CANADA

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**OFFICIAL REPORT**
**(HANSARD)**

## Wednesday, December 11, 2002

**THE HONOURABLE DAN HAYS**
**SPEAKER**

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# THE SENATE

**Wednesday, December 11, 2002**

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

Prayers.

[*Translation*]

## SENATORS' STATEMENTS

### EARTHQUAKE IN PROVINCE OF MOLISE, ITALY

**Honourable Marisa Ferretti Barth:** Honourable senators, as the holidays approach, and as I continue to receive letter after letter of distress, I could not help but express the sorrow I feel as a result of the earthquake that struck Italy.

As you know, on October 31, a violent earthquake struck Central and Southern Italy, leaving 29 people dead. Twenty-six of the fatalities were children, who had been celebrating Hallowe'en in their school at San Giuliano di Puglia when the roof collapsed.

Honourable senators, I will give you an indication of where the beautiful region of Molise is, and what it is like. The Province of Molise is in the south-central part of Italy, and is surrounded by the Provinces of Puglia, Abruzzi, Campania and Latium. It is bordered on the east by the Adriatic. This region is not well known, although it is worth discovering for its splendid scenery and its rich history.

Molise is a very ancient region. The Romans built flourishing cities there. Even after their empire declined, Molise retained a strategic position in the heart of the Southern Peninsula, along with its originality, its customs and its beauty.

Today, my heart is with the people of the region, in these dark hours they are living through. All of Molise is mourning the people who were lost and the villages that were destroyed. Molise is not prone to earthquakes, so it was hit unawares, adding to the shock of it all.

Molise is a very hilly region, with a few plains along the shore of the Adriatic and banks of the Biferno and Trigno Rivers. On many of the hilltops, we find hamlets that have preserved their medieval charm. A stroll through one of these hamlets takes us back in time to the Middle Ages, with the knights, the lords and the damsels, who are as *bellissime*, or most beautiful, today, as ever.

Honourable senators, despite the time that has passed, the people of Molise are still suffering. It is hard to forget the deaths of 26 innocent children, who had their entire lives ahead of them.

In closing, honourable senators, as the holidays, *natale e anno nuovo,* approach, their sorrow is deepening. Perhaps a message of love, hope and solidarity can help console these people, who are still reeling from this terrible natural disaster.

[*English*]

### THE LATE HONOURABLE HARTLAND DE MONTARVILLE MOLSON, O.C., O.B.E.

TRIBUTE

**Hon. Marcel Prud'homme:** Honourable senators, he was a visionary. He was a great wartime hero. He was a sportsman. He was a great statesman.

I am sure all honourable senators will recognize the one to whom I said I would pay homage — our beloved Senator Molson whose memorial service will be held tomorrow. I did not want to speak at the time homage was paid to him and said I would do so the day before the service.

There are many reasons for what I am doing today, honourable senators. First, honourable senators know that Senator Molson was appointed to the Senate in 1955. Second, he always sat as an independent. If I had to, I would repeat what Senator Meighen said apropos Senator Molson when he spoke about the role of independent senators in this place. However, there are other reasons for which I should like to pay homage to Senator Molson. For some honourable senators, it will be a surprise.

• (1340)

Honourable senators know that Senator Molson could have stayed in the Senate until his death. However, he always said, "I will resign my Quebec Senate seat as an independent only if I am assured that I will be replaced by an independent." Therefore, I should like the record to show that on the morning of May 26, 1993, Senator Molson said, "I shall resign today," and then made his farewell speech in the Senate that afternoon. At 4 p.m., I was appointed as an independent senator to replace him. I will let people draw their own conclusions. Senator Molson was very happy. He knew who would replace him. I am proud to say that I succeeded one of the greatest Canadians, whom I knew for over 45 years. I knew him when I was president of the student association at the University of Ottawa. He was helpful to me and I hope that many senators can attend tomorrow, even though it is the end of the session.

[*Translation*]

I extend my most sincere condolences to his daughter and son-in-law.

[*English*]

For us in Quebec, it was the loss of a great statesman and a great English-Canadian in Quebec.

[*Translation*]

## MULTILINGUALISM AND CULTURAL DIVERSITY

**Hon. Jean-Robert Gauthier:** Honourable senators, statistics from the 2001 Census, published December 10, 2002, by Statistics Canada, demonstrate that, over the last five years, Canada has benefitted not only from official and institutional bilingualism but has also grown richer as a result of multilingualism and cultural diversity.

Canadians are increasingly embracing Canada's linguistic duality and multilingualism. Bravo! We will be able to take our proper place on the world stage, since the report informs us that there are more than 100 languages spoken in Canada.

This ability to communicate with others in no way threatens the social fabric of Canada, but it does allow us to communicate better with other countries to strengthen cultural, social and economic exchanges.

The challenge for French-language minority communities is to ensure that our young people speak English while preserving their own language. The fact that both official languages are spoken regularly in the home and at work is most encouraging.

[*English*]

One disturbing piece of data is the fact that youth bilingualism is decreasing in provinces outside Quebec. That phenomenon was unexpected, based on previous data. Some of us thought young English speakers outside Quebec were becoming increasingly bilingual, but the data indicates a drawback in individual bilingualism amongst English-speaking youth. The cutbacks in education and changes in education programs with regard to second-language education in the different provinces are probably responsible for this setback. The federal government will have many occasions in the New Year to discuss this important question with provincial authorities.

[*Translation*]

Coincidentally, the Official Languages in Education Program expires on March 31, 2003. We must discuss this with provincial officials before committing to any new agreements. The effectiveness of the program is presently being evaluated.

However, the support for the Official-Language Community Program must also be evaluated. It is not currently available. The effectiveness of this program needs to be looked at carefully and improved if the government plans on extending the agreements. As far as I know, the support for the Official-Language Community Program has never been evaluated since 1970. It is high time it were.

The interest in official languages is national. As a result, we must take all of the necessary measures to ensure that the agreements reached with the provinces yield results.

To conclude, I hope that the Standing Senate Committee on Official Languages will examine this very important issue.

[*English*]

## PUBLIC SERVICE COMMISSION

### HIRING PRACTICE

**Hon. Donald H. Oliver:** Honourable senators, I rise to bring your attention to the hiring practices used by the Public Service Commission of Canada. For the past 40 years, the PSC has used a system of hiring employees that limits who is allowed to apply for federal job opportunities. Positions vacant in British Columbia, for example, are not available to Atlantic Canadians. Jobs available in Nova Scotia are not available to residents of Ontario. Canadians hoping to have top-level positions with the PSC must live in Ottawa to be eligible under the current hiring system. This hiring practice is clearly unfair but perfectly legal. A policy that uses postal codes and radiuses to determine eligibility does not provide full access and does not take advantage of the talent available across our country. In fact, the job opportunities available to all Canadians with the federal government are limited.

In the fiscal year 2000-01, only 17 per cent of the total number of jobs posted on the PSC Web site were available to everyone in Canada. A year later, the number of jobs posted nationally had only climbed to 22 per cent. In that year, less than 930 of the 4200 jobs posted were accessible to all Canadians. MPs from the government and opposition in the other place have agreed that the PSC hiring practices are wrong. Even management within the PSC has recognized that something must be done to rectify this problem. Until the limited selection process used by the PSC is ended, jobs that could be filled by qualified and talented Canadians from all corners of our country will remain inaccessible to them. Any Canadian qualified and interested in a career with the government should be allowed to compete for jobs in the public service in a fair and equitable hiring system. One's address should not be the qualifying factor.

## THE LATE FATHER LES COSTELLO

### TRIBUTE

**Hon. Francis William Mahovlich:** Honourable senators, I rise today to pay tribute to a dear friend of mine, Father Les Costello, who passed away at the age of 74.

Born in South Porcupine, Ontario, he graduated from St. Michael's College in Toronto. After playing for the St. Michael's Majors, he spent three seasons in the American Hockey League with the Pittsburgh Hornets. During the playoffs in 1948, he scored two goals and two assists in five games, helping the Toronto Maple Leafs capture the Stanley Cup.

He could have become a great player, but he had a higher calling. The next season, he surprised everyone by leaving the NHL for the priesthood. Many are called but few are chosen. In 1957, he was ordained and in the 1980s returned to Northern Ontario, where he ran St. Alphonse's Church in my hometown of Schumacher. You can see in that church, today, something unique: He had one of the artists, who was a miner up there, paint a fresco much like the Sistine Chapel's in Rome. There are two angels; one has my brother's face painted on it and on the other, my face is painted.

Father Costello was most famous for his role as one of the founding members of the Flying Fathers hockey team, a team of Catholic priests who travelled across Canada and the United States, raising over $4 million for charitable organizations. I remember a time when he first moved up north and was speaking at a sermon in a little mining town just north of North Bay. At that particular time, the cover of *Time* magazine was published with a big question mark and the words "Is God Dead?" He began his sermon by saying, "I did not even know God was sick."

Father Les Costello had a great sense of humour. Our sincere condolences go to all the members of his family.

[*Translation*]

## INTERNATIONAL HUMAN RIGHTS DAY

**The Hon. Gérald-A. Beaudoin:** Honourable senators, I would like to say a few words on the 1948 Universal Declaration of Human Rights, the 54th anniversary of which we celebrated yesterday.

In this troubled world of ours, it is comforting to see that we have very significant international documents.

The great British philosopher Isaiah Berlin, who lived from 1909 to 1997, said that the 20th century was the most violent century in history with its two world wars. Alas, he was right.

However, the 20th century, this violent century, was also one in which charters of rights and freedoms were entrenched in the constitutions of several countries, including Canada's.

It is one of the centuries that began with this bible — if I may use the term — of modern times, of major international documents, of constitutional charters of rights and freedoms.

I am pleased that, in 1982, Canada entrenched in its constitution a charter of rights and freedoms, which is one of our greatest legacies. I am proud to point out this fact.

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• (1350)

# ROUTINE PROCEEDINGS

## STUDY ON ISSUES FACING INTERCITY BUSING INDUSTRY

### REPORT OF TRANSPORT AND COMMUNICATIONS COMMITTEE TABLED

**Hon. Joan Fraser:** Honourable senators, I have the honour to table the third report of the Standing Senate Committee on Transport and Communications, entitled "Intercity Bus Service in Canada."

[*English*]

## STATUTES REPEAL BILL

### FIRST READING

**Hon. Tommy Banks** presented Bill S-12, to repeal legislation that has not been brought into force within 10 years of receiving Royal Assent.

Bill read first time.

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

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, this is a debatable motion. Is this a government bill or a private bill?

**Senator Banks:** Honourable senators, it is a Senate public bill. It is not a private bill in the sense of seeking action on behalf of a company.

**Senator Lynch-Staunton:** I was unsure of the origin of the bill because of its topic.

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

## CANADA ELECTIONS ACT

### NOTICE OF MOTION TO REFORM PARTY FINANCING

**Hon. Consiglio Di Nino:** Honourable senators, I give notice that, on Tuesday, December 17, 2002, I will move:

> That the Senate urge the Government of Canada to reform the Canada Elections Act and other pertinent Acts to eliminate all donations to political parties and to replace them with a system of full public financing, and to establish an impartial, independent committee to direct and oversee the said system, including setting and enforcing standards and rules of conduct.

[*Translation*]

## OFFICIAL LANGUAGES

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY FRENCH-LANGUAGE BROADCASTING IN FRANCOPHONE MINORITY COMMUNITIES

**Hon. Jean-Robert Gauthier:** Honourable senators, I give notice that, on Friday next, December 13, 2002, I will move:

> That the Standing Senate Committee on Official Languages be authorized to examine and report upon the measures that should be taken to encourage and facilitate provision of and access to the widest possible range of French-language broadcasting services in francophone minority communities across Canada.

[*English*]

## LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET
DURING SITTING OF THE SENATE

**Hon. George J. Furey:** Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(a), I move:

> That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 3:30 p.m. on Wednesday, December 11, 2002, even though the Senate may then be sitting and that rule 95(4) be suspended in relation thereto.

**Hon. Marcel Prud'homme:** Question!

**Senator Furey:** Honourable senators, I understand that the committee will hear evidence from out-of-town witnesses.

**Senator Prud'homme:** Honourable senators, I am afraid that if we grant leave for too many committees to sit, there will be no senators remaining in the chamber for the balance of today's sitting. Thus, I am reluctant to agree to this motion without knowing how many committee's will make this same request. I am told that as many as five committees could ask for leave to make such a motion. If all requests were granted, would we retain our quorum in the Senate?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Are honourable senators aware that Bill C-10A, which resulted from the committee's decision to split Bill C-10, is no longer on the Order Paper of the House of Commons to be dealt with before it rises? Therefore, Bill C-10B may become redundant.

**Senator Furey:** Honourable senators, that will not affect the order of reference of this chamber to the committee.

**Senator Lynch-Staunton:** The House of Commons has not concurred in the request of this chamber to split Bill C-10. I am interpreting their refusal to put Bill C-10A on their Order Paper as a questioning of the action of this house. I ask the honourable senator if he deems it proper to continue the committee's valuable studies before it has had confirmation of concurrence, or an indication otherwise?

**Senator Furey:** Honourable senators, it is not a question or a prerogative of the committee. The committee is following a directive of this chamber. If the honourable senator wished to introduce a motion to change that directive, that may be the best course of action. The committee follows the direction of this chamber.

**Senator Lynch-Staunton:** Honourable senators, that is a suggestion that I may entertain and raise at a later date.

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

**Hon. Senators:** Agreed.

Motion agreed to.

• (1400)

## STUDY ON STATE OF HEALTH CARE SYSTEM

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY
COMMITTEE AUTHORIZED TO RETAIN
POWERS TO PUBLICIZE REPORT

**Hon. Michael Kirby:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move, seconded by the Honourable Senator Cook:

> That, notwithstanding the Order of the Senate adopted on Tuesday, October 8, 2002, the Standing Senate Committee on Social Affairs, Science and Technology, which was authorized to examine and report upon the state of the health care system in Canada, be empowered to retain the powers necessary to publicize its findings for distribution of the study contained in its final report for 120 days after the tabling of that report.

Motion agreed to.

[*Translation*]

## LINGUISTIC DATA IN 2001 CENSUS

NOTICE OF INQUIRY

**Hon. Jean-Robert Gauthier:** Honourable senators, I give notice that, on Friday December 13, 2002:

> I will call the attention of the Senate to the demo-linguistic data in the 2001 Census dealing with Canada's language profile and many other useful facts of national importance.

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[*English*]

# QUESTION PERIOD

## CRIMINAL CODE
## FIREARMS ACT

DIVISION OF BILL—STATUS IN HOUSE OF COMMONS

**Hon. Terry Stratton:** Honourable senators, my question is addressed to the Leader of the Government in the Senate and concerns Bill C-10, Bill C-10A or Bill C-10B. As regards the status of Bill C-10, is it still on the Order Paper in the other place or has it been removed?

**Hon. Sharon Carstairs (Leader of the Government):** My understanding, honourable senators, is that it remains on the Order Paper, or at least will be on the order of business today that will be called. It does not appear to have been called.

**Senator Stratton:** The leader may not be able to answer this next question, but what is the government's policy with respect to Bill C-10A now? It seems to have hit the wall over in the other place. We were forced to rush the bill through the Senate without proper and complete hearings. It would be nice to know what is going on because not knowing only delays Bill C-10A and also affects the process by which we continue to carry on with Bill C-10B.

**Senator Carstairs:** As honourable senators can well understand, I do not tell the Government House Leader how to run his place and he does not tell me how to run this place. The Senate has dealt with the legislation as it saw fit. The House of Commons now must undertake to do the same. My understanding is that they are sitting until Friday of this week, and so it may well still be dealt with before we rise before Christmas.

**Hon. Gerry St. Germain:** Honourable senators, were we not made to believe that Bill C-10A was required before December 31 so that situations would not arise that would put our citizenry who are affected by guns in a position where they would be subject to criminal prosecution? Was that not the understanding given to us by the Leader of the Government in the Senate?

**Senator Carstairs:** It is not a matter of my having given honourable senators that advice; it is in the legislation.

**Senator St. Germain:** What we are saying is that if the House of Commons refuses or sees fit not to proceed at this time, as of December 31 citizens will be exposed to risk, from a criminal point of view. Is that what the leader is saying?

**Senator Carstairs:** Bill C-68, the original gun legislation, outlined a situation where a number of guns would become subject to prosecution if they were still in the possession of Canadians. The enabling legislation, which I believe is Bill C-10A, originally Bill C-10, extended or grandfathered many of those weapons. Obviously, if the legislation is not passed, that grandfathering will not exist.

**Senator Stratton:** My understanding of Bill C-10A is that, while the regulations still require registration by December 31 of this year, an amnesty has been granted for prosecution. In other words, a six-month extension has been granted by the minister so as to allow the bureaucracy to deal with the late registrations; is that correct?

**Senator Carstairs:** Yes, senator, but do not confuse the two issues here. There are two issues. I want to make it very clear. Bill C-68 set down registration requirements requiring Canadians to be licensed and to have their weapons registered as of December 31, 2002. That particular section of Bill C-68 has been given a grace period for six months. That has not changed. That grace period will be instituted January 1 for the next six-month period.

