincial/territorial actions.

Your committee suggests what is, in fact, a starting point for criteria — that the existence of provincial or territorial legislation alone is not sufficient. It is the enforcement of the legislation that counts. It tells the government that we would like it to address, ahead of time, the chronic problem in our nation's environmental laws — the matter of enforcement. It wants the government to put resources in place to ensure enforcement when and if the government invokes a safety net.

There are good reasons for this. As honourable senators have heard, the safety net approach in Canada makes very good sense in theory. It recognizes the reality of our makeup, our constitutional division of powers, our land mass and the very practical consideration that the federal government cannot be everywhere. It is very tough to argue that we should not work in collaboration with the provinces and territories. Of course, we should.

It is one thing to take a safety net approach; it is another to take a meaningful safety net approach. Honourable senators have heard that the government is reserving the right to step in when provinces fail, but there is no iron fist in the velvet glove. There are two reasons for saying that — one is historical and the other leaps up from the bill itself.

As our committee heard, historically, this same safety net approach or something very similar is found in four other pieces of environmental legislation. It is found in the Canada Wildlife Act that gives the federal government the discretionary power to make regulations, in cooperation with the provinces, for the protection of endangered species. It has never been used in 28 years.

It is found in the Canada Waters Act, giving the government the discretionary power to impose water management and protection measures for interjurisdictional or boundary waters. It has never been used in 31 years. It has never been used in the Canadian Environmental Assessment Act. It has never been used in CEPA, the Canadian Environmental Protection Act or its predecessor, the Clean Air Act, that also goes back 31 years. Therefore, why should we believe at this time the government will use its discretionary power?

In this bill, the safety net itself is weak. One of our witnesses was Mr. Stewart Elgie, who teaches environmental law at Osgoode Hall Law School and has put together lists of acts. He worked quite closely with the government in the acts that I have just mentioned. Speaking to this bill specifically, he said:

...the safety net is so unclear and so lacking in strength that there is very little chance it will ever be invoked. We run the real risk that neither order of government will protect endangered species.

What could we do to turn the hope that the government will act into the reality that it should and does act? We could vastly improve the odds with a simple amendment first conceived by the Commons committee. It would replace cabinet's discretionary authority with a mandatory requirement, when, in the opinion of the minister, a province or territory has failed. The Commons committee put it in; the House did not approve. The Senate committee thought about the long-standing failure of successive governments to exercise cabinet discretion on environmental matters and had this to say:

Your Committee recommends that, during the mandatory five-year review of this legislation, consideration be given to making this a mandatory undertaking.

There is one more crucial matter that comes under the heading of scope of the bill. It is the matter of critical habitat of migratory birds and the federal retreat, under this bill, from a clear area of federal responsibility.

• (1630)

Federal authority, and responsibility, stems from an Empire Treaty, the Migratory Birds Convention, signed in 1916, and its implementing legislation, the Migratory Birds Convention Act and its regulations. I should like to cite the words of former Supreme Court Justice Gerard La Forest and the renowned constitutional expert Dale Gibson, referring to the Migratory Birds Convention Act:

That these provisions, which provide broad powers to protect migratory birds' habitat, fall within federal authority has never been seriously questioned. Indeed, several court decisions, beginning as long ago as 1925, have confirmed that Parliament has broad authority to pass legislation to fulfill the requirements and purposes of the *Convention*. This authority almost certainly includes the power to protect habitat upon which migratory birds depend.

Yet Parliament is not requiring the government to protect even the portion of habitat needed to prevent the extinction of some 20 species of migratory birds unless those birds nest on federal land. Elsewhere, it is subject to cabinet discretion. Again, the Commons committee took a more protective approach, requiring that same broad protection of critical habitat for migratory birds under the Convention as the bill gives to so-called other "federal species," such as fish or other aquatic species.

Our committee heard that the Forest Products Association of Canada, the Mining Association of Canada and members of the Endangered Species Task Force, which included the Federation of Agriculture, the Association of Petroleum Producers and the Fisheries Council — these radical environmentalists, as some would call them — all recommended that the protection of migratory birds' habitat be dealt with as a federal matter.