Bill C-10A, or Bill C-10, if you wish to call it that, took the weapons that were declared illegal in the Bill C-68 legislation and grandfathered them to allow them to be held in the hands of certain individuals. That grandfathering provision was drafted as enabling legislation to make this possible. My understanding is that if we do not pass this bill, that grandfathering will not be in force and effect.

**Senator Stratton:** What happens to those individuals who are not subject to the grandfathering provision? How are they affected?

**Senator Carstairs:** My understanding of the bill, and I certainly stand to be corrected, is that if the grandfathering provision is not passed — and we certainly did our job to make it pass — then those weapons will be illegal.

## JUSTICE

### ENFORCEMENT OF FIREARMS ACT

**Hon. Lowell Murray:** Honourable senators, I appreciate what the Leader of the Government has said about the provisions of Bill C-68 and of Bill C-10A, if that is what it is, which seems to have disappeared into thin air over there.

I should like to ask the Leader of the Government a question about a statement attributed four years ago to Mr. Jean Valin, Public Affairs Director of the Canadian Firearms Centre. I quote:

> If provinces are reluctant to enforce laws of the land...they have the choice to interpret things loosely or tightly. The law is no different but what is different is the enforcement. The enforcement continues to be a local police issue...and every police officer will tell you there is some discretion and judgment-call in how you characterize an offence. This is good news for the West. It's like a speeding ticket...the police have some degree of latitude.

My question is: How can the government expect a law brought in under Parliament's criminal law power to be defensible, much less credible, when spokesmen for the federal government are prepared to contemplate a checkerboard system of enforcement across the country?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. Clearly, I do not believe that we should have individuals making those kinds of statements. However, it is quite clear that that has been the attitude on marijuana for some time in this country. The possession of small amounts of marijuana is not prosecuted in many of our cities. It is, however, prosecuted in many other communities. Police work is police work. It is left up to the police authorities, and sometimes they use the full force of the law and sometimes they do not.

**Senator Murray:** To clarify and confirm what we have just heard, my honourable friend is suggesting that the statement I have just quoted from Mr. Valin does indeed represent a checkerboard approach on the part of the federal government to the enforcement of this law.

**Senator Carstairs:** No, senator, it does not. I made that very clear in my opening statement. The government does not think such a statement is an appropriate statement to be made, but I think we also have to accept the reality that police work is police work. The federal government does not control police work, nor should it control police work. As a result, there is, in a number of instances in this country, somewhat of a checkerboard approach.

• (1410)

CHANGES TO FIREARMS REGULATIONS—
EXTENSION OF GRACE PERIOD

**Hon. Charlie Watt:** Honourable senators, I have a question for the Leader of the Government on the six-months' grace period. How will that be done? Will that begin before Christmas or after the holidays?

At the same time, I would like to take this opportunity to say that the ruling by the Nunavut court came down yesterday, and the law right now, as it stands, exempts sustenance hunters. In other words, the people of Nunavut have won their case.

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

**Hon. Sharon Carstairs (Leader of the Government):** The honourable senator has asked the question: When does the grace period take force and effect? The grace period takes effect on January 1, 2003, because they are not obviously in violation of the law at the present time and would not be until midnight on December 31, 2002. That grace period is for a period of six months and deals only with the actual registration.

## CRIMINAL CODE
## FIREARMS ACT

DIVISION OF BILL—STATUS IN HOUSE OF COMMONS

**Hon. Herbert O. Sparrow:** Honourable senators, pertaining to Bill C-10, I guess my confusion has not abated much. Bill C-10A does not appear anywhere in the House of Commons orders and Bill C-10 does. They refer to Bill C-10. They refer to an amendment on Bill C-10. This house passed a bill called Bill C-10A that went to the House of Commons. However, Bill C-10A does not appear on the orders of the House of Commons. I ask the question: Where is Bill C-10A? The Minister of Justice has been quoted as saying that they did not withdraw, they stayed Bill C-10A, but it does not appear anywhere that that has happened.

Senator Lynch-Staunton asked the question earlier: What happens to Bill C-10B now? How do we deal with that one?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, we have covered this ground a number of times; however, let me try one more time.

The Senate of Canada instructed the committee to split the bill. The Senate of Canada sent the bill off to committee with that instruction. The Standing Senate Committee on Legal and Constitutional Affairs, under the able leadership of Senator Furey, followed the Senate's instructions and split the bill, naming one portion Bill C-10A, and that was the firearms portion, and naming the other portion Bill C-10B, and that was the cruelty to animals part.

Are you with me now?

**Senator Sparrow:** Not quite.

**Senator Carstairs:** Let me continue. We then had a situation in which the Legal and Constitutional Affairs Committee reported the bill back to the Senate of Canada. The report of the committee did two things: It made a recommendation to split the bill and to ask for concurrence of the other place, and to pass one part of it, which they had duly designated Bill C-10A.

We did that in this chamber. We sent it off to the other place. We sent the entire bill, Bill C-10. We sent Bill C-10A as a passed piece of legislation. We agreed to leave Bill C-10B in our committee for further study. The House of Commons debated Bill C-10A last Friday. The Senate introduced a motion urging the House of Commons to concur with the decision made in this place.

Then, as the honourable senator has indicated, it seems to have somehow gone into limbo. The reality is, however, that it is still on the overall Order Paper, just as all government legislation is on the Order Paper. It remains in the other place.

I do wish I had a bit more control over their Order Paper on occasion; however, I do not, any more than the House of Commons has control over Senate business over here. I suppose that is as it should be.

**Senator Sparrow:** Thank you very much. The Order Paper of the House of Commons shows Bill C-10. There is no reference at all on the Order Paper to Bill C-10A. It does not show that there was an amendment. A message came from the Senate to the House of Commons amending Bill C-10. It does not exist here on their order paper.

The consideration here is under the Minister of Justice, and it reads:

> Resuming consideration of the amendments made by the Senate to Bill C-10, An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act.

No reference is made to us sending Bill C-10A to the chamber.

The minister has stated that he has stayed the discussion on Bill C-10A. However, Bill C-10A appears now nowhere in the House of Commons. I am asking why not.

**Senator Carstairs:** Honourable senators, it appears in the message from the Senate of Canada. That is the message that is being dealt with. That is why we had to send them the full Bill C-10 and that is why we also sent them Bill C-10A, so that when they passed their motion or agreed to our motion, it would be to split the bill and to pass the split section known as the Firearms Act.

**Hon. John Lynch-Staunton (Leader of the Opposition):** At the risk of muddying the legislative waters even more, if one looks at page XIII of today's House of Commons Orders of the Day, you will find chapter heading "Motions Respecting Senate Amendments to Bills." Then it says "Bill C-10, an act to amend the Criminal Code (cruelty to animals and firearms)," in other words, the original bill.

> Resuming consideration of the motion...that, in relation to the amendments made by the Senate...this House concurs...

That is a motion presently before the House of Commons that they concur with our decision here.

Honourable senators, listen to this paragraph — and, Your Honour, you will be particularly interested in this:

> That this House, while disapproving of any infraction of its privileges or rights by the other House, in this case waives its claim to insist upon such rights and privileges, but the waiver of said rights and privileges is not to be drawn into a precedent...

Therefore, Senator Sparrow technically is incorrect but, in fact, is right. It is in the order paper, but it is not being called. The question is: Why is this order not being called? According to house leaders' agreements, which we were told about, today, in all our caucuses, it is not to be called before adjourning for the Christmas period.

**Senator Carstairs:** With the danger of being very, very repetitious, I do not control the business of the House of Commons.

**Hon. Pierre Claude Nolin:** Honourable senators, we are not asking the Leader of the Government in the Senate to be in charge of, control or influence the affairs of the House of Commons. It is the government's business. It is a motion of one of the leader's fellow ministers in cabinet. She is part of that cabinet. Could the leader inform us as to the intent of her government and her colleague, the Minister of Justice, in that business?

• (1420)

**Senator Carstairs:** As soon as I know, I would be delighted to tell honourable senators.

**Senator Nolin:** Do I read between the lines that the leader does not know what the Minister of Justice is trying to do?

**Senator Carstairs:** I have not been informed of what members of the other place are doing.

## FISHERIES AND OCEANS

### COAST GUARD—SEARCH FOR VESSEL DUMPING OIL AT SEA—STATUS OF DISABLED RUSSIAN VESSEL

**Hon. Gerald J. Comeau:** Honourable senators, my question is for the Leader of the Government in the Senate. It concerns Coast Guard-related matters that are presently occurring off the East Coast of Canada.

Over the past few days, it has been reported that Coast Guard officials have been trying to track down vessels suspected of dumping oil off Newfoundland after finding oil-covered birds — including some endangered species — washed up on shore near pristine ecological reserves.

This news comes at the same time as that of a Coast Guard vessel keeping close watch over a disabled Russian fishing vessel 800 kilometres northeast of St. John's, Newfoundland. The 55-metre ship has been dead in the water since its prop became ensnared in netting or cables a few days ago.

Has the government made progress in finding the vessel that dumped the oil that was found on the birds, and what is the status of the disabled Russian boat?

**Hon. Sharon Carstairs (Leader of the Government):** I thank the honourable senator for his question. I will have to take both matters under advisement as I do not have any information to share with him at this time.

### COAST GUARD—EFFECT OF BUDGET SHORTFALL

**Hon. Gerald J. Comeau:** Honourable senators, perhaps the minister would also represent to cabinet, on behalf of many of us, the help that the Minister of Fisheries needs to supplement the budget of the Canadian Coast Guard. My understanding is that its budget is stretched to the limit. Hundreds of millions of dollars are needed to bring the Coast Guard to an acceptable state, both on the East Coast and the West Coast of Canada.

I understand that the Coast Guard on the West Coast is not able to honour past agreements with our American allies to respond jointly to oil spills.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, let me deal with the latter part of the senator's comments. I believe that the honourable senator is addressing a news story to the effect that the agreement between Canada and the U.S. has collapsed, and that is simply not true. No agreement has collapsed. We have negotiated with our United States colleagues an updated joint contingency plan to respond to environmental emergencies. This agreement is currently with the U.S. State Department for its approval.

I have a comfort level that I wanted to share with the honourable senator about that issue because it is an important one for us.

In terms of the budget priorities-setting exercise underway, I will ensure that the representations of the honourable senator are made to cabinet.

## SOLICITOR GENERAL

### LISTING OF HEZBOLLAH AS TERRORIST ORGANIZATION—EFFECT ON PARLIAMENTARIANS AND PARLIAMENTARY ASSOCIATIONS

**Hon. Marcel Prud'homme:** As we all know, honourable senators, the government has decided to forbid any contact of any kind with either wing of the Hezbollah, the political one or the charitable one, which is agreeable to most Canadians. This is now the law of Canada. However, this decision is extremely difficult for me, after listening very attentively to the Solicitor General and the Minister of Foreign Affairs, for both of whom I have great respect. I became confused at noon. It is a matter of extreme importance that we be given an answer before we leave for the Christmas break.

Any contact with Hezbollah is forbidden. Fine. That is the law of the country, except that there is a very vigorous Canada-Lebanon Parliamentary Association. I could name many senators in this chamber who are members. Many members of the House of Commons are members of the Canada-Lebanon Parliamentary Association.

As honourable senators know, Hezbollah means the "Party of God." It was created as a liberation movement after the invasion. They now have 12 elected members in the Parliament of Lebanon. They are federal compatriots, duly elected out of a house of 128 members — 64 Christians, 64 Muslim of all cultures.

I believe strongly that parliamentary associations are created to move forward and not to be frightened. Their mandate is to openly entertain new avenues of discussion. What is the minister's view of contact between Canadian parliamentarians and their federal compatriots, the 12 Hezbollah members of the Parliament of Lebanon?

**Hon. Sharon Carstairs (Leader of the Government):** As honourable senators know, today it was announced that three additional entities have been added to the Criminal Code provisions of the Anti-terrorism Act that we dealt with in this house as Bill C-36. The organizations that were listed are the Kurdistan Workers Party, the Aum Shinrikyo and the Hezbollah.

I do not usually read verbatim, but I want to read this statement verbatim because it is very important.

> The Government of Canada has determined that these entities knowingly engaged in terrorist activity. Any person or group listed may have its assets seized and forfeited. There are severe penalties, including up to ten years imprisonment, for persons and organizations that deal in the property or finances of these listed entities.

I cannot imagine a parliamentary group dealing with either the finances or the properties of those listed groups. The statement continues:

> In addition, it is a crime to knowingly participate in, contribute to or facilitate the activities of a listed entry.

Personally, I do not see any conflict between the two matters.

**Senator Prud'homme:** Honourable senators, I am aware of the possible penalties. I do believe that some people, maybe even in Canada, could be in deep trouble.

The Minister of Foreign Affairs, for whom I have the greatest respect, is under immense pressure. I said as much in *La Presse* last week. The minister comes with this announcement just before a long adjournment. My father always said to be careful at the end of a session because there is always a surprise. I was waiting for a surprise, and we have it.

The minister says that these 12 members of the Lebanese Parliament would be forbidden entry to Canada. That is the decision, and I respect the law of the land. However, I can fight for change. We live in a democracy, and a decision was taken. I disagree with the decision, of course. I wonder if I could say outside of the Senate now that I profoundly disagree with what took place. I am not sure. However, I will find out, be assured, and I do not care about the consequences. I think of Canada's interests.



These members will be forbidden to enter Canada. The minister may not be prepared to answer my question today, but it is important that we know the answer because Parliament will recess until late January. There are many parliamentarians involved. I am not one of them because my health does not allow me to travel, unfortunately. However, there are many parliamentarians who will go to the Middle East in January, and some will go to Lebanon.

Will these parliamentarians be considered under this law? Their counterparts in Lebanon would not be allowed to come into Canada, as was said during a press conference at noon by the Minister of Foreign Affairs and the Solicitor General.

**Senator Carstairs:** Honourable senators, it would clearly be a decision of the Government of Lebanon as to whether Canadian parliamentarians could go to Lebanon. I see nothing in this list that would create a problem for the travelling Canadian members of Parliament.

Something else that the honourable senator mentioned requires clarification. He said that there was enormous pressure on the Minister of Foreign Affairs. I want honourable senators to understand that the authority provided by the Anti-terrorism Act to list these entities does not rest with the Minister of Foreign Affairs; it rests with the Solicitor General.

• (1430)

The Solicitor General comes before a committee of cabinet, and that committee determines whether these organizations should be listed. I can assure you that it is done in a very thorough manner, seeking out every bit of information possible, not only from our friends and allies but, more important, from those who investigate criminal organizations, particularly CSIS.

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

[*Translation*]

## DELAYED ANSWER TO ORAL QUESTION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table a delayed answer to an oral question raised by the Hon. Senator Oliver, on October 22, 2002, concerning visible minority appointments to judgeships.

## JUSTICE

### VISIBLE MINORITIES APPOINTED TO JUDGESHIPS

*(Response to question raised by the Hon. Donald H. Oliver on October 22, 2002)*

> The federal government recognizes the importance of appointing judges who are representative of the diverse Canadian society they serve. Although the overriding

consideration in making appointments is the candidate's merit, ensuring the judiciary's representativeness is among the objectives that the Minister of Justice strives to achieve in filling specific positions.

With regards to the specific questions raised by the Honourable Senator Donald Oliver, the short answer is that the government does not keep these numbers. The collection of personal background data is the responsibility of the Office of the Commissioner for Federal Judicial Affairs. Neither the Commissioner nor the Minister of Justice maintains statistics on the cultural or racial profile of the judiciary and some would question the propriety of collecting this data. All information on candidates for the judiciary is kept strictly confidential, so any cultural or racial data would have to be obtained through self-identification. In these circumstances, the reliability of the data would also be questionable.

That said, the federal judicial appointments process established in 1988 has incorporated several mechanisms designed to encourage greater diversity within the federal judiciary. First, efforts have been made to make the application process open and accessible to all. Qualified persons wishing to be considered for appointment are invited to apply to the Commissioner for Federal Judicial Affairs ("CFJA"). All law societies are regularly approached by the CFJA to publicize the procedures for application, and the Commissioner's Office has been active in promoting the process among minority groups, both at meetings and in writing. In addition, members of the legal community and all other interested persons and organizations are encouraged to submit to the CFJA the names of persons they consider qualified for judicial office. The CFJA will then send application materials to the nominee.

The provincial and territorial advisory committees that assess each lawyer's qualifications for the bench constitute another key mechanism aimed at achieving a representative bench. When appointing committee members, the Minister of Justice attempts to reflect factors appropriate to each jurisdiction, such as geography, language, multiculturalism and gender. The Commissioner for Federal Judicial Affairs forwards all reference letters received in support of a candidate to the appropriate committee. The Minister of Justice also welcomes the advice of interested groups and informed individuals on particular appointments, especially in the furtherance of achieving a representative bench.