Mr. Pierre Gratton, vice-president of the Mining Association of Canada, told us directly:

The government continues to hold a very narrow view regarding its jurisdiction with respect to the protection of

migratory birds. It is a view not universally shared by legal experts and the courts. We think clarity and certainty on this issue would be beneficial.

There is then the possibility of a legal challenge to this failing in the bill.

The consensus opinion of the Senate committee was:

Your Committee reminds the government that it already has responsibility for the protection of critical habitat for migratory birds under the *Migratory Birds Convention Act* and that responsibility must not be limited by this Act.

That is hardly a wishy-washy observation. We made a similar observation on protection of other transboundary species and the protection of their critical habitat, although it was couched in the context of the five-year review.

The five-year review itself was also debated by senators. Unlike many other environmental statutes, this bill requires a one-time-only review, five years after it comes into force. One of our witnesses, Ms. Kate Smallwood, of the Sierra Legal Defence Fund, told us that a single review, and its timing, was inappropriate:

Most of the recovery efforts under this bill will only be starting or slightly underway, if that, in five years. The recovery process is the major mechanism to bring species back off the brink of extinction and down to the lower level of risk. We are not going to know in five years how this act is really going. We will have an idea, but we will not have a full picture.

In response, the Senate committee recommended that at least two further five-year reviews be conducted.

Our observations also dealt with matters of compensation, which other senators raised on Thursday last, so I will not reiterate them. They do not, unfortunately, deal with the non-derogation question, which engaged us perhaps more than any other matter. That matter seems to have been resolved by the Minister of Justice, although it is not clear at this time whether it will be acceptable to the Aboriginal community.

There are a few other key matters in the observations that I should like to briefly mention. The first is the absence of a measure to allow the government to ensure interim protection of critical habitat. This is important because the time between the listing of a species and the completion of a recovery plan will be in the order of two to three years. It is undesirable, to say the least, to have species becoming extinct during the development of recovery plans. The House of Commons committee recognized this deficiency. It amended the bill to give the minister the discretion to take interim measures. Again, the House disapproved. The Senate committee believes that the government should reconsider, albeit in the course of the five-year review, if not earlier.

On timelines, we found that we concurred with the House of Commons committee amendment that was removed from the bill. It simply makes no sense to set time limits for recovery strategies, then to allow unlimited time for action plans, which is where the real work on the ground begins. Again, we asked the government to reconsider.

We heard the opinion of several witnesses, including Mr. Gratton, that the basic legal protection — protection from killing and destruction of residences — should apply everywhere, not just on federal land. The 5 per cent solution, even with a safety net, is problematic, as 95 per cent of the land mass outside the territories is under the jurisdiction of the provinces.

There is one matter that we expect the minister to address immediately. It is the matter of listing of species endangered or threatened under Schedule 1 of the bill. The Minister of the Environment agreed to include automatically on the endangered or threatened list those species already reviewed by COSEWIC — the scientist committee on endangered species — at the time Bill C-5 is approved. What has happened since the minister made that commitment, however, is that COSEWIC has added another 50 species to its lists, some as recently as a week ago Friday. These species, which include the endangered coho salmon of Fraser River and the blue whale populations, are not on Schedule 1 of this bill. In reality then, we have some 230 Commons species that are automatically protected and some 50 Senate species that were listed while the Senate was debating the bill that could be forced to ride the tide of political decision making.

Our consensus view was:

Your Committee expects the Minister to add these species to Schedule 1 immediately upon proclamation of the legislation.

In order to monitor whether our observations are taken up by the government, we have asked the minister to meet with the committee a year from now to discuss progress on our recommendations.

I do believe that the Government of Canada could do better on Bill C-5. In fact, we are obligated to do better under the Convention on Biological Diversity that was ratified 10 years ago. Our committee heard that opinion. It heard that, with this proposed legislation, Canada is the weak link in the continental protection of species. Both Mexico and the U.S., our NAFTA partners, have better laws.

I simply do not agree, with great respect, with my colleague, the Honourable Senator Banks, that the U.S. legislation has been a disaster and is proof that we should avoid federal intervention in the protection of species at risk. I cite as my authority Edward O. Wilson, the eminent Harvard biologist and Pulitzer prize-winner. The facts, according to Professor Wilson, are these:

Of the 98,237 projects reviewed by federal government —

The government referred to there is the U.S. government.

— during interagency consultations between 1987 and 1992, only 55 were stopped cold by application of the Endangered Species Act.

That is quite a comparison with what the federal government has done in the years since all those other bills that I cited to you were passed.

That is less than 0.06 per cent. There is a very practical reason for what Professor Wilson describes as “the light touch” of the U.S. Endangered Species Act:

...endangered species tend to be concentrated in geographically limited hotspots, such as the Hawaiian rainforests and Lake Wales Sand Ridge scrubland of central Florida. Very few are to be found in the great stretches of America's agricultural belts and ranchlands, from which so much of the anti-ESA protest arises.

• (1640)

Once we give third reading to this bill, we are saying that we have done what we could under the circumstances. It is now up to the government to have a change of heart and to adopt our key observations; or, it is up to the courts to force the government to reconsider.

In closing, I should like to leave honourable senators with the words of one of our witnesses, Mr. Elgie. I preface them by saying that he has literally devoted the last 10 years of his life to working with different governments on endangered species legislation. He has been tireless. I believe all Canadians owe him and many others like him our thanks for his dedication to what is without question a Canadian value: the desire to protect the species at risk in our vast land.

In response to a question from Senator Kenny, Mr. Elgie said he was prepared to risk that 10-year personal investment in the bill if we were prepared to amend it to protect the critical habitat of migratory birds. He ended on a high note, which I think is worth sharing. He said:

This bill represents a remarkable opportunity to do something good for Canadians, something that will unite us. It is one of those rare things that will make us feel pride in a way that we all do about our wild places and wild species. It is an investment in the future of Canada and in a future that still has grizzly bears, beluga whales and marbled murrelets living in the wild.

I commend all the members of the committee, and certainly our chairman, for their very persistent work on this bill. It might not be exactly what I would have wanted to see, but there is no questioning the hard work and the good intentions of all committee members. It is certainly a committee on which it is a pleasure to serve.

**Hon. Willie Adams:** Will the honourable senator accept a question?

**Senator Spivak:** Certainly.

**Senator Adams:** The honourable senator is concerned about the future of migratory birds. Could the honourable senator elaborate on other kinds of species about which she is concerned? Where I live in the North, there is not much at risk. We are concerned about whether the migratory birds will return every year because we use them for food. We want to protect them for that reason.

Currently, the majority of the species at risk are in Nunavut. The honourable senator talked about polar bears and caribou. Those species have been protected for over 10 years in the High Arctic. In addition, whale quotas have been reduced every year.

My question for the honourable senator is this: What is next? The government tells us every year that we have to cut back our whale hunting. The experts do not come up to where we live. They do not live up there. They tell us what types of birds should be protected, yet we use them for food.

**Senator Spivak:** Honourable senators, it is quite evident that this bill is designed to protect species at risk or those that are endangered. If they are not endangered in the area in which Senator Adams lives, that is fine. The bill will not apply. In other areas, there are species that are endangered or threatened, which is what this bill addresses. It is not addressed to places where there are no endangered, extinct or threatened species.

**Hon. George Baker:** Honourable senators, further to the question asked by Senator Adams, would the honourable senator not agree that we should wait to find out just how effective this legislation is, that surely the effectiveness of legislation is sometimes found in the regulations that are passed under it? When the honourable senator says that this measure does not apply to provincial lands or habitat because it is an encroachment of provincial —

**Senator Spivak:** I did not say that.

**Senator Baker:** I thought the honourable senator said she was somewhat upset that the measures of the bill did not extend beyond federal lands.

**Senator Spivak:** Yes, I said that.

**Senator Baker:** Would the honourable senator not agree that regulations passed by the federal government sometimes encroach on provincial lands, on provincial jurisdiction? The distinction between section 91 and section 92 of the Constitution Act has to do with power.