[*English*]

## SPECIES AT RISK BILL

### THIRD READING—POINT OF ORDER—SPEAKER'S RULING

**The Hon. the Speaker:** Before proceeding to Orders of the Day, honourable senators, yesterday, as the Senate was about to resume the debate on third reading of Bill C-5 respecting the protection of wildlife species at risk in Canada, Senator Kinsella rose on a point of order. In substance, the senator challenged the report of the committee that was presented on December 4 because, in his view, it contained remarks that were inconsistent with its recommendation to report the bill without amendment.

To support his claim, he cited references from the British parliamentary authority Erskine May, Twenty-first Edition at page 644 and Twenty-second Edition at page 666.

[*Translation*]

By way of rebuttal, Senator Robichaud claimed that it was inappropriate to raise the point of order now since the report had been adopted immediately after it was presented since it had recommended no amendment to the bill and that the debate on third reading was already well underway. In his assessment, the time had passed for any point of order on the committee report.

[*English*]

Several other senators then intervened to explain their understanding of the report's observations and the procedural acceptability of our practices with respect to observations generally. Other senators also commented on the deliberations of the committee as it studied Bill C-5.

[*Translation*]

I want to thank all honourable senators for their contributions. They were useful in helping me to better understand the issue in dispute with respect to the point of order. I have had time to consider the arguments that were made and I am now ready to rule.

[*English*]

I will deal first with the position taken by Senator Robichaud. There is merit to the claim that the point of order ought to have been raised earlier. The report of the committee was presented last Wednesday, December 4, and the motion for third reading of Bill C-5 was moved on Thursday, December 5.

Citation 321 of *Beauchesne's Parliamentary Rules and Forms*, Sixth Edition at page 97 states:

> A point of order against procedure must be raised promptly and before the question has passed to a stage at which the objection would be out of place.

Under rule 97(4) of the *Rules of the Senate of Canada*, when a committee reports a bill without amendment, it stands adopted immediately and the senator in charge of the bill is obliged to indicate when third reading will be moved. The automatic adoption of the committee report would have made it difficult to raise the point of order last Wednesday, but it should have been raised on Thursday when third reading of Bill C-5 was moved.

The objection of Senator Robichaud, therefore, is valid. Nonetheless, I am willing to waive this matter with respect to the point of order because I feel it would be useful to the Senate to review certain aspects of our practices as they pertain to observations in committee reports.

For about 20 years, committee reports on bills have sometimes contained observations. These observations are not a procedurally significant part of the reports. Their value, in the view of some senators, is an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation. Some senators, including Senator Stollery and Senator Murray, have tended to object to the use of observations, but they have, nevertheless, found a place in our practices. They are now fairly routine, as was pointed out by Senator Milne.

In the case of Bill C-5, Senator Banks informed the Senate that the observations were adopted unanimously. Thus, in this instance, the observations cannot be said to represent the views of a minority of the committee. For other bills, however, the observations have represented the views of a dissident minority. Of course, none of these differences matters because, as Senator Andreychuk correctly explained yesterday, the observations are not and have never been a substantive part of the committee's report. That is why, when the Standing Senate Committee on Energy, the Environment and Natural Resources reported Bill C-5 last Wednesday without amendment, the report was adopted immediately as required under rule 97(4) of the *Rules of the Senate*.

This brings me to the core of the argument made by Senator Kinsella and Senator Stratton. Both objected to the committee report on Bill C-5 because, as they put it, the observations, these statements, invalidate it procedurally. As Senator Kinsella described it, the report presents difficulties in substance and process.

To substantiate their position, Senators Kinsella and Stratton cited Erskine May where it is made clear that a committee report must not be accompanied by any counter-statement, memorandum of dissent or protest from any dissenting or non-assenting member or members, nor ought the committee to include in its report any observations which are not subscribed to by the majority.

It is relevant to point out that the citation in the British authority pertains to minority reports. In the United Kingdom, it is established practice that the report of a committee must reflect only the views of the majority. There can be no minority report.

On the same page as already cited, Erskine May states:

> It is the opinion of the committee, as a committee, not that of the individual members, which is required by the House, and, failing unanimity, the conclusions agreed to by the majority are the conclusions of the committee.

This position is not much different from our own rule 96(2), which provides that a report of any select committee shall contain the conclusions agreed to by the majority.

Honourable senators, as I have already mentioned, Senate practice has permitted appending observations to reports for almost 20 years, but they have never been accepted as minority reports. Indeed, the observations have no substantive value in terms of our procedure. They can serve, as Senator Andreychuk explained, as a notice to the government of the views of committee members. They can even provide material for debate, but they have no substantive significance or procedural weight.

In this context, therefore, the citation from Erskine May is not relevant because the observations attached to a committee report of the Senate do not constitute a minority report.

• (1440)

Thus, I can find nothing in substance or process that substantiates the point of order, and debate on third reading of Bill C-5, when we come to it, can proceed.

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[*Translation*]

# ORDERS OF THE DAY

## BUSINESS OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I move, with leave of the Senate, that we first call Item No. 2 under Bills, followed by Item No. 3 and Item No. 1, and then follow the Orders of the Day as they appear on the Order Paper.

[*English*]

## APPROPRIATION BILL NO. 3, 2002-03

### THIRD READING

**Hon. Joseph A. Day** moved the third 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.

**Hon. Anne C. Cools:** Honourable senators, I wish to speak at third reading. It is becoming increasingly difficult to find an opportunity to do so. It seems to me that, before the Speaker puts the question, he should look around to ensure that no other senator wishes to participate in the debate.

**The Hon. the Speaker:** If you are rising to speaking on a point of order, I take your comment. If you are rising to speak at third reading, you have the floor.

**Senator Cools:** Honourable senators, it is a well-known practice in parliamentary circles that, before any question is to be put, the Speaker should ascertain whether any other members wish to speak.

Honourable senators, I wish to speak briefly to Bill C-21, known as Appropriations Act No. 3, 2002-03. I was chatting this morning with the President of the Treasury Board, Lucienne Robillard. I thought the record of this house should reflect the fact that the members of the National Finance Committee feel a great debt of gratitude to the Treasury Board Secretariat for the quality testimony they have provided to this particular committee.

Honourable senators, in particular, I should like to thank the President of the Treasury Board, Madam Lucienne Robillard. I should also like to thank the Treasury Board officials, Mr. Richard Neville and Mr. David Bickerton, who appear before us frequently and who judiciously present to the committee whatever information they have available. These gentlemen are truly industrious. It is important that our debates in this place reflect our appreciation for that kind and quality of service. The government is well served by these individuals.

By way of clarification, I should like to make a second point. I had hoped that this clarification would have been put forth in a more fulsome way. I will be brief.

If we were to look at Bill C-21, particularly page 22, we would see the appropriation that will be voted on shortly for the Department of Justice. The appropriation is in the form of votes 1a and 5a. Vote 1a is described as "Justice — Operating expenditures," and the amount is $62,621,757. If we look to vote 5a, again under "Justice — The grants listed in the Estimates and contributions," the sum is $44,411,117. Honourable senators, the total amount of those two votes is approximately $107 million.

I have raised this point before, though not in connection with this bill. For posterity, the record should clearly show that, at page 109 of the Supplementary Estimates (A), that famous blue book, the quantum requested for votes 1a and 5a was substantially different.

At page 109 of the Supplementary Estimates (A), under the Department of Justice, vote 1a, "Justice — Operating expenditures," we see the request for $125,494,673 million, and vote 5a, "Justice — The grants listed in the Estimates and contributions," shows a request for $53,520,787. Anyone interested in the arithmetic will note that there is a difference between the sum in the Supplementary Estimates (A) and the sum in the Bill C-21. Added together, the difference is roughly $72 million.

Honourable senators, our record should clearly show that this is not a mistake and that this is properly the appropriation that has been requested by the Department of Justice and by Minister Robillard. This is very much in order. There is no mistake here. The difference represents a quantum that was reduced during the process of supply and during the debates on the Supplementary Estimates (A) in the House of Commons.

If one were to go to page 2337 of the House of Commons debates, one would see the Speaker put a question in respect of an opposition member moving a reduction to the Estimates. I want the record to be clear and accurate about the quantum being asked for in this appropriation bill on which we are being asked to vote.

Looking at the House of Commons debates from December 5, 2002, at page 2337, Progressive Conservative Mr. Peter MacKay had 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 then put the question as follows:

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

The members obviously concurred and the motion was agreed to.

Honourable senators, Bill C-21 reflects that vote to reduce the Estimates. The $72 million reduction is the difference between what is before us in Bill C-21 and what was before us in the Supplementary Estimates (A). It is exactly the amount that was moved by Mr. Peter MacKay, Opposition Member.

I am certain that honourable senators will have an interest in keeping our record clear and accurate. We should never allow ourselves to be in a situation where we can be either misrepresented or misunderstood.

It is useful and good for the record to reflect today and clearly show that that the amount being voted on is the amount the government was requesting, and that everything is in order and proper.

Having said that, honourable senators, we can vote with good conscience and with clear unanimity.

• (1450)

**Senator Day:** Honourable senators, I should like to thank the Honourable Senator Cools for her comments.

Honourable senators, I believe that the chamber is ready for the question on this matter.

**The Hon. the Speaker:** Is the house ready for the question, honourable senators?

**Hon. Senators:** Question!

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

Motion agreed to and bill read third time and passed.

## BUSINESS OF THE SENATE

**Hon. Peter A. Stollery:** Honourable senators, I rise to request leave for the Standing Senate Committee on Foreign Affairs to sit at 3:30 p.m. today, even though the Senate may then be sitting.

I have spoken to both sides about this. I would point out that 3:30 is the hour at which the committee normally sits.

**Hon. Terry Stratton:** Honourable senators, other committees, having realized the busy schedule we have before us today, in particular, and over the next few days, decided that, if their meetings were not urgent, they would simply not hold any meetings.

Are the witnesses that are scheduled to appear from out of town? Is there an urgency to this meeting?

**Senator Stollery:** Honourable senators, the committee is scheduled to hear from two groups of witnesses this afternoon. Of course, it has taken some days to plan for this meeting.

The normal slot for the Foreign Affairs Committee is Wednesday at 3:30. As such, we organized our meeting for today at 3:30. I spoke with the deputy leader about this.

**Senator Stratton:** As I said before, other committees that meet at the same time decided not to meet, simply because of the busyness of the chamber. Who are the witnesses from whom the committee will hear? If they are from Ottawa, could they not be rescheduled for another day?

**Senator Stollery:** Honourable senators, clearly, if the committee does not have permission to sit at 3:30, then it cannot sit at 3:30. I do not have with me any material on the witnesses. I cannot remember if one has come from Toronto or not. It is our first meeting on the reference that was approved by the Senate.

Honourable senators, I can only request leave for the committee to sit. I had no way of knowing that it would be impossible for our committee to meet today, which is why I am requesting leave and which is why I consulted with the opposition.

**Senator Stratton:** Honourable senators, at least three of our members are active on the Foreign Affairs Committee. My concern is that if they must remove themselves from the chamber at a critical time for our side, leaving us with a diminished number, then I have to express my concern about that.

If the matter upon which his committee is meeting is not urgent, I would ask the honourable senator to please consider not having the meeting. If there is no urgency, then why have the meeting?

**Senator Stollery:** Honourable senators, if the committee does not meet today, its next meeting cannot be held until February. I also consulted with the deputy chairman of the committee, Senator Di Nino, who is not here at the moment. I spoke with him a few minutes ago and he was under the impression that we would be meeting at 3:30.

What else can I say, honourable senators? In my opinion, the committee should meet at 3:30. This is an important matter, and a very urgent matter, because it involves our trade problems with the United States in softwood lumber, the Canadian Wheat Board and a number of other things.

I should like to meet at 3:30, honourable senators. I think I have consulted all the appropriate people on this.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, obviously the witnesses were not invited at 2:30 today to appear at 3:30. Here we are at 2:55, being asked to give leave for a committee to meet in 35 minutes. The witnesses must have been invited some time ago. The committee must have known that it wanted to meet at 3:30. Why was this motion not made yesterday when motions were called? I find it objectionable that we are being asked 35 minutes before a meeting is called, with witnesses scheduled and waiting, to rubber stamp this type of motion. That is not how this place should operate.

**Senator Stollery:** Honourable senators, I agree with the Leader of the Opposition, in that this is not a great way to run our affairs. However, it is my understanding that there is an arrangement in the Senate whereby committees may meet when the Senate adjourns on Tuesdays and Wednesdays. It is also my understanding that, on Wednesdays, the normal procedure for the Senate is to adjourn at around 3:30, making it possible for committees in that time slot to meet. As a result, I thought this was the proper manner in which to proceed.

I did not move a motion yesterday because I naturally assumed that today, Wednesday, we would do what I thought we had all agreed to do.

I only discovered when I walked into the chamber at 1:30 this afternoon that it was anticipated that today's sitting would be longer than usual. I did not know that until I came in the door.

**Senator Stratton:** Honourable senators, in anticipation of the length of time the Senate would sit today, two other committees decided not to meet. A third committee asked leave right off the start, at the beginning, when leave should be asked for. How can I agree to tie up at least four people on our side when we are debating issues such as Kyoto? How can the honourable senator ask me to do that?

**Hon. Marcel Prud'homme:** Honourable senators, my honourable friend talked about consulting with the opposition. We independents should sometimes be put into the mix.

Therefore, I will help the Senate by refusing consent.

**The Hon. the Speaker:** Leave is not granted.

## PEST CONTROL PRODUCTS BILL

### THIRD READING—MOTION IN AMENDMENT—DEBATE ADJOURNED

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

**Hon. Wilbert J. Keon:** Honourable senators, I am pleased to have this opportunity to make a few remarking concerning Bill C-8.

First, I wish to congratulate my friend and colleague, Senator Morin, for the time he has devoted to this bill and for the time he has given me to debate some of the issues I am about to raise.

It is important to note at the outset that Bill C-8 represents an improvement to its 33-year old predecessor. One must acknowledge that Bill C-8 represents the fervent commitment of the federal government to address the issue of pesticide use and its impact on the environment and, consequently, on the safety and health of all Canadians. This includes the most vulnerable of our citizens, our children.

• (1500)

However, there is still room for immediate improvement. The responsibility of the federal government does not end with product registration. Let us emphasize now the protection of human health and safety through appropriate access to

information. I must say, many citizens petitioned us about this. In another matter passed in this chamber, Senator Gauthier aptly said Canadians want to participate directly in the important decisions affecting their lives and those of their children. I ask honourable senators, how can the public be sufficiently informed in this manner? What better way of addressing this issue than by legislation that will provide all the relevant information about the composition of a pesticide?

The public currently has access only to information that was not confidential test data or business information authorized under the regulation, clause 42(4). For example, confidential test data in the registration could be inspected, after submitting a request, by a medical professional requiring the information to make a diagnosis, provide a medical treatment or respond to an emergency.

As it stands, Bill C-8's data access provisions are unduly restrictive, especially compared to information available in the United States, including cases of pesticides registered there by the same companies. The definition of confidential test data and confidential business information must be clarified by indicating: first, the names and contents of active ingredients; second, the names and contents of formulants; third, the names and contents of contaminants; fourth, the results of tests to establish the product's substances, efficacy, and the short and long-term risks to humans, animals, plants and the environment.

These items are not to be automatically deemed confidential business information or confidential test data.

MOTION IN AMENDMENT

**Hon. Wilbert J. Keon:** Honourable senators, let us remember the current debate on the protection of the environment, from which we must examine the legislation more closely. In keeping with that, I would request that you consider the amendment to the proposed bill as follows:

That Bill C-8 be not now read a third time but that it be amended:

(*a*) in clause 2, on page 4, by replacing lines 36 and 37 with the following:

"meets the requirements of subsection 43(4).";

(*b*) in clause 43, on page 35,

(i) by replacing lines 22 to 39 with the following:

"(5) Information that contains the identity or concentration of an active ingredient, formulant or contaminant in a pest control product is not confidential business information for the purposes of this Act.", and

(ii) by replacing line 41 with the following:

"designated under subsection (4) does not"; and

(*c*) in clause 67,

(i) on page 53, by deleting lines 37 to 39, and

(ii) on pages 53 to 55, by relettering paragraphs (*o*) to (*z*.5) as paragraphs (*n*) to (*z*.4) and any cross-references thereto accordingly.

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

**Hon. Yves Morin:** Honourable senators, I should like to thank my friend for his interest in Bill C-8, which I think is an excellent bill that has been remarkably well-received in the committee by all stakeholders, the agricultural community, industry, and environment associations.

Concerning the amendment, I think Bill C-8 will make the registration of pesticides very transparent. It will involve the public at each step of the registration, and also establishes an advisory council made up of concerned citizens who will have full access to all information.

Concerning the specific points of the amendment, they deal really with three types of products. The first mentioned were active ingredients. Active ingredients have been and will be completely available to the public. There is no confidential information concerning active ingredients, and this is also the case for the present bill, which dates from 1969.

Concerning the matter of formulants and contaminants, which are also known as inert substances, they will be revealed and made public if there is any concern regarding health or the environment. This is precisely the work of the scientists of the Pest Management Regulatory Agency, which studies pesticides to determine whether they may be of concern to the health of Canadians or to the environment. If there is any concern, the information is immediately made available.