On Friday, 108 sealers were charged under the federal Fisheries Act with selling, trading or bartering in what we call blueback seal skins. Under federal fisheries legislation, we only have jurisdiction in the ocean. What are we doing with a federal regulation that deals with the trade, sale and barter of seal skins on land? The answer to that is found in the regulations. The pith and substance of a piece of legislation is found in its regulations. They carry

through the intent of the legislation and permit encroachment on provincial land, on provincial jurisdiction, on provincial anything. I am not saying that is right, because we argue against that encroachment by the federal government. Unfortunately, the Supreme Court of Canada does not agree with us.

Would the honourable senator agree that we should not just be saying that this is terrible legislation because it does not do this, this and this? Why not wait for the regulations when, perhaps, we will see that it goes too far for a great many of us?

**Senator Spivak:** Honourable senators, what we are reflecting is what many witnesses said before our committee, the House of Commons committee and the strenuous work done by all parties, not just one, in the House of Commons committee.

Is the honourable senator opposed to the federal government power that protects fisheries and navigable waters? That power even allows for a 100-meter stretch to protect salmon, which I do not think is enough. Does the honourable senator think that the interests of the provinces is to trump the ability to protect a national resource?

I remind the honourable senator that the federal government has jurisdiction, along with the provinces, in the matter of the environment. It is not the case here that the federal government is encroaching. It is the case that the federal government is timidly retreating because of the fear of encroaching on provincial protection.

I would say that most people in Canada — and it is a proven fact — want protection of the grizzly bears, transboundary species and migratory birds. They do not care whether that protection is federal or provincial. In fact, it is a bit of a joke as to whether it is a provincial matter or a federal matter. I think the honourable senator's fears about encroachment on the powers of the provinces and territories is misplaced.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, last week, when I listened to Senators Milne and Sibbeston, I was struck by their lack of enthusiasm for this bill, which led me to the committee report. I found this report to be the most discouraging that one could find on the support of a bill. There are more negative comments in this report than there are positive comments. I will not make a speech at this time, although perhaps I will in time.

I should like Senator Spivak to comment on some observations that were tabled at committee, which state that when legislation is introduced in the Senate as a result of amendments filed by several parties and last-minute negotiations, the result is inevitable: drafting errors and inconsistencies that the Senate has an obligation to address before the bill becomes law. So far so good. It goes on in the same paragraph to say that the majority of the members on the committee have determined it is unwise in this instance to make those minor changes, fearing rightly or not that any change in the bill would mean its defeat when it returns to the House of Commons.

• (1650)

I have not read a report that claimed the Senate cannot make minor changes for fear of their being defeated in the House of Commons. Could Senator Spivak elaborate on this? Since she says it is the view of a majority of members, perhaps it is not her view. If it is her view, would the honourable senator please elaborate; if not, I will ask a member of the committee on the majority side, when his or her turn comes to speak, to elaborate.

**Senator Spivak:** Honourable senators, I believe it is certainly up to the members on the other side to put forward a motion, although I would say to you that even on our side there was not a tremendous enthusiasm — and I am speaking sarcastically — for amending the bill. To give an example of minor discrepancies, an amendment was put forward by our colleague, John Herron, in the committee and, for some reason, the first part of his amendment was lost so that we only had the last part of his amendment, which had to do with residences. As a result, there is a contradiction in that clause in the bill where it talks about residence or nests for animals like caribou, which is not at all applicable. That really should have been corrected.

However, I must say that there was a great fear that, if the bill went back to the House of Commons, it would be lost and might come back in worse shape than it came here. That was the prevailing view.

**Senator Lynch-Staunton:** My point, honourable senators, is that some members of the committee are asking us, through their observations, to pass a flawed bill. In another paragraph, these observations state that the bill presented to the Senate is in part the result of eleventh-hour negotiations between the Prime Minister's Office and Liberal members of Parliament on the Commons Environment Committee. As such, it has drafting errors and inconsistencies that can be expected when last-minute changes are made to proposed legislation. We hope the government will correct those at its earliest opportunity.

Why does the Senate not correct them? It is our job. We have been waiting years for a bill like this one, but after reading this and hearing Senator Sibbeston — who tried to present an amendment last week on the non-derogation clause, and even Senator Milne had certain reservations, as I am sure other members do, and even the report is full of reservations — how can the government seriously ask us to pass this bill? That is an editorial comment to Senator Spivak. I am sure she is not comfortable with this bill, or is she?

**Senator Spivak:** I said I was not.

**Senator Robichaud:** You do not want her to answer.

**Senator Lynch-Staunton:** Like Senator Bryden, I have to put a question mark at the end.

**Senator Spivak:** I believe I clearly indicated that I was not comfortable with the bill, but I was hoping that the minister would listen to the reservations, which I think are quite severe, and understand the feelings of the committee members.

**Hon. Ione Christensen:** Honourable senators, I wish to express my support for Bill C-5 and perhaps I will wish later that I had not — not because I do not support the bill but because of the quite obvious concerns on the opposite side.

I want to recognize the hard work and the diligence that has gone into the drafting of this bill over the last eight years, and please note eight years is how long this bill has been in the making. We are looking at its third revision.

Over the years, politicians and environmentalists, industry, landowners and concerned citizens have all presented opinions and recommendations for improvement, and many of those improvements will be implemented with the passage of this bill. Often those recommendations were in direct conflict with each other, but they were always made after careful study and with concerns for the point of view they were representing. This legislation has tried to find the balance between the two, while still focussing on the intent of the bill, which is the protection of the species that are at risk.

This bill is the end result of a decade of exhaustive consultation, negotiation and public debate. Some will argue it is not strong enough, that jurisdictional matters and other shortfalls should be dealt with immediately in order to have a more perfect bill. Others will say that the legislation is too strong and does not ensure compensation for those who will be affected. I feel, however, that we are moving in the right direction and that in five years we will have the opportunity to review those areas needing to be addressed.

We have come to the point where we must move forward. This bill is the first blueprint. It will be Canadians who will make it work. More delays will not help species at risk.

During our committee deliberations we heard diverse opinions on how Bill C-5 could be made better. On one side we heard that we should not miss this chance to make the proper changes to improve the bill, and that the consequences of making mistakes in Bill C-5 could be very serious. Key changes were proposed by the environmental protection groups to have more effective protection for the species that are at risk. They proposed, in part, to expand habitat protection for the migratory birds beyond the federal lands; to include a time line for the completion of action plans; to have provisions of interim habitat protection between the listing of species at risk and protection of critical habitat for the recovery process; and to have provisions for ongoing, five-year review of the act.

The issue of protecting habitat for migratory birds presents some great difficulties in that migratory birds do not use the same pathways and corridors each year. They can vary greatly. What I am saying is that you can find a species in one area one year and set up habitat protection, only to find that the next year and the year after it is in an entirely different area. Migratory species are, however, protected through our acts, such as the Migratory Birds Conventions Act and the Fisheries Act. Those acts offer protection to the extent that no one can kill those species or disturb critical habitat anywhere in Canada, and we have addressed this in our observations.

On the other side of the spectrum, landowners, industry and concerned citizens lack confidence that they will be adequately compensated if there were to be any losses due to the protection of habitat. Their main arguments were that Bill C-5 facilitates but does not guarantee compensation when a landowner suffers a loss as a result of extraordinary impact of the application of the bill. It is also their view that restriction of land use amounts to expropriation and must be compensated as such.

Compensation was the main concern for landowners, and I can empathize with anyone who may suffer loss because of a situation such as a species at risk on their property. However, I do believe that the measures taken in this bill will be effective. As stated by Mr. Stewart Elgie:

This bill goes further than any other environmental statute in Canada to provide for fair and reasonable compensation for people who are significantly affected by environmental legislation.

I would also like to think that the compensation clause of this bill is there to support stewardship, which is the desired first step of protection of critical habitat.