The third point of the amendment deals with the results of tests to establish products or substances. The point of the amendment is to make this public. As you know, many of these tests are, in fact, trade secrets. In spite of that, Canadians who are interested in how the actual tests have been conducted will have access to this confidential information in a reading room within the agency offices, once they have signed the necessary forms and taken the necessary oath that they will not use this information for trade purposes.

In conclusion, honourable senators, this bill is remarkably transparent as far as the regulatory process is concerned. It is on par with other legislation in OECD countries. As far as the one aspect raised in my honourable friend's speech, the matter of protection of children, this bill is actually the most child-protective legislation of all OECD countries.

I strongly invite honourable senators to support this legislation.

On motion of Senator LeBreton, debate adjourned.

• (1510)

## 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. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, now that money is available and more is known about pesticides, let us return for a moment to our third reading debate on Bill C-5. I wish to make three points in my comments.

The first point relates to clause 3 at page 7 of the bill, which provides that:

> For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for existing aboriginal or treaty rights of the aboriginal peoples of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.

Honourable senators, this issue was given some focus in earlier debate in the chamber and in discussions in committee. The report and the attachments that we received from the Standing Senate Committee on Energy, the Environment and Natural Resources was not clear as to whether, as part of the attachments, this was an observation specific to the subject of inclusion of the non-derogation clause. I am certain that was discussed. It would seem that many members of the committee were of the view that the term "protection provided for," which is currently in clause 3, should be expunged from the bill. Although the committee recommended that the bill proceed without amendment, there seemed to be, at the same time, a message from the committee such that those three words, "protection provided for," should be deleted. Simply said, honourable senators, Bill C-5 should be amended.

It is my understanding that the committee had a communication with the Minister of Justice in respect of this issue. If I have a clear understanding of that correspondence between the Chair of the Energy Committee and the Minister of Justice, the minister seems to agree in principle. If such an agreement exists, why is the bill not amended at clause 3 in that respect? The committee should have acted on that.

My second point concerns the area of the report that speaks to the provision outlining the automatic listing, not subject to review by the Governor in Council, of species set out in Schedule 1 on the date that this legislation is enacted. The appendix of the committee's report states that:

> As it stands, Schedule 1 only includes species assessed or reassessed by COSEWIC up to November 2001. It does not include the 31 species reassessed by COSEWIC in May 2002, the two species that were emergency listed in October 2002 or the 17 species reassessed in November 2002.

The appendix further states that the minister is expected "to add these species to Schedule 1 immediately upon proclamation of the legislation."

My goodness, honourable senators, the statement from the committee was clear in its message that, immediately upon proclamation of the legislation, certain species should be added to Schedule 1; and they believe this. If that is the case, surely this should be done in the bill. I do not understand why we did not have an amendment to that effect.

Honourable senators, my third point is the issue of compensation. Once again, the committee has advised honourable senators on compensation. It expects that the regulations developed to implement the provisions of the bill will encompass certain principles; and the committee articulates the four principles. The first principle is that "fair market value should be a starting point of the measure of compensation." The second principle is that "monetary compensation may not always be the most appropriate form of compensation and other forms may be made available."

Honourable senators, those views have been well articulated, to the extent that guiding principles have been developed so that the regulations will reflect the view of the committee. Clearly, the bill should have been amended by the committee in such a way that the drafting of the regulations would follow and reflect those principles.

Honourable senators, those are but three areas of the bill that the committee has found deficient. The responsibility was theirs because it is so difficult to deal with a complex bill at third reading in terms of amendment.

### MOTION IN AMENDMENT

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Therefore, honourable senators, I move, seconded by the Honourable Senator Rossiter:

> That the bill be not now read a third time but that the Bill be referred back to the Standing Senate Committee on Energy, the Environment and Natural Resources for consideration of amendments to the Bill that would accurately reflect the concerns raised in the Committee's Third Report on Bill C-5, An Act respecting the protection of wildlife species at risk in Canada, presented in the Senate on December 4, 2002.

**The Hon. the Speaker:** Honourable senators, is it your pleasure to adopt the motion?

**Some Hon. Senators:** No.

**Hon. Charlie Watt:** Honourable senators, I do believe I know what the Deputy Leader of the Opposition is doing, and I should like to speak to this issue because it is important.

It is almost equivalent to what I did in the committee when we were dealing with Bill C-10A. When I put forward a motion, I looked around me at individual members of the committee and saw from their faces that that was not the way for me to do what I wanted to do — in other words, to put forward that motion, so it was dropped.

• (1520)

Honourable senators, I have a question that I would like to put forward before I speak on the bill itself. In regard to the non-derogation clause, as I have said in the committee and as I have said in this chamber, the government is putting an interpretation on what it states in the Constitution by adding those three words. I would like to deal with that matter separately.

I believe that what we are trying to say to members of the Senate is starting to break through. I think senators are slowly recognizing the ability of Aboriginal people, but we are not quite there yet. I would like to say that we are ready, and everyone understands, but I do not think it is there yet.

I do not want to take the risk of being voted down on this particular non-derogation issue. This is something that the Department of Justice on their own, without any indication or order from Parliament, has decided to —

**The Hon. the Speaker:** Senator Watt, I just want to interrupt for a moment to clarify where we are. You are entitled to speak to the bill. Senator Kinsella has moved a motion, and you rose after the amendment was put. He had five minutes left in his time. If you want to put a question to him, and I think I heard you say you wanted to ask a question, I would advise you that you have only four or five minutes to do that before Senator Kinsella's time expires. That does not mean you cannot speak to the bill after that.

Are you speaking to the bill or are you asking a question?

**Senator Watt:** Honourable senators, I was trying to do two things at the same time, but let me correct myself.

The question was to Senator Kinsella. Would the honourable senator be prepared to withdraw that portion of the non-derogation issue so I can deal with it by other means when I speak on the bill?

**The Hon. the Speaker:** Do you wish to take that question, Senator Kinsella?

**Senator Kinsella:** To be helpful, honourable senators, the pith and substance of my motion is a suggestion that the committee do a little bit more work on the bill by looking at a number of issues. I mentioned clause 3 only because it came up in committee. I am not proposing a substantive amendment to the bill because it is very difficult to do that with such a complex bill at the third reading stage. It is much better that it be done at committee stage. The honourable senator's suggestion as to how that may best be handled should be determined, in my view, by the committee, and I would hope that the committee would re-address that.

**Senator Watt:** Honourable senators, I understand now what the honourable senator is trying to do, and I reserve my right to speak later on the bill itself.

**The Hon. the Speaker:** Are you moving adjournment of the debate, Senator Watt?

**Senator Watt:** No.

**The Hon. the Speaker:** We are at third reading, Senator Watt. If you want to speak, this would be your time to do it.

[*Translation*]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, we are at third reading. If no other senator wishes to speak to this amendment proposed by Senator Kinsella, we should dispose of it. Senator Watt asked a question. It would appear that he intends to speak later to the bill, and not the amendment.

[*English*]

**Hon. George Baker:** Honourable senators, I rise on a point of clarification. If the honourable senator wishes to speak, the motion put by the Deputy Leader of the Government was so general in nature that I am sure he can give his speech and it would relate to the bill and to the amendment that we will vote down.

**The Hon. the Speaker:** For clarification, I think I am hearing a wish of this house to deal with the amendment now.

**Hon. Senators:** Yes.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Those in favour of the motion in amendment please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Those opposed to the motion in amendment please say "nay."

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "nays" have it. The motion in amendment is defeated.

We are now on third reading of this bill.

**Senator Watt**: I think I am finally on the right order.

Honourable senators, let me begin by saying that it has not been easy dealing with this particular bill and all the other bills that have an impact on the people I represent.

Honourable senators, I appreciate the fact that the bill gives Aboriginal people the right to take part in matters with regard to putting species that might be considered endangered on the list, so at least there is a potential that the traditional knowledge can be used through this piece of legislation. I do appreciate that Aboriginal people can be participants.

However, honourable senators, what happened with the non-derogation clause, as stated in Bill C-5 itself is bothersome to Aboriginal people, and that is putting it lightly. It certainly puts us Aboriginal people in the position of wondering about the system. At the time when we negotiated with the Crown to establish our constitutional rights, we had section 35 and the non-derogation clause. We did have faith then, and we continue to try to have faith in the system that should have a responsibility to protect the rights of Aboriginal people.

I know for a fact that at times it is perceived that there is not a need to protect Aboriginal rights, especially when dealing with a piece of legislation, because you can easily put a twist to the actually wording without impacting the Constitution itself. You could alter those rights and give them a different spin through a piece of legislation, and that is exactly what we worry about. This is one of the reasons we feel that the words put in by the Department of Justice, "protection provided for," should be removed.

• (1530)

Honourable senators, I have no hesitation, whatsoever, to put forward an amendment to this particular issue. However, the fact is that I do not think this chamber is ready to entertain the idea of making an amendment. I will tell honourable senators why.

First, the House of Commons has made it absolutely clear that this bill must go back to the House of Commons without amendment. Second, all honourable senators, including myself, are anxious to go home for Christmas. Once again, I am caught in that bind. I am damned if I do and damned if I do not.

Honourable senators, my purpose in speaking this afternoon is at least to put my view on the record. This is the least I can do. I do not want to take any chance that honourable senators will vote me down. One day, my honourable colleagues will rely on me, and I am also relying on them.

I work as hard as I can to be a team player, but at times it is impossible. I come from a very different background than most senators. Foremost is the people that I represent. They are important to me. I understand their lifestyle. I know what they do. I know what makes them tick. I know what they do to bring food to their families.

There is very little opportunity for the people in the North to have equal access to the system that is taken for granted in the rest of Canada, especially in this house. One day, I hope the country, especially the system, will understand that it cannot continue — I repeat, "continue" — to treat the people of the North the way they are treated today. One glove does not fit all. I hope that is absolutely clear.

I know the gun law was passed in 1995. I tried to be instrumental when it was first introduced. I suggested a two-tiered system, one for the North and one for the rest of Canada? The answer was that that was not possible.

I am counting on all honourable senators that one day we will have a clear understanding on these issues. People, regardless of where they live, have a right to life. That right to life is clearly expressed within the Constitution. I do not feel that that right is being honoured and respected by the system we have today.

Honourable senators, if the atmosphere were different, I would move a motion in amendment, which would state, for the purposes of the record, that it was moved by Senator Watt, seconded by Senator Sibbeston:

> That Bill C-5 be not read a third time, but that it be amended
>
> (*a*) in clause 3, on page 7, by replacing line 25 with the following:
>
> "derogated from"; —

— which would remove those three words.

The motion in amendment would continue as follows with respect to compensation:

> (*b*) in clause 64, on page 35, by replacing lines 31 and 32 with the following:
>
> "(*b*) an emergency order in respect of habitat or harvesting or other activities identified in the emergency order that are"; and
>
> (*c*) in clause 83, on page 46, by replacing lines 18 and 19 with the following:
>
> "harvesting activities in accordance with conservation measures or any other measure for wildlife species under a land".

That is the motion in amendment to Bill C-5 that I would have moved.

As honourable senators know, I included the compensation because we talked about that. Senator Kinsella correctly stated that.

Why did I mention the land claims issue? The land claims, the so-called modern-day treaties, are explicit in terms of how we deal with the government authorities. The mechanics and mechanisms have already been negotiated.

Three words were added to the non-derogation clause of the bill, but they do not do the trick.

One could ask whether this bill and other statutes that contain the non-derogation clause are constitutional or unconstitutional. Honourable senators can see why I would not have wanted them to vote against my motion in amendment. I would not have wanted to give the wrong message to the Supreme Court of Canada.

Thank you, honourable senators, for giving me the opportunity to speak from my heart. I do believe I speak for Senator Sibbeston, Senator Adams and Senator Gill. This issue is important to all of us.

**Hon. A. Raynell Andreychuk:** Honourable senators, Honourable Senator Watt ended by saying that this issue was important to the senators that he listed. It is more than that. These issues should be important to each and every senator in this chamber. The rubber hit the road for me when I had to make my first choice as to whether I would respect Aboriginal rights and handle my fiduciary responsibilities appropriately.

It saddens me to hear the honourable senator say today that there is some pressure that we must go home for Christmas and not deal with this issue, that the House of Commons is putting pressure on us by saying that they do not want this bill amended. Surely, if we are to discharge our responsibilities to Aboriginal people — and with respect, that is not to you but to Aboriginal people — is it not time to take a stand and put the Christmas season into perspective on this issue?

I understand why the honourable senator does not want to move his motion in amendment. I understand the jeopardy it may put him in, but now that we have had a proper airing of this matter in the chamber, is he against referring the bill back to committee so that it may reconsider how fundamentally important this bill is to Aboriginal people and to all of Canada? Perhaps some sober second thought by the committee would be appropriate. Would he reconsider the fact that, perhaps, the time is now, not tomorrow and not the next time? I feel, upon hearing the honourable senator, that it is important to keep this dialogue going. The honourable senator says there is some movement on this matter. Surely, from this side and this caucus, I have heard nothing but support for the position that the honourable senator is taking.

**Senator Watt:** Honourable senators, I do believe the time is now. Even though I strongly feel the time is now and even with all the good intentions that have been put forward by the deputy leader on the other side, this matter has been considered in the committee. I do not think I am too far off when I say that any motions in amendment would be voted down. We do not have the necessary numbers at this point. Hopefully, down the road we will have the numbers to support something like my motion in amendment. I do not feel, today, that we have that support. That is one of the reasons that I had to make that last-minute decision.

• (1540)

Honourable senators, this morning I was still planning to put forward that amendment because I had the feeling, from what was said yesterday, that there was a possibility that some senators would vote in favour of it. I thought that we might have an edge. However, several senators asked me if I intended to keep them here for Christmas.

Honourable senators, the numbers are stacked on the side of my amendment not winning the vote even if a few senators from the Liberal side voted in favour of it.

What is of paramount importance to me today is that we do not give the wrong message to the Supreme Court of Canada on this issue. I do not know what impression would be given if the amendment were defeated, and I cannot take that chance.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I find it most disheartening and discouraging to hear a senator from the majority side on such an important issue as the treatment of Aboriginals and the recognition of the special place that they have in our country, historically and at present, living under circumstances different from those under which the rest of us live, having to publicly admit that there is no support from others in his community for even considering an amendment or sending the bill back to the committee for further study. I find that disheartening and discouraging, a feeling which, I am sure, is shared by others.

I would like to reflect on what Senator Watt has told us today and read in his remarks. I move the adjournment of the debate.

**The Hon. the Speaker:** Before I put that question, Senator Baker has requested permission to speak.

**Senator Kinsella:** Honourable senators, an adjournment motion is neither deferrable nor debatable. A motion to adjourn has been moved.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, we have always had a policy in this chamber to leave the adjournment in the name of Senator Lynch-Staunton. We are not trying to take that away from him. If somebody wishes to speak at a particular moment, they must be given permission to speak at that moment.

**Senator Kinsella:** Agreed.

**Senator Baker:** Honourable senators, Senator Watt informed me this morning that he had made his decision. I have watched Senator Watt, Senator Adams and Senator Sibbeston, a former premier of the Northwest Territories, deal with the multiple whammy of the deadline for the gun control criminalization being January 1, 2003, species at risk, as it affects Aboriginal seal hunting, and the proposed cruelty to animals legislation.

A few moments ago, an honourable senator talked about pith and substance, a well-known term that we use in judging the object of legislation.

Honourable senators, just this week, 108 sealers were charged with the sale, trade and barter of sealskins under a federal regulation. That is clearly a matter of provincial government jurisdiction. We can debate sections 18 and 19 of the Constitution. The appeal courts of Newfoundland and Quebec ruled that it was, in fact, a provincial jurisdiction, but the Supreme Court of Canada said that it was not because the pith and substance was that, in order to control something in the ocean, it could legally extend or encroach upon a provincial jurisdiction. Therefore, the sealers were charged this week under a federal regulation.

In committee, witnesses told us that the gun control law should be changed to allow members of the FBI and the CIA, who are required to carry guns, to move through Canadian airports. The government wants to exempt them from all of the rules and regulations. At that point, Senator Adams posed the question, and I paraphrase: If we exempt those people because it is their job to carry a gun, why would we not exempt all of the people in my area because it is their job to carry guns?" The question went over the heads of the legal experts who were before the committee.

Honourable senators, Senator Watt told me of his decision this morning. I respect his decision. He has done a mental balancing act. The Minister of Justice has lobbied him. Letters have been sent to the chairman of the committee. He has been assured that he need not be concerned.

In dealing with the issue of species at risk, the question of compensation was one of the major issues that he pursued in committee. He asked if compensation would be paid to somebody whose livelihood would be taken away because a species had been declared as endangered. The answer came back, "We do not know." The definition of compensation in the bill, we believe, has to do only with the habitat, the destruction of the physical environment. That would be cause for compensation, but not the loss of the livelihood of the people.

However, when legal witnesses appeared before the committee and were asked about their understanding of the situation, they told us that the compensation provisions would cover individuals.

Honourable senators, Senator Watt has made a decision. He has balanced all of the considerations, and he has come to the conclusion that perhaps the best bet for the people he represents is to do what he has done today.