Guaranteeing compensation also poses difficulties when you cross into lands that are under provincial or territorial jurisdiction and they have their own legislation that deals with land use and compensation. Minister Anderson gave assurances that, in the case of hardship as a result of taking over a person's land, there must be some protection for them. One thing the government wants to ensure is that no one will use endangered species as a bargaining tool for compensation.

This legislation has tried to avoid the U.S. model of a similar bill where landowners, who are by nature stewards of the land, would "shoot, shovel and shut up" because of the more punitive laws that they must operate under. In Canada, we want to avoid the situation of "show me the money," and, instead, we would rather have a "let's work together" approach. As I have said before, stewardship is the preferred choice for the protection of critical habitat.

I would like to touch on the issue of "strict liability" offences as opposed to "*mens rea*" offences. This was also a major topic of discussion during our deliberations. Strict liability offences are used in environmental protection statutes, both federally and at the provincial and territorial levels, and using them here gives continuity. The mental element of a strict liability offence would be civil negligence. In the prosecution of a strict liability offence, the Crown must prove that the prohibited act has been committed, at which point the onus shifts to the accused person, who must prove that he or she acted with due diligence in order to avoid conviction.

• (1700)

Honourable senators, it is "strict liability" for killing healthy wildlife species, and so there should be the same judicial approach in dealing with the critical habitat of an endangered species.

Those are strong arguments, honourable senators, and I would submit that the observations attached to the committee's report reflect quite strongly those concerns. While observations are not amendments, they have the weight of the Senate behind them. They serve to give direction when regulations are drafted; they give direction when future amendments are made to the bills. If

they are not given serious attention, then it is the prerogative of all Senate committees to implement amendments and abandon the observation and recommendation process. The use of observations is in everyone's best interests, and with the attention and cooperation of ministers and their departments, it is a practice that should continue in the legislative process.

As we have seen through the witnesses who have appeared before us, there are very wide and diverse opinions on what the bill should do and how it should be applied. It would be next to impossible to make changes that would meet the stated needs of all of the groups. While the bill is not perfect — and, senators, we do not see many of those coming before us — we do have a workable bill. After a decade of debate, now is the time for action. Five years from now, we will have the opportunity to assess how things are going and make the necessary changes.

This bill, honourable senators, is a work in progress. We will assess how well the stewardship program is working. We will see how other jurisdictions will work with us through Bill C-5, and if the measures are not tough enough, has the federal government stepped in to ensure the protection of species that were at risk. As well, much of what directly affects people is often found in the regulations, and we do not have those documents before us at this time.

Honourable senators, species at risk are the canaries in the coal mine, and we owe it to all species, of which we are one, to move and to make a start to implement this legislation. We must then work to identify where improvements are needed as the bill is applied. As I said before, Bill C-5 is a first step, and I urge all honourable senators to take that step and support the bill.

**Senator Adams:** I have a question for the senator. I studied this bill before it went to the committee. It seems that as soon as it got into the committee, many other species at risk got into the bill. I think at that time it was only about strict risks to species. I believe it was polar bears, belugas and narwhales, the Perry caribou in the High Arctic, the woodland caribou in Manitoba, and one bird. I believe there were only seven. There are a lot more in the bill now.

A species that is at risk in the territory of Nunavut may not be at risk in other parts of Canada. I believe that the woodland caribou in Manitoba are of concern, but there are lots of caribou elsewhere.

**Senator Christensen:** I thank Senator Adams for his question. If I understand it clearly, he is concerned about northern species that may appear on the list. Senator Spivak pointed out the endangered species in certain areas, and Senator Adams is talking about the woodland caribou, the ones that perhaps are in Manitoba. There are lots of woodland caribou in the Yukon that are not endangered. There are certainly areas in Nunavut and the Northwest Territories with species that may appear on an endangered list but in some areas in Canada would not be endangered. I think we have to be very clear on the distinction. If we say a grizzly bear is endangered, it does not mean that he is endangered throughout the whole of Canada. However, there will be regions where that distinction will be made.

On motion of Senator Kinsella, debate adjourned.

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