Senator Watt read out a resolution. He told this chamber what he would have put forward had he thought that he would be improving the situation of his people more than what could be achieved as a result of his lobbying. He has made his decision.

Honourable senators, there is pith and substance in this proposed legislation. The honourable senator read clause 3. I would draw your attention to clause 4 which proposes to extend Canada's jurisdiction beyond the 200-mile zone, which is absolutely illegal. It cannot be done unless we ratify the Law of the Sea — which the Canadian government has not done, but should have done — and apply under article 6 of the Law of Sea to extend jurisdiction.

Honourable senators, there are former premiers in this chamber who passed laws completely outside of their jurisdiction. The former premier of Nova Scotia, who is here, passed such a law in his fourth term as premier. I do not know how many terms he was in office, but he reminded me of Joey Smallwood of Newfoundland. Forty years ago, when I was working in New Brunswick, Joey Smallwood and I met at the Lord Beaverbrook Playhouse. He asked me to go to Newfoundland and work for him on the laws of Newfoundland. I said, "No, I want to go to law school." He said, "Why go to law school? We have a system in Newfoundland where all you have to do is article for three years while you work for me." In fact, honourable senators, I did that. I went to Newfoundland where the first issue we dealt with was claiming jurisdiction out to 100 miles off the coast of Newfoundland. We placed a plaque there.

• (1550)

I will give you another example of a premier doing something completely illegal. I got a phone call one day from the opposition leader who said that the premier of Nova Scotia had just introduced a bill to extend jurisdiction to what was called, in 1920 terms, "the extent of exploitability over the ocean floor." In 1980, that meant seizing the entire Atlantic Ocean, including the coast of Africa. I told the leader of the opposition in Nova Scotia that he should tell the people of Nova Scotia that the premier was crazy, that this cannot be done. Honourable senators, the leader of the opposition took my advice and I think the premier got elected for his fourth term shortly thereafter.

Getting back to the subject under discussion, that is, the pith and substance of the bill before us today, I watched senators, including Senator Sparrow, work at the committee to try to convince the authorities that they were not dealing with reality in some of the things they were telling us. They have spent sleepless nights over the past two or three weeks and have come to a decision. I respect their decision and I can tell you, Mr. Speaker, that senators who support these honourable senators today will support them even more to ensure that what they believe they may be able to accomplish will in fact be accomplished.

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

**Hon. Jerahmiel S. Grafstein:** Honourable senators, Senator Baker may be unaware that in the Senate we address each other, rather than the Speaker. I say this with no disrespect to the Speaker. Senator Baker may wish to read rule 32.

**Senator Carstairs:** Honourable senators, Senator Baker indicated in his closing comments that the Aboriginal members of this chamber will have a great deal of support as we go through a very important process that began, I believe, in March of this year. I would assure those senators that I will be at the top of their list of supporters.

In the last few years, there has been a very mixed approach to the non-derogation clause. We started with a non-derogation clause with a certain wording. Then, with no explanation that was satisfactory to me, the wording of the non-derogation clause was changed. Aboriginal senators struggled with how they would deal with this. They believe, as do I, that their fundamental protection is in the Constitution and that non-derogation clauses were added to legislation for greater certainty. However, if they were added for greater certainty, why was the wording changed? That is a fundamental concern.

We have gone through a series of steps. Last year, the Nunavut bill was before us and the decision was made that, because land claims and treaties had been signed, the non-derogation clause would be withdrawn. We had another bill, the name of which I cannot immediately recall, in which we left the non-derogation clause with its new wording. We currently have a bill before us with wording different from the original wording, and Senator Watt and his colleagues have once again raised the concern about how we bring clarity to this issue.

For that reason, a series of letters were sent from Senator Banks, the chair of the committee, first to the Minister of the Environment, because it was his bill, and then to the Minister of Justice. A decision was made at the cabinet level that this issue

had to be resolved. That is why the government, in a letter to Senator Banks, clearly stated that, in March of 2003, legislation will be introduced to establish, once and for all, the wording of a non-derogation clause, or lack thereof, in order to deal with the derogation issue.

That is critical because it is not helpful to the process to deal with the issue in a piecemeal fashion. We need to bring the topic to the Senate and we must have a fulsome discussion, not only with Aboriginal senators but also with Aboriginals throughout the country because, as we all know, various Aboriginal peoples are listed in the Constitution. The Inuit, the Metis, status Indians and non-status Indians are listed, and we need to learn what all of them think.

I would assure my colleagues — particularly Senator Watt, Senator Adam, Senator Sibbeston, Senator Gill and Senator Chalifoux — that they need not depend upon only themselves for support; they can depend on me.

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

**Senator Watt:** Honourable senators, new elements have been added by our leader with regard to what the minister has stated he intends to do in March.

I have a great deal of concern about that. Stand-alone legislation that the minister is talking about is an option. In his letter, the minister talks about removing the non-derogation clause from each piece of legislation and says that there will be no reminder of non-derogation clauses in future legislation.

I am concerned, honourable senators, that this will not rectify the matter. I think that the minister must go a step further because, from time to time, there is definite infringement on Aboriginal rights. How will that infringement be dealt with? If it is weighted too much in the government's favour, we will lose that which we thought we had negotiated and for which we thought we had constitutional protection. This is a very dangerous way to go. Without much expense, we could easily remove that non-derogation clause from the five pieces of legislation where it is found, but we could include a proper non-derogation clause in future legislation. To me this makes a great deal more sense. At least if we go down that avenue I need not worry about what the minister might be trying to do.

• (1600)

Honourable senators, there is one thing I know for a fact because I was involved in signing what we have in the Constitution. I was one of the people involved right from the very beginning, so I feel I know what I am talking about. The reason section 25 was put in the Constitution is to protect section 35.

Section 35 is made up of detailed agreements like the James Bay-Northern Quebec Agreement, the Nunavut Agreement, the Gwich'in Agreement, the Yukon Agreement, all the modern-day treaty agreements. However, from time to time Parliament has the authority to make laws, and they may infringe on our rights. If the legislation is not dealt with properly, if we never have an opportunity to sit down and negotiate, there may be certain things that will have an impact on us and we will lose along the way.

Honourable senators, we do not want that. We would like to have a reasonable chance to sit down and work out a regime as to how the entrenchment can actually take place. However, if it is to be one-sided, without the direct input of our people , I am worried that the minister might not do what he said he would do.

**Senator Carstairs:** Honourable senators, in answer to Senator Watt's question, that is exactly what I indicated this afternoon. As the honourable senator knows, because I told him yesterday, I specifically asked the minister to bring this issue to the Senate in draft form. In other words, instead of having a tight bill we would have greater flexibility to develop this policy together with all members of the chamber and seek the opinions of those outside the chamber.

Let me state one thing that is absolutely paramount, and then I am afraid I cannot take any more questions because I must go to the Governor General's. The rights of Aboriginal people have been entrenched in the Constitution. The Constitution cannot be amended by a simple law passed in the House of Commons and the Senate. The Constitution can only be amended via the proper amending formula set out in the Constitution, so the rights are there.

I believe the rights are protected but — and this is the big but — it is clear, honourable senators, that there is the need for some clarity. That is why I have put all the limited powers of my office to work in order to ensure that we get that clarity, in order that the Justice Minister makes us understand that there are serious concerns not just among Aboriginal senators but among many senators, including me.

**Senator Grafstein:** Honourable senators, the Leader of the Government made reference to a letter that is the subject matter of Senator Watt's concern, and that is a letter of commitment to introduce early legislation to resolve the non-derogation matter. Is the Leader of the Government prepared to table that letter so that we may have it as part of the record for this debate?

It has been brought to my attention that there is not one but two letters, dated November 27 and December 3. I was not a member of the committee but, since the Leader of the Government raised it and put it on the record, it might be helpful for those letters to be tabled. However, I leave that to the Leader of the Government and the Deputy Leader of the Government.

[*Translation*]

**Senator Robichaud:** Honourable senators, these letters were provided as reference material to the Chair of the Standing Committee on Energy, the Environment and Natural Resources, which was considering Bill C-5.

[*English*]

**Hon. Terry Stratton:** Honourable senators, I move the adjournment of the debate.

[*Translation*]

**Hon. Laurier L. LaPierre:** Honourable senators, I wanted to rise in this debate, which I believe is essential for Canadians. What just happened is quite scandalous. When Canadians read the newspapers and see today's remarks about our inability to meet the needs of our First Nations, we will look foolish. Since this debate has already been adjourned, I will not continue.

On motion of Senator Stratton, debate adjourned.

## CODE OF CONDUCT AND ETHICS GUIDELINES

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

On the Order:

> Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Carstairs, P.C.:
>
> That the documents entitled: "Proposals to amend the Parliament of Canada Act (Ethics Commissioner) and other Acts as a consequence" and "Proposals to amend the Rules of the Senate and the Standing Orders of the House of Commons to implement the 1997 Milliken-Oliver Report", tabled in the Senate on October 23, 2002, be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament;
>
> And on the motion in amendment of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Losier-Cool, that the motion be amended by adding the following:
>
> > "That the Committee, in conjunction with this review, also take into consideration at the same time the code of conduct in use in the United Kingdom Parliament at Westminster, and consider rules that might embody standards appropriate for appointed members of a House of Parliament who can only be removed for cause; and
> >
> > That the Committee make recommendations, if required, for the adoption and implementation of a code of conduct for Senators, and concerning such resources as may be needed to administer it, including consequential changes to statute law that may be appropriate."

**Hon. Gérald-A. Beaudoin:** Honourable senators, I would like to say a few words regarding the code of ethics bill now before the Senate. I have listened to the remarks of my fellow senators, in particular those by the Honourable Senator Joyal. He raises some interesting questions and concerns, which deserve some thought and, of course, in-depth consideration in committee.

Senators' privileges are written in part and unwritten in part. Section 18 of the Constitution Act, 1867, dealing with the privileges of senators and members of Parliament, was repealed in 1875 and replaced by a new section which provides that the Senate, the House of Commons and the members of these two chambers hold, enjoy and exercise the powers, privileges and immunities defined in an act of Parliament. However, such act shall not confer privileges exceeding those that the House of Commons of the United Kingdom and its members may hold, enjoy and exercise at the passing of such an act.

This text must be read in conjunction with the Parliament of Canada Act. Under section 5 of this act, these privileges, immunities and powers are part of the general and public law of Canada and they shall be taken notice of judicially by judges.

Since 1949, the federal Parliament could have amended section 18 of the Constitution Act, 1867, under section 91(1). Section 91(1) was repealed in 1982 and replaced *mutatis mutandis* by section 44 of the Constitution Act, 1982.

• (1610)

The issue of parliamentary privileges and the Canadian Charter of Rights and Freedoms was raised in the *New Brunswick Broadcasting Corp.* ruling. In this case, the issue was the freedom of the press. The court had to decide whether the media have the right to film parliamentary debates with their own cameras and control production and the subsequent use of the resulting films. Currently, the legislative assembly controls its own cameras, but allows the media to use the films that it produces. However, these clips only show the person who is speaking; they do not reflect the atmosphere or the reactions of the other members of Parliament during debate.

The Supreme Court ruled, based on a number of grounds, that the parliamentary privilege to exclude outsiders is protected under the Constitution and, therefore, cannot be superseded by section 2(*b*) of the Charter.

I simply want to draw your attention very briefly to the right to privacy.

Honourable senators, the draft code of ethics merits serious and careful examination, particularly in connection with how it affects privacy rights. Since the 1982 Charter of Rights is our greatest legacy since Confederation, in 1867, I believe there needs to be a more thorough committee study of the right to privacy. There are limits that need to be set, limits on the invasion of privacy. A code of ethics must respect the right to privacy, which is very hard to delineate in constitutional law. For this reason, the entire matter should be referred as expeditiously as possible to the Committee on Rules, Procedures and the Rights of Parliament for a very thorough investigation of the right to privacy. This is one of the most important rights in the Canadian Charter of Rights and Freedoms, which, as I have said, is part of the very core of the Canadian Constitution.

[*English*]

**Hon. Jerahmiel S. Grafstein:** Is it possible to ask Senator Beaudoin a question or two?

**The Hon. the Speaker** *pro tempore***:** Senator Beaudoin, will you take a question?

**Senator Beaudoin:** Yes.

**Senator Grafstein:** Senator Beaudoin raised an interesting question about the rule relating to any attempt by Parliament to limit the powers and privileges that were known at the initiation of the Constitution. In regard to the proposals tabled by the government, does the honourable senator view the imposition of an Officer of Parliament, who would be more accountable to the Commons than to the Senate, as a reduction in the powers and privileges of senators?

**Senator Beaudoin:** As I said at the beginning of my intervention, this is a concern. The right to privacy is a fundamental right that has been sustained, supported and confirmed by the Supreme Court of Canada. The Supreme Court has rendered more than 400 cases on the Charter of Rights and Freedoms. They are very generous to the fundamental rights of expression and equality before the law. One of these fundamental rights is the right to privacy.

Several honourable senators have raised many points. I come to the conclusion that a prima facie restriction in the areas of fundamental rights is probably unconstitutional. That is my initial reaction to the question of Senator Grafstein. The subject is so complex and fascinating. However, it is with the experts and senators in committee that we may perhaps weigh the invasion of privacy rights, the rights of expression, equality, et cetera.

The legislative branch of the state, with all its privileges, has latitude that even the Supreme Court respects. Their lordships conduct themselves with that in mind and I congratulate them for it. A complete and in-depth study should certainly be undertaken before the committee of experts. I cannot be too precise, because we may speak for hours and hours on this subject.

The restriction of a freedom that is clear-cut in the Charter of Rights and Freedoms, and of freedoms that are interpreted by the Supreme Court so generously, requires prudence and examination. The mere fact that there is an invasion of these rights is, prima facie, unconstitutional. However, under section 1 of the Charter, we may say that the restriction is acceptable in a free and democratic society. The onus of evidence rests with legislators. I cannot be more precise than that. We must study each case on its own merit.

On motion of Senator Comeau, debate adjourned.

## KYOTO PROTOCOL ON CLIMATE CHANGE

### MOTION TO RATIFY—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Banks:
>
> That the Senate call on the government to ratify the Kyoto Protocol on Climate Change,
>
> And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Murray, P.C., that the motion be amended by substituting for the period after the word "Change" the following:
>
> ", but only if, after the Senate has heard in Committee of the Whole from all federal, provincial and territorial government representatives who wish to appear, the Senate determines that there is a substantial measure of federal-provincial agreement on an implementation plan."

**Hon. A. Raynell Andreychuk:** Honourable senators, though this motion stands in my name, I yield to my colleague, Senator Eyton, and I propose to speak after his intervention, if I may.

**Hon. J. Trevor Eyton:** Honourable senators, global warming is not yet the most common topic at our nation's dinner tables. I believe this will change as Canadians, through the lens of the Kyoto accord, become more acquainted with their environment and how critical it is to Canadians and our way of life.

The Kyoto Protocol basically relates to only one aspect of our environment and that is how to reduce the amount of greenhouse gas emissions in the atmosphere as part of a global undertaking. People are somewhat vague at present about the details and unhappily that includes our own federal government in particular. This vagueness is not surprising, given the newness of the topic and the daily changing positions of our federal government on the various elements of the accord.

• (1620)

To put things in perspective, honourable senators may recall that it was in 1988 that the United Nations and the World Meteorological Organization together set up the Intergovernmental Panel on Climate Change. Its mandate was to study a variety of issues related to climate change, including the then relatively unknown subject of global warming.

Out of the work of this committee came the United Nations Framework Convention on Climate Change. In 1992, this convention was ratified by more than 100 countries in spite of the fact the science behind this convention was then, as now, still uncertain and much in debate.

Five years later, Canada and some 150 other nations went to Japan and signed what we now refer to as the Kyoto agreement. At the heart of this agreement was a commitment by the signatory nations to reduce greenhouse gas emissions.

The emission reductions negotiated under the Kyoto Protocol are to be implemented in two stages. For brevity's sake, we shall call them up to 2012 and post-2012. The first stage, covering the period up to 2012, applies to what are called Annex I countries. These are the world's developed nations, including only Canada and the U.S. in the western hemisphere.

On the face of it, the Kyoto accord commits these 38 Annex I countries to reduce their greenhouse gas emissions by 2012 to levels approximately 5 per cent below those of 1990. The stated thinking here is that the developed nations have created the lion's share of the problem, so they should take the lead in fixing it. The underlying reason, in my view, was that the developing countries were simply not going to sign on unless they were exempted for a period during which they would have the opportunity to attract investment and, with it, economic growth at the expense of the developed countries. In other words, it is a catch-up opportunity representing a transfer of wealth from the developed countries to the developing countries.

Accordingly, prior to 2012, developing nations, including even immense ones like China, India and Pakistan, are exempted from mandatory reduction targets, and this notwithstanding these countries account for something approaching 50 per cent of today's greenhouse gas emissions, with more to come.

It should be noted, however, that these developing nations are free to set voluntary targets, if they so wish. I will let honourable senators judge for themselves the chances they will do that. In any event, the developing countries have been invited to ratify the agreement in order to show their support for the principle involved including, presumably, the competitive advantage they will thereby acquire.

The expressed fond hope is that once the developing countries see the developed nations sign on and implementing emission reductions, they will be encouraged to follow suit during the second phase of Kyoto set to begin in 2013. Again, this is not mandatory but fondly hoped for. However, before Kyoto can come into force two main criteria must be met. The first is that 55 parties to the convention have to ratify it. The second is that at least six Annex I countries, representing a minimum of 55 per cent of the total 1999 greenhouse gas emissions, must also agree to ratify it.

To date, more than 90 countries have signed on to the protocol. Even Russia and China have recently signalled they will be following suit. Again, time will tell what that is worth, given their less than transparent economies.

The fly in the ointment thus far is that Annex I signatories among the ratifiers account for only 37 per cent of total 1999 Annex I emissions. Thus, there is still some way to go. The main difficulty here is the United States which, in the protocol baseline year, was responsible for 36 per cent of total Annex I emissions. The Bush administration has announced it will not ratify the protocol.

It has given a number of reasons for this, but the most compelling, from their point of view, is that Kyoto will not succeed in its objectives while its strictures would put the U.S. at a competitive disadvantage. Moreover, the U.S. believes it can achieve the Kyoto targets with initiatives developed and undertaken in the U.S. consistent with its own needs and values.

Elsewhere on this continent, Mexico has ratified the accord but there will be no immediate reductions there because of its status as a developing country.

That brings us to Canada, which is currently responsible for 3.3 per cent of Annex I emissions. In terms of total world emissions, we sit at something less than 2 per cent. In that circumstance, our Kyoto commitment is to reduce our greenhouse gas emissions to levels 6 per cent lower than 1990 by the year 2012. In other words, we have committed to reduce our emissions by a total of 240 megatons over the next nine years.

This is to be achieved, as mentioned earlier, in two stages, the first involving a 180 megaton reduction by 2012, which itself is short of our Kyoto commitment, and the second, a 60 megaton reduction, representing our shortfall to come later.

To reach our Kyoto target, major industrial polluters will be required to reduce emissions by 15 per cent between now and 2012. Automobile makers will have to improve the fuel efficiency of their vehicles by 25 per cent. Individual citizens will be asked to cut their personal production of carbon-based pollution by 20 per cent through buying more fuel efficient cars and making more intensive use of public transit, et cetera.

One obvious problem with this scenario is that it does not take into account what has been happening over the past decade, or what will happen over the next. By that, I mean that since 1990, when we began talking about this issue, and today, our greenhouse gas emissions have risen by some 15 per cent — whoops! Over the next decade this trend will likely continue as our population grows, economic development expands and energy consumption rises to keep up with increased demand.

As a result, it has been calculated that by 2012 we will be responsible for reducing our emissions of greenhouse gases to the tune of 25 to 30 per cent in order to meet our protocol commitments and not the stated 6 per cent. Obviously, this will have a significant impact on both consumers and business. In particular, businesses big and small will be faced with the task of adjusting their investment and employment strategies to meet the increased demands of satisfying our Kyoto commitments. Big corporations will face some pretty tough decisions regarding the introduction of new technologies, the installation and upgrading of essential infrastructure and their commitment to sustainable development programs and the like.

A couple of weeks ago, the federal government acknowledged that ratifying Kyoto could cost the country up to 240,000 jobs and $13.5 billion over a decade. These are serious numbers which, if accurate, need some equally serious consideration before we proceed with the ratification. Remember, honourable senators, these are the same people who are bringing in the relatively simple gun registration program at a cost more than 10 times the amount budgeted and originally given to Canadians.

Lest some get the wrong impression, I support any reasonable measures to preserve the environment, provided they are well and truly thought out and do not unjustly penalize particular groups or classes of individuals. However, we should not be adopting public policy on the fly, with no real understanding of the short and long-term implications. I fear this is the case with the Kyoto Protocol.

Remember, honourable senators, even if we achieve our Kyoto commitments we as Canadians are dealing with something less than 2 per cent of the world's total, so that any Canadian reduction will pale beside the significant increases coming from the exempted developing countries which even now approach 50 per cent of the world's total. Keep that in mind and let us consider for a moment the prospective impacts on Canada and Canadians.

According to Kyoto forecasts, so-called large industrial emitters like petrochemical plants, mining corporations and large manufacturing interests will contribute almost half of Canada's emissions by 2010. Many of these industries are already actively involved in reducing emissions. However, under Kyoto, they will be required to more than double their present reductions to meet the targets Canada agreed to in 1997.

To do this, they will have to make major new capital investments, acquire new and cleaner sources of energy, purchase domestic offsets or international carbon permits and so on. Are these businesses ready and able to meet these demands? For example, can our mining companies, already experiencing difficult times, be in a position to make the required additional investments? If these industries cannot, what should we be doing to help them so as to keep jobs and investment here in Canada?

The federal government has recognized that there could be circumstances where an industry falls short of its commitments for whatever reason, and it is making allowances for those industries to make up the difference post-2012, again outside our Kyoto commitment.

Is that enough? The problem, honourable senators, is that the impacts to industry are unknown. The federal government says it plans to continue discussions with industry so as to refine the details of how Canadian companies can meet their Kyoto targets. Indeed, just this week the federal government announced it would consider capping Kyoto costs to industry by, in effect, transferring excessive amounts to taxpayers — some solution, and open-ended at that. Can this be the proper way to proceed?

There is much unease in the business community at the federal government's lack of precision in its statements and actions to date.

• (1630)

There appears to be no commitment to any specific course of action, other than the targets themselves, that were largely negotiated by others, without any regard to Canadian needs and challenges, and in particular without any regard to the thinly populated massive land mass represented by Canada and to the significant clean energy exported by Canada to the U.S. as a contributor to their program to reduce greenhouse gas emissions.

There is also a widespread feeling that politics are playing much too much of a part in this process. This is making many people unhappy. For example, Canadian Natural Resources, a developer in the oil sands industry, recently took $100 million it had put aside for a development project in Alberta and reallocated it to a similar project in Africa. According to the project's leader, it did so because Kyoto did not bring the clarity required to make the investment. In other words, while Kyoto's ultimate goals are laudable, the uncertainty about its implementation and impacts led the company to believe it would be imprudent to invest in a massive multi-decade project in Canada when there was another attractive and more certain opportunity elsewhere.

It is not only in the energy area where people are feeling uncomfortable. It is everywhere in the business world, where managers are responsible for investing large sums of money in long-term ventures that must have maximum certainty. It was Perrin Beatty, wearing his hat as President of Canadian Manufacturers and Exporters, who not long ago summed up what many in the business community are thinking about Kyoto. "Canadians," he said, "deserve a detailed plan that spells out the costs and necessary actions on the part of industry and individual citizens for Canada to achieve its" Kyoto "target." Or to quote Nancy Hughes Anthony, who heads the Canadian Chamber of Commerce representing over 200,000 Canadian businesses, "the Kyoto targets and timelines poses challenges to industry, and the government has not calculated how much taxpayers, consumers and business will need to spend to implement Kyoto."

Honourable senators, ratifying the Kyoto Protocol will commit Canada to legally binding reduction of greenhouse emissions. Before we sign, we should know with some precision what it will cost us. We need to know, for example, how much we will have to pay in the international market for carbon permits; and how much it will cost to purchase domestic credits; and when new technologies will reduce or provide alternate energy usage available on a wide scale; and how Canada will meet the second stage 60-megatonne reduction called for under the protocol; and, on a larger and more immediate scale, what impacts the Mexican exemption and the U.S. decision not to ratify Kyoto will have on investment here in Canada, given that some 90 per cent of our trade and investment is with these NAFTA partners. Last week, we had an indication when Michael Grimaldi, President of GM Canada, warned that ratification of Kyoto could create different vehicle standards from those in the U.S., so as to have, as he put it, a "significant impact" on the Canadian company's operation. Mr. Grimaldi noted that today more than 80 per cent of GM's current Canadian production of cars and trucks is shipped to the U.S., which is an immense enterprise supporting hundreds of thousands of jobs that are vital to Canada and Canadians as part of an integrated North American industry. Double whoops!

In other words, honourable senators, we should not jump into this thing on blind faith. We need to know more.

The federal government itself must first determine, and thereafter explain more clearly, the impact Kyoto will have on people and business in this country. There is absolutely no need to get this motion passed before we break for Christmas. This is much too short a time given the complexity and importance of the issue. The fact is that Canada alone, among the developed nations in the western hemisphere, will be required to reduce its greenhouse gas emissions in accordance with the Kyoto regime. Our two NAFTA partners, Mexico and the U.S., will not be subject to Kyoto any time in the near future. Obviously, this will place us at a clear competitive disadvantage opposite these most significant trading partners.

Honourable senators, money and investment flow to places that provide the highest return on investment in a predictable investment climate. Kyoto will have a very real impact on that consideration. This is not scaremongering, but a simple fact of business life. While we are busy handicapping ourselves and our ability to compete, other nations, particularly the developing ones, will be adding to the problem of greenhouse emissions, happily doing business as usual, free from the Kyoto constraints.

**The Hon. the Speaker** *pro tempore***:** I am sorry to interrupt, but I must advise that the honourable senator's time has expired.

**Senator Eyton:** I am almost finished.

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

**Hon. Senators:** Agreed.

**Senator Eyton:** Honourable senators, I am not opposed to the objectives of Kyoto. I am a fan of energy efficiency and of a cleaner, healthier environment, including as but one of the elements reducing greenhouse emissions and, beyond that, $SO_2$ and other substances degrading our air and water. In the real world, companies like Noranda are making serious and sustained commitments to a cleaner environment and sustainable development. There are other examples to learn from, such as California or companies within California, models for us to emulate.

It is not the goal of smarter environmental stewardship that I am worried about. It is the particular structure and means we propose to achieve it. In short, we should not now ratify Kyoto. We need to have an implementation plan broadly acceptable to Canadian provinces and industry, for the political and economic well-being of Canada and Canadians. We can all agree that we want a cleaner and healthier environment on a sustainable basis. Perhaps we should come up with a purely made-in-North America solution, something thoroughly researched and based on the economic and environmental realities here.

Honourable senators, it is clear to me that before we ratify this treaty, we need a broad consensus, a more complete understanding of the costs and other impacts of Kyoto and prospective alternatives, and a much better idea of how we will get there. Given that — and only then — will Canadians of every class and kind massively support what truly are the worthy objectives underlying Kyoto.

Honourable senators, I urge each and every of you to vote against ratification of the Kyoto Protocol at this time for the very simple reason that it is the right thing for us to do as a body charged with exercising sober second thought. Your vote against ratification will be a vote for the provinces, the territories, the regions and the sectors making up this magnificent country, whose voices have not been distinctly heard to this time. Surely, this is a proper responsibility of the Senate chamber.

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

**Hon. Ione Christensen:** Honourable senators, I rise to give my support to this motion, without amendment. I have listened with interest to the presentations given, both for and against, and all are certainly excellent arguments.

Questions have been raised on the international ramifications of signing such an accord, the failure to engage all the provinces, and the lack of a clear, detailed and universally agreed-to action plan. All arguments were eloquent, but I should like to introduce some simple observations, no rocket science, but some facts about why I see Kyoto as a catalyst for focus and why it should be implemented.

Fact: Hydrocarbon exhaust is a lethal gas. It is bad for your health and you do not intentionally go out and breathe the stuff.

Fact: We in Canada are pumping out megatonnes of it yearly.

Fact: This gas does not just stay in Canada's airspace, but it floats around the world, as do similar gases from other industrialized countries. It is big-time sharing.

Fact: Without a catalyst of some kind, no one, least of all industry, will willingly take steps to make changes that may just cost them a little money.

We now come to Kyoto. With all the information gathered by the scientific community around the world, it is difficult to deny the fact that our planet is warming up. Yet there is still strong debate on whether we should take action.

Is the debate political? Is the debate about jobs or funding? Is this debate about who has the most convincing statistics? Like most debates, the answer depends on which side of the issue one supports.

Yes, it is about politics: selling a perspective that will appeal to the voting public. Yes, it is about jobs, some of which may not be generated in future and some of which will be created in future. Yes, it is about funding. For industry and the territorial and provincial governments, it is about what the federal government will be willing to commit to the costs associated with implementation. We must also ask: To what degree are industry and the provinces willing to share the wealth that may be generated by new industry opportunities? Make no mistake, there will be opportunities. Petroleum companies are taking advantage of those opportunities today.

• (1640)

Yes, it is definitely about statistics, and we all know that with statistics, you can prove just about anything. We need a plan that reflects the wants and needs of all parts of this country. Who will be the winners? Who will be the losers? How can we balance that equation? That can only happen if we are talking with each other and not at each other. That is one reason I reject the amendment. I feel that we would only then be talking at each other. It is important that we settle down to the debate on how to solve the problem.

Honourable senators, we are, for the first time in history, living in an interconnected global economy. I ask you: In the last four years, how effective has your well-planned investment portfolio been performing? Can we realistically ask any government to produce a detailed 10-year fiscal plan on reducing a sky full of gas that we cannot even see? The Kyoto Protocol calls for much good faith from all players and, that good faith is needed because the stakes are so high.

Like the global economy, the global greenhouse gases produced by the industrial first world economies, affect everyone. My car emissions can end up in Australia, India or Africa. Industrial emissions from Russia, Germany and China affect Nunavut, Chile and Spain. If we do nothing, what would be the health costs? What would be the costs to agriculture? Would we be able to secure our food supply? What about forestry? What effects would there be on the world fisheries? What would be the impact on that very precious 5 per cent of the earth's water that is available to all living things?

There is convincing evidence that our planet is warming. Although natural cycles would normally produce periods that would be warmer than others, the higher degree of global warming that we are seeing today is man-made. No other species or phenomena are responsible. We energy consumers are the guilty ones. It is because of our first-world lifestyle that greenhouse emissions are at the high levels, we now experience.

At the UN Conference on Environment and Development in Rio de Janeiro in 1992, we signed on to reduce greenhouse emissions to the 1990 levels by the year 2000. In 1997, Canada, together with over 160 countries, met in Kyoto to recommit to the reductions and what those reductions should be. Canada set a target of reducing emissions to 6 per cent below our 1990 levels by the end of the period 2008 to 2012. Whatever plan we may implement would be a made-in-Canada plan. We would set the emission reduction rate and, working together, we would develop the plan for achieving those reductions.

We are already 10 years into the process. We did not meet the 2000 target — far from it. In 1997, Canada was identified as one of the top three countries with emissions growth since the 1992 convention in Rio. This is not something new; governments and industry have all known about our commitment to emission reduction for the last 10 years. Some are now arguing that there is not enough time and that this is being rushed. They need until the year 2020 or maybe even 2050. That is at least a full 20 years. Guess what? From 1992 to 2012 is 20 years. It is rather like the times at school when a project was assigned and the work on it did not begin until the night before it was due. Yes, we may just have a problem. Should we be looking at extensions now? Will greenhouses go on hold while we dither around? I do not think so.

In the North we see warming effects perhaps more than in other areas. Our Canadian farmers are also suffering. There are reduced water levels in our aquifers and our river systems; changes in fish migration, as happened in British Columbia this year where the salmon had only dry creek beds in which to spawn; cooler summers and warmer winters in the North, where it was raining yesterday in Whitehorse and where there has been no snow; hotter summers and higher levels of smog in southern urban centres; more droughts, more flooding and ice storms that break records; melting of the polar ice cap; and West Coast glaciers melting, where I have been flying since 1945 at least once per year. The scour on the mountains gets greater and greater as the ice melts. Some of them have totally disappeared. We also see insects and animals in areas where they have never been before; and caribou dropping and losing their calves before they can reach the calving grounds because of river ice breaking up early. A few weeks ago, CBC reported a study in the Yukon that provided evidence that the increase in temperature is related to the industrial revolution. Core samples taken from the glaciers atop Mount Logan, Canada's highest peak, give us a picture of the amount of snow that has fallen there over the last 300 years. The data indicates that precipitation on the mountain has been increasing since about 1850. Scientists link increased snowfall with increased temperatures, as the warmer air can carry more moisture up to Mount Logan's higher altitudes.

The CBC report quotes Gerald Holdsworth, Researcher at the University of Calgary, as saying:

> We find an increase from about 1850 and it actually corresponds with the start of the Industrial Revolution, which we also see in the ice cores.

And he continues:

> The trend is increasing in the last few decades. There has been a trend over the last 150 years and it is now increasing a little faster.

Why should we ratify the Kyoto accord while others will not ratify it? We are a major part of the problem and so we should be a major part of the solution. Some might say: If the United States — the largest emitter of greenhouse gases — is not ratifying the protocol, why should Canada ratify? The United States has, however, made large investments in cleaner energy. Also, individual States have made commitments to stabilize greenhouse gases. While not formally committed, it is well known that they are well advanced in greenhouse gases reduction technology, and Canada must remain competitive.

Energy efficiency is not a new concept. Certainly, during the energy crisis of the 1970s, many new technologies were developed. There was the R-2000 home, air-to-air heat exchangers, wood stoves with catalytic combustors, wind energy, solar panels, propane cars, inline hydro and even the Thermo-Hygrograph and I would point to that little glass box in the middle of the Senate Chamber — which came from exclusive use at the museums and the archives to become a common, useful tool in monitoring the R-2000 air-tight and energy-efficient homes. They wanted to ensure that the right temperatures and levels of humidity were being monitored. Canada's home-building technology was then seen as state-of-the-art. We were world setters in the way that we built our homes in cold climates.

Then it was all about money and supply. However, the issue we face today is about the health of our future generations and the health of our planet to sustain us. What little faith we have in our own abilities. We did it 30 years ago for money; surely we can do it today for life.

• (1650)

**Senator Andreychuk:** Honourable senators, I wish to make some preliminary points with respect to the Kyoto Protocol and process. We have heard debate from senators, scientists and others on both sides of the issue as to whether there is real evidence about global warming. The issue of global warming is not settled by scientists, and there are compelling opinions on both sides.

The debate has not moved much since the 1980s when the United Nations Environment Program was struggling to put in its first report that led to the Rio Conference and the United Nations Framework Convention on Climate Change, which in turn led to the Kyoto Protocol. What was said then in the United Nations Environment Program, UNEP, is that if we go with the sceptics, that there is no global warming, the cost could be the planet. If we go with those who believe that there is global warming and they are proven wrong, the cost will be a syphoning off of resources from other necessities, but in any event, some good to the environment will occur. Environmental protection must be paramount and good practices should be enforced. Therefore, the second choice was made.

The issue, then as now, is not utilizing existing resources but what is reasonable use in our generation in order that we are neither careless nor utilizing more than our fair share in relation to the needs of future generations. Therefore, the process of Rio inherently stated that good environmental practices were not in place and should be with respect to issues that affect climate change.

In the Kyoto Protocol, the fair share concept for existing environmental degradation was extended to how this should be apportioned amongst countries. Time does not permit me, in the few minutes that I have, to address this issue, but I would certainly put it on the record that the fair share amongst nations was not "a good deal" for Canada, nor for the developing world in the future. Honourable senators, that is for another debate.

One further preliminary point that I would like to make is that the actions of the government at this time, I believe, are misleading, confusing and not helpful to reaching an honest consensus or understanding by Canadian citizens, nor, may I say, is it good public policy. It is not helpful when the Minister of the Environment has categorized the ratifying of the protocol as "historic." Even if Kyoto were fully implemented in Canada, the delay in doing so and the minimal effect that this will have on environmental degradation is misleading when categorized as historic.

My concern, as well as that of some others, is that there will be a sense of satisfaction in the Canadian public that we have "saved the environment." This Kyoto Protocol is but one very small piece of what needs to be done. Further, to say that there is a made-in-Canada plan for reducing global warming is to misunderstand or misrepresent international treaty-making. If there is such a thing as a made-in-Canada plan for reducing greenhouse gases and other actions to counter the effect of climate change, then the minister should put this national strategy or plan forward and proceed with it. The Kyoto Protocol ratification simply means adherence to an international plan, which may not have been the best deal struck for Canada, nor all that Canada has to do.

The major point that I wish to make today, honourable senators, is with respect to treaty making and Canada's outdated process. Two givens are unalterable, in my opinion. First, there is no suggestion in any of my submissions that the executive's right to sign and ratify international treaties at the federal level should be changed, or through the Constitution. It is a discretion that properly lies with the federal government and its executive. Second, as Senator Beaudoin has pointed out through case law, the federal government cannot encroach on provincial rights in any way when enacting the implementation of treaties.

However, it would appear that Canada's process has not kept up with the growing trend or the importance of international treaty-making in this globalized world. We know that many issues previously national in scope are now international. In light of the fact that national and international laws are inextricably intertwined, and in light of the need to develop a more mature system of democracy, it is no longer acceptable to continue the practice that has led us to the confusion and the difficulties at this time in the Kyoto process.

Canada has done little to modernize and democratize its treaty implementing systems, while others like Great Britain and especially Australia have completely revamped their systems. There has been no similar process in Canada.

It should be noted that the Vienna Convention on the Law of Treaties, which Canada acceded to, indicates that when a country signs a treaty, it then has the obligation not to defeat the object and purpose of a treaty prior to its entry into force, as noted by article 18 of that convention. Therefore, we are not bound by the terms, but we are not to go against the object and purpose.

However, if ratification of an international law takes place, then you are not only bound to not defeat its objectives and purposes, but it becomes a legally binding commitment. Article 26 of the Vienna Convention states that every treaty in force is binding on the parties to it and must be performed by them in good faith.

The Vienna Convention goes on to say, in article 27, that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

Honourable senators, what does all this mean to Canada? Well, the federal government can sign any treaty through the executive without consultation with anyone or with abbreviated consultation, because they have the exclusive right to do so. Once they determine to ratify, the federal government must act in good faith and attempt to implement into national law its obligations.

Many of those obligations are within provincial jurisdiction, and to this point, in many treaty-making processes, Canada has often indicated when it was found wanting in the provincial sphere that it had no right to intervene and, in fact, looks to the province for explanation. In fact, the federal government in many cases has not passed enabling legislation

for conventions but has simply said that they are in conformity with standards in the treaty. They have often gone as far as to say that the Canadian standards are higher than those in treaties and therefore existing laws are sufficient.

Needless to say, these are always the opinions of the federal government, and those who wish to take issue with the federal government have little recourse internationally or nationally to put a different point of view forward, including, I may say, provinces.

In other countries, the process is more democratic, open, consultative, meaningful and in line with consensus building. For example, the Australian model, adopted in 1996, still maintains within their constitutional structure the exclusive right of the executive to sign and ratify treaties, but the executive has put into place the following five areas: first, the tabling of treaties in Parliament for at least 15 days before the government takes binding action, and that is either signing or ratifying.

Second, the tabling by the executive in Parliament of a national interest analysis explaining why their country should become a party to the treaty in question. The national interest analysis is to include a discussion of the economic, social and culture effects, the obligations imposed by the treaty, the direct financial costs to the country, how the treaty is to be implemented domestically, and what consultations occurred during the negotiations. If we had this process in Canada, would we be talking about the Kyoto Protocol in the same terms today?

A third area they put into place in Australia is the establishment of a joint parliamentary standing committee on treaties to consider and report to the government on tabled treaties and other related issues. This committee does in-depth analysis and synthesizes public submissions and is a barometer for public opinion.

• (1700)

Fourth, in their system there are treaty councils chaired by the prime minister, no less, which serve as an advisory form for consultations with state governments on treaties of particular sensitivity and importance to states. If we had only had this in our Kyoto process for Canada.

Finally, there is the establishment on the Internet of an Australian treaties library. I do not have time to go into the detail of what it does, but it informs parliamentarians on a regular basis of the status of all negotiations and their impact on Parliament, on the states and on the citizens.

I am certainly not advocating a direct copy of the Australian system, but it is illustrative to point out that they have modernized their system and taken into account the need for realistic, comprehensive and timely negotiations and discussions before final decisions are made.

Let us look at the Kyoto situation in Canada. When did the government advise Parliament in any way or give a role for Parliament in the Kyoto process until this resolution? How meaningful is it for Parliament, without study, without documentation, without hearing from citizens or others, to give informed and reasonable advice?

The Senate, in particular, has a role to protect the Constitution, to balance needs, opinions and regions, and it has to fairly take into account minority interests. It is being asked to perform its role by a quick debate, not even at the eleventh hour, but I would say at the eleventh — and one-half hour. Surely, this makes a mockery of good governance and the role of Parliament.

Have we really, in this debate, analyzed fully the public policy issues that need to be addressed? Have we looked at Aboriginal rights and how they may be affected by the ratification of the protocol and implementation? Do we have an implementation plan that is definitive and detailed in a way that informed conclusions can be drawn? Surely, a proper policy process should have been started immediately after the convention, including Parliament, the provinces and others.

Further, there is something seriously wrong in the government resolution that tells Parliament what it should say back to the government. Surely, this is usurping the role of Parliament. Surely, a proper and respectful resolution of the role of Parliament would have been to call on Parliament to have an informed, critical and strategic debate on the need, the issues, the cost and the implementation strategy for compliance with the Kyoto Protocol. It should have involved the people of Canada, through Parliament, in a more effective way.

One could only assume a puppet role in this resolution for the government's ventriloquist act. In conjunction with Senator Lynch-Staunton's amendment, the resolution might have called on the Senate to concur with the principle of the government ratifying the Kyoto Protocol on Climate Change. However, to call on the government to do it, to order the government, surely, is a mixing of executive capacity and parliamentary integrity and independence.

A critical question in international treaty-making for Canada is the fact that so much of what is ratified and needs implementation is in the hands of the provinces. Again, a modern treaty process would have involved the provinces giving opinions prior to the signing of a protocol early in the negotiation stage, and an implementation plan should have been hammered out long before ratification.

While there were ongoing discussions between the provinces and the federal government, it is hardly reasonable to have provinces respond to a plan that was only cobbled together in the last month. The citizens of Canada have a right to hold the provinces accountable for their implementation legislation. However, this can only be done if the federal government puts into place a process that is timely, fair and reasonable for input from the provinces.

From the Kyoto experience, we know that discussions are not sufficient. It is only when there is some concrete action being tabled that provinces will then be put in a position that they must respond and respond in good faith. If this does not occur, as has been pointed out by academics, then as a last resort, the federal government has the exclusive responsibility for ratification. I must say that not only were the provinces not aware of this ratification coming so quickly, but that many of its own ministers were unaware. This left everyone scrambling, and this is not good governance.

**The Hon. the Speaker** *pro tempore*: I regret to advise that the honourable senator's time has expired.

**Senator Andreychuk:** I would ask for leave to continue my speech.

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

**Hon. Senators:** Agreed.

**Senator Andreychuk:** One further comment about the Kyoto process that does not sit well with good modern governance is that if we pass this resolution calling upon the government to ratify, we will, at least morally, have no alternative but to accept whatever implementing legislation federally the Government of Canada places before Parliament, not to mention the fiscal expenditures. Therefore, while many have noted that there is very little consultation or room for input by Parliament now in treaty law, we will, in fact, have passed over our authority to pass enabling legislation. If we call upon the government to ratify immediately the Kyoto Protocol without knowing what kind of implementation is intended, we lose that right, as I believe we will, if we pass this resolution, and we will be in a poorer position than we are today.

Many experts say that it is very late in the process to have Parliament put into place enabling legislation because treaties are already signed and ratified. However, in this case, I believe if we pass this resolution ordering the government to ratify, we will lose our right to even comment on implementing legislation, at least morally, if not constitutionally or legally. I dare say that we may be going so far as delegating our responsibilities to the executive.

One final point is that provinces could be in violation of the Kyoto agreement, as they have the conduct of the implementation of the Kyoto agreement within provincial jurisdiction. In the past, the government has often pointed out, when there has been an omission at a provincial level, that the internal laws do not permit the Government of Canada to intervene except by way of persuasion or encouragement. The past treaties were often pious invocations with very little accountability and responsibility. The new age international treaties are much more detailed, comprehensive and binding.

One problem that has not been dealt with and is exacerbated by the fact that we do not have a modern treaty-making process to adjust to this new reality is that the Government of Canada must act in good faith, ensuring and attempting to provide implementing and enabling legislation within its jurisdiction, but it cannot encroach on the provinces. However, the Vienna Convention, as I pointed out earlier, indicates that internal law is not an excuse. How will the international community interpret any reticence by provincial premiers to place enabling legislation before their legislators? Will the federal government be scrutinized in its process and "fairness" in dealing with the provinces in assessing Canada's commitment or failure to comply? These are still unanswered questions and could easily have been avoided if good public policy practices had been put in place. For example, could the delay of no proper plan being proposed by the government well in advance of ratification be taken as federal government acting in bad faith? This is but one example of many ingenious attempts that may be made in the future to put pressure on Canada to fully comply. This is uncharted territory, and the outcome remains to be seen.

What about actions against the provinces? This is even more virgin territory. Suffice it to say, from what I know, I suspect that the point of view of Canadians will be that it will not matter whether it is provincial or federal jurisdiction, but that Canada has made an obligation that it should live by.

If we had had an updated and modernized and a truly revamped treaty-making system, then we would know who pays, how much and what benefit would be derived.

• (1710)

Instead, we are left not with a consensus-building exercise, but with citizens who have been shocked or scared into action by one side or the other. Success for the Kyoto Protocol, in the end, lies in the delivery as well as in the law itself.

How we manage the process, involve citizenry and respect the Constitution is important. With this government, it has been increasingly important that implementation be examined. The Kyoto Protocol is no different. Therefore, I believe that many citizens, if not all citizens, would accept a ratification of Kyoto if a just and fair process had been utilized.

For the Senate to accept a call to order the government to ratify, in my opinion, could be unconstitutional and certainly not a good practice for the Senate. In fact, it would set a bad precedent.

If passed, this resolution of the Senate would join other bad practices of the government. Therefore, I do not believe that the Senate, with its independence, should pass the resolution.

Honourable senators, there are two options to correct this resolution. One is to adopt the amendment of Senator Lynch-Staunton, which at least provides for a fair opportunity for provinces and others to be heard. The other option is that we ratify in principle rather than provide an order to ratify without good practices being put forward.

**The Hon. the Speaker** *pro tempore*: Would you accept questions, Senator Andreychuk?

**Senator Andreychuk:** Yes.

**Hon. Jerahmiel S. Grafstein:** I have listened very carefully to the honourable senator's comments with respect to the power of the Senate as it relates to this resolution. Would she not agree that, in effect, the resolution has no force in law; it is advisory; it is an opinion of the Senate at a particular moment, and in no way, shape or form, does it bind the Senate from very carefully scrutinizing implementing legislation?.

**Senator Andreychuk:** Honourable senators, I was trying to condense my speech. I apologize if I have not made full arguments.

I am not saying, definitively, that it is more than an advisory resolution, if you want to use those words. However, in practice, when we call upon the executive to ratify the Kyoto Protocol, without material before us, and when the Prime Minister has stated he will do so before December 31, we are simply doing it because, in our own capacities, we think that is a good idea. We have not done the critical analysis that the Senate always does. The Senate has not measured and looked at its responsibilities to Aboriginals, regions, minorities, citizens and the national interest. In other words, we have never looked at a national impact analysis of any kind.

If we give in to the pressure to ratify the Kyoto Protocol immediately, without any analysis, what will be the government's response if we dislike some part of the implementing legislation that will follow? The government is forcing us to move quickly on the Kyoto Protocol. We may still have some room to debate and to consider some of the administrative matters, but, morally, we lose the independence to examine the enabling legislation without a fettered eye.

**Senator Grafstein:** Honourable senators, I do not mean to debate this, but that is not my understanding of the power of the resolution. The power of this resolution is purely advisory. From my perspective of my rights and powers as a senator, I am in no way, shape or form censoring or restraining myself from carefully scrutinizing implementing legislation. If legislation is inconsistent with the objectives of Kyoto or if it has unintended consequences that have not been adequately addressed, this process will not bind me or any other senator from carefully scrutinizing implementing legislation.

We have done this before. We followed a similar process with respect to the NAFTA. We examined the legislation. We were told it was up or down, but clearly a number of additional comments were made with respect to it. Perhaps some of those comments were not satisfactory to some of us.

Honourable senators, I clearly take it as inappropriate that I am to assume that, having voted for this resolution, which I intend to do, I am limiting myself or abrogating my responsibilities as a senator to examine the implementation process as it relates to my particular province. My province has not taken a straightforward position on this particular legislation. That is understandable. Therefore, it frees me to examine it in the best interests of my region.

**Senator Andreychuk:** Honourable senators, there was certainly sufficient examination by the Senate of the North American Free Trade Agreement. I would suggest that the honourable senator go back and look at the records of how the Senate examined the issue throughout, and how the provinces were involved. The Senate considered the enabling legislation in light of everything else.

We are not saying that we will not examine whether ratification is good or bad, we are simply saying that the government should do it. Without analysis and information, there is no credence to our ratification. If this chamber decides that the government should ratify the Kyoto Protocol on a very superficial scanning of information, we lose the high moral ground to then tell the government that the Senate has the expertise to question the implementing legislation.

If we support ratification at this point, we are simply saying that we do not want to examine the government's ratification process because we think it is being done well.

Perhaps the honourable senator does not share my dilemma. However, I will have a lot of difficulty with supporting what the government wants done one day, and then, the next day, demanding that we be given the opportunity to closely examine every nuance of proposed legislation to determine whether the government is proceeding appropriately. Senator Grafstein may feel comfortable with that, and he may even have the opportunity to have his comfort level tested. However, I do not like this precedent being set in the Senate. I do not like that we have not had an opportunity to do the thorough type of job that we are renowned for doing, and that we have excluded the views of citizens who wanted to be heard.

Surely, we must balance rights and interests. I have heard competing interests from competing senators, but not the kind of careful consensual balancing that we as a chamber do.

I have not had the time or opportunity to reflect fully, but I simply put on the record that I am most uncomfortable with this kind of resolution. I would be comfortable in saying that, in principle, the government should proceed to ratification.

Honourable senators, it is not our responsibility to instruct the government to ratify the accord if we have not studied the issue and provided reasons in support of ratification. This is not a precedent that will lead anyone to take our second deliberation seriously when our first was so superficial.

**Senator Grafstein:** Honourable senators, I understand that what the honourable senator is suggesting — and we are in agreement — is that this places a higher onus on each individual senator to scrutinize with greater care each and every element of the implementation process, if, in fact, we have any reservations.

**Hon. Mira Spivak:** I would suggest that honourable senators look at the precedent of the Convention on Biological Diversity which was ratified without any consultation with the provinces. It was not brought to the House of Commons or to the Senate. It then took 10 years of consultation with the provinces and citizens before the implementing legislation was introduced. That is the species at risk bill.

• (1720)

We may debate what we think of that legislation, but the process certainly separated ratification from implementing legislation. The government simply ratified, but then two governments were so cautious and scrupulous about the implementing legislation that it took 10 years and unending consultation with the provinces. I am wondering whether that is a precedent.

**Senator Andreychuk:** I think it is a precedent for what I was saying we should avoid. I am saying that the treaty-making process in Canada is outdated. That applies equally to biodiversity and to Kyoto. The dilemma here is that there were consultations.

I had something to do with biodiversity as a permanent representative on the United Nations Environment Program. There were consultations and steps taken. I do not think we have time to go into the reason for the length of implementation at this point, but Kyoto graphically points out to me that we cannot continue on this route because it results in the species at risk legislation taking 10 years and Kyoto being cobbled together too quickly and not implemented properly.

It is time to take a hard look at the international treaty process. This will not be the last time we will be caught this way if we do not carefully reflect on federal-provincial responsibilities and the need for a new treaty process. I do not distinguish between the two treaties. It is a flawed process and it is time for the government to consider a new process so that we do not find ourselves in this mess again.

**Senator Spivak:** I may not have asked my question properly. Is the Honourable Senator Andreychuk suggesting that the same sort of consultation, even though it is an executive prerogative, should take place before ratification as takes place before implementing legislation? I see the two as separate. The process being suggested would involve a great deal of consultation before ratification.

**Senator Andreychuk:** I believe that in this complex world one must know what one will do. One must know what impact it will have on everyone, what the possible outcomes are, how it will be implemented, what the cost will be and what the cultural or social ramifications will be. That should be dealt with in a process long before we are embedded in international negotiations, because we know that in international consultations and negotiations we do not win everything we want. However, we should start with a blueprint. If we have to veer off the blueprint in international negotiations, we will know what we will end up with. If we have no idea where we are going, how we will implement, what it will cost or what the effect on us will be, how will we know at any given time where we are going?

We must remember that times change. The process for which I am pleading will involve everyone on a continual basis. It is the only way to build consensus, and it appears that other countries are following that process for the same reasons.

[*Translation*]

**Hon. Roch Bolduc:** Honourable senators, the senator appears to agree that this is one of the government's prerogatives. It negotiates and concludes treaties. The senator contends that we need to follow the example of Australia and submit the idea to the House within two weeks or so.

In reality, this is the equivalent of the U.S. "fast-track authorities," where the executive negotiates, and there can be no debate about it. This is part of their Constitution. No debate whatsoever. When the process is over, it gets voted upon, but when all is said and done, nothing can be changed. It is just a matter of indicating support or lack of support. My point of view is as follows.

[*English*]

**The Hon. the Speaker:** I am sorry, Senator Bolduc, but a senator is rising on a point of order.

**Hon. Eymard G. Corbin:** I believe that Senator Bolduc is questioning the senator who previously questioned Senator Andreychuk. That appears to me to be out of order. I could be wrong, but I thought he was questioning Senator Spivak.

**The Hon. the Speaker:** Senator Corbin's point is that we are now in a period where senators are asking questions of Senator Andreychuk on her speech. Senators Grafstein and Spivak were earlier questioners. Senator Corbin is quite right.

Senator Bolduc, are you putting a question to Senator Andreychuk?

**Senator Bolduc:** Yes, that is what I was doing.

**Senator Corbin:** Who are you questioning?

**Senator Bolduc:** I am asking questions of the speech she made.

[*Translation*]

If you do not want to listen to me, and do not like what I have to say, then I will take my seat. I will leave.

[*English*]

**Hon. Douglas Roche:** Honourable senators, the arguments for and against the Kyoto Protocol on Climate Change are well known, and I do not propose to take up the Senate's time with another recitation of the effects of Kyoto. However, coming from Alberta as I do, I do believe it is necessary to put my position on the record.

I pay my respects to those who oppose Kyoto, but I do not share their views. I will vote for the motion to ratify the accord. Although Kyoto is not the full answer to global warming, I believe the scientific evidence is such that without the protocol we will not be able to stop global warming.

The degradation of the environment is a principal stumbling block to sustainable development. We in the developed countries must understand our responsibilities not only to protect the environment but also to help the developing countries move forward with their own programs for economic and social development.

The Kyoto Protocol should not be seen as a punitive measure against the developed countries, but rather as a step forward in advancing the common good. I believe I am speaking for many Albertans who want Canada to play an important role in the equitable development and preservation of the planet.

For me, the principle of Kyoto is clear, but the process by which the motion arrived in the Senate is murky indeed. While there has been consultation with the provinces, the lack of a clearly defined economic program to implement Kyoto, which is of great concern to the provincial governments, concerns me. It also concerns the Leader of the Opposition, who has introduced an amendment calling for the Senate Committee of the Whole to hear from all federal, provincial and territorial government representatives who wish to appear. This is a reasonable request.

Why should the Senate, the chamber of sober second thought, not hear from experts from across the country? Why is the government so adamant in refusing this request? We are all aware of the Prime Minister's statement that he wants Kyoto ratified by the end of this year. However, Kyoto sat on the desks of the government for five years before this final rush. The amendment is reasonable and I will vote for it.

Although the process of the Kyoto ratification is not very edifying, the principle of what Kyoto is all about stands. I believe that Canada must join the 100 nations that have already ratified it.

On motion of Senator Buchanan, debate adjourned.

• (1730)

## NATIONAL ANTHEM ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Banks, for the second reading of Bill S-3, to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Spivak*).

**Hon. Mira Spivak:** Honourable senators, I am pleased to speak to Bill S-3. I will be brief because there has already been considerable debate in the last session of Parliament on the principles underlying the bill. Senators have already heard almost everything that could be said.

When the substance of the bill was presented as an inquiry, I spoke in favour of the small but significant change to our national anthem that this bill contemplates. Not all Canadians see the need to change it, but those who most want it are those who most feel excluded by the existing wording. Our country's best and brightest young women want the anthem to explicitly include everyone.

Inclusion is what underlies this bill and has been an important principle in our nation's past. It is important today and will continue to be important in our future. Language, religion, and race: none of these determine who is a Canadian and who is not a Canadian.

From our founding, we have welcomed new Canadians and celebrated the richness that results from diversity. For women, however, the struggle for inclusion took longer, whether it was in winning the vote, in gaining full legal recognition, or in achieving equity in the workplace. Outside our doors is a marvellous statute commemorating the famous *Persons* case — the case in which women, through their struggle to gain the right to be appointed to this very chamber, attained standing.

Honourable senators, it is therefore time to make a minor change in another tradition. It is time to replace the wording "thy sons" with words that clearly tell young women they are as Canadian and as important as their male counterparts. It is time to be inclusive. We have had considerable debate over the principles, and I believe it is now time to give the bill over to committee for detailed study. I hope that happens soon.

**The Hon. the Speaker:** Honourable senators, Senator Poy is rising to speak. This is her motion. I must advise honourable senators that if Senator Poy speaks now, her speech will have the effect of closing the debate.

On motion of Senator Stratton, debate adjourned.

[*Translation*]

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

SIXTH REPORT OF COMMITTEE—
DEBATE ADJOURNED

The Senate proceeded to consideration of the sixth report of the Standing Committee on Internal Economy, Budgets and Administration (*Senate Estimates 2003-04*), presented in the Senate on December 10, 2002.—(*Honourable Senator Bacon*).

**Hon. Lise Bacon:** Honourable senators, the Senate's proposed budget for 2003-04 is $67,032,050. This amount represents an increase of $3,131,200, compared to the 2002-03 Main Estimates of $63,900,850.

[*English*]

The Main Estimates were prepared taking into consideration the policies of the government announced in the Speech from the Throne, which alerted departments and agencies that they were expected to be prudent and live within their means, and went on to describe the importance of reallocating resources to the highest priorities and transform old spending to new purposes.

I believe honourable senators will agree with me that the message is clear: New requirements are expected to be funded within existing budget levels by reallocating resources. To the extent possible, this budget reflects government-wide expectations. Some internal resource reallocations have been made, even though the resource base of the Senate provides little flexibility.

In fact, 90 per cent of the budget is necessary to meet recurring but, more important, increasing expenditures. This includes the indemnities of the senators, the salaries of employees, contributions to the pension fund and the benefits plan, transportation and communication costs, and expenditures for researchers and other professional and special services. The remaining 10 per cent is required for the acquisition of machines, equipment, supplies, repairs, maintenance, and grants and contributions.

[*Translation*]

Honourable senators, I would like to briefly go over the Senate's achievements in recent months. The Senate has produced comprehensive reports on very important issues for Canadians.

[*English*]

I am thinking about the reports from the following committees: The Standing Senate Committee on Social Affairs, Science and Technology reported on the state of health care in Canada; the Standing Senate Committee on National Security and Defence reported on security preparedness in Canada and on funding of the military; a special Senate committee reported on illegal drugs; another special Senate committee undertook an extensive pre-study of Bill C-36, the government's anti-terrorism bill; and the Standing Senate Committee on Energy, the Environment and Natural Resources reported on Canada's nuclear reactors.

[*Translation*]

These reports and other Senate committee reports have helped improve the quality of debate on these important issues, and they have ensured that the Senate receives all the attention that it deserves.

[*English*]

In effect, the level of activity in the Senate is high. The Senate sat more often than the majority of all provincial legislatures, and although the Senate sat 80 days, its committees sat for 120 days. Furthermore, during the last fiscal year, our work in committees has increased considerably, over and above our previous five-year average. Committees held 544 meetings, which represents an increase of 33 per cent, and sat for 1,117 hours in committee meetings, representing an increase of 39 per cent. We should all be proud of our track record.

[*Translation*]

Honourable senators, the situation we face was presented to you and, since the appropriate information was provided, it is recommended that the Senate propose an increase of $3,131,200, which will be used in full to fund non-discretionary needs that cannot be funded internally.

[*English*]

However, in light of government-wide restraint measures, many demands will remain unfunded. I commend the administration for having met this challenge of restraint and constraint, and I hope my fellow senators will also meet this challenge of restraint and constraint.

Honourable senators, in order to allow us to pursue our valuable work, I ask you to support the adoption of this report.

• (1740)

**Hon. Ione Christensen:** I have a question for the chairman, but before I pose it, I would commend the committee for the hard work it did and its excellent report.

Turning to the committees section of the budget, the proposal is for a $65,000 increase, which is 0.1 per cent, yet we recommend that there be three new committees. We now have 17 committees and there has been discussion of, and there certainly is a need for, an additional committee on culture and heritage.

It seems that we are not even keeping pace with what all of our committees need. How did you arrive at this amount of $65,000 to meet the needs of our committees?

Our committees not only do an excellent job in reviewing legislation, they also do excellent work on the studies that are referred to them.

**Senator Bacon:** The $65,000 amount is for parliamentary associations, not for committees.

**Senator Christensen:** Is it not for committees and parliamentary associations?

**Senator Bacon:** No, it is just for associations.

**Hon. Tommy Banks:** Honourable senators, I have a question for the chair, Senator Bacon. I would reiterate what Senator Christensen has just said. I think the toughest job here is Senator Bacon's job, because she has all honourable senators howling at her heels for money and complaining when they do not get it.

However, as Senator Bacon has said, the highest profile and greatest credit that is now coming to the Senate comes largely as a result of the work of its committees. There is no substantive increase in the committee budget. In fact, I think there is no increase for the committee budget to speak of in this motion.

As the honourable senator said, because of the constraints she has seen, many imperatives and demands will remain unfunded.

The chair carefully explained the undertaking to exercise constraint in the Speech from the Throne. Were other considerations taken into account in arriving at this increase, which I understand to be on the order of 4.9 per cent, that is to say, from $63,900 to $67,000 and $32,000? Would it not be as prudent now as it would be at any other time to try to get the Senate caught up in respect of its committee undertakings?

I am wondering whether the senator heard said, as I did, in national caucus this week —

**Senator Stratton:** Whoops, careful.

**Senator Banks:** I beg your pardon. Obviously she did not. Perhaps she should read *The Globe and Mail*.

**Senator Lynch-Staunton:** What did she not say?

**Senator Banks:** I have reason to believe that the other place, in respect of its request for money for committees to do their work, will find favour when they make those requests, and that when the members of the other place need to find more money to do their research, they will find favour in making that request.

The amount of money that the other place deals with in respect its base budget has been aggrandized over the years by the addition of certain capital expenses, which, once they have been added, remain in the base budget. The disparity of the proportion of the work this place and the other place does is forming a widening gap. As in the case of salary proposals, there is no right time to do this — no time at which it would be better or more

convenient or less obvious than any other. It is my contention that it is precisely in the committee work of the Senate, not only in those committees which the honourable senator correctly named, but in others as well, where some of the most important work of the Senate is done. It is work that has undoubtedly raised the positive profile of the Senate substantially in the last few years.

Were those things taken into account by the honourable senator and her committee in arriving at a budget which contains virtually no increase in the expenditures for committee work?

This brings me to my second question, which is very specific. Section D of the information provided to us last night refers to an amount of $700,000 needed to fund an increase in research carried out by senators' offices. Does that mean $7,000, give or take a nickel, to each of us as an increase to our global office budgets?

**Senator Bacon:** Honourable senators, I must say that usually the amounts granted to various committees at the beginning of a fiscal year are not totally spent. About 70 per cent of the committee budgets is spent by the end of the year, so that leaves 30 per cent unspent. That is why we have requested that there be a reallocation to those committees who require more money to complete their studies.

I will have to take notice of the honourable senator's second question and provide a proper answer as soon as possible.

I must add that I do not compare the Senate to the House of Commons. I believe that we do the best job we can within our means, as we have done before. We must be commended for the jobs done by our various committees and the reports they have produced.

I think we can work well here within our means. This next year will be a difficult year for everyone and I hope that people will understand when we reject their requests for more money and we spend the money parsimoniously.

**The Hon. the Speaker:** The 15 minutes allocated to Senator Bacon has expired.

**Hon. John Lynch-Staunton (Leader of the Opposition):** I had intended to speak but I will ask the honourable senator to reflect on my suggestions.

[*Translation*]

I would like to congratulate the Chair of the committee, or perhaps offer her my condolences, for having accepted to chair the Standing Senate Committee on Internal Economy, Budgets and Administration. It is not the easiest committee to chair, and I congratulate all of the members of the committee who accepted the work in the past and those who have agreed to work with the Honourable Senator Bacon. I believe that they are on the right track.

[*English*]

I have a couple of comments pertaining to the budget. I may be repeating what I have said here before. I hope the committee will be more sympathetic to what had been said by me, as well as by others, which is that we should instil a little discipline in the budgetary process as it relates to committees. We now have so many proposals for special studies, yet we have a very limited budget.

• (1750)

We feel that we have to answer them all and, as a result, we will disappoint a few of them. We will have to be more disciplined and perhaps even harsh. My suggestion would be that, prior to every fiscal year, committees that want to do a study within the following fiscal year, not beyond it, make their proposals to the Internal Economy Committee. Then, either through a lottery or by decision of the committee, only one, two or three would be selected. As it stands currently, we may have as many as seven studies running at the same time; and some of them by the same committee. We are stretching our resources and our budget. Many of these committees ask to report one to three years on. Thus, we are committing resources of this institution far into the future when we do not know whether they will all be available.

My main suggestion is that before a committee requests a term of reference from this chamber, it go before the Internal Economy Committee to state its budget, from which it cannot deviate. Once it has the approval of that committee, it may then come to the chamber for the term of reference. In that way, the Senate would know the exact cost, timing and purpose. As it is now, we approve the terms of reference first. For example, Senator Day has a proposal for a study on media. I will vote against it because I do not have enough information about the costs of that study between now and next March; and I have no idea how much it will cost the following year. Even if I did know those figures, I do not know whether our budget can absorb the cost. For that reason alone, despite the validity of the study, I, for one, cannot support it. I would like to see how applications for terms of reference are handled with the monetary factor given more importance prior to approval than after approval.

Honourable senators, I am also concerned that more and more committees are asking to hire communications consultants, editors and outside researchers, at different rates, although I will stay away from the subject of rates. There was a time when we could satisfy those requirements in-house, but more and more we seem to be going outside the Senate for those services. The Library of Parliament has always been a source of extraordinary research and still is, but we also have a communications department. I am not familiar with what it does, but I would like to see more and more of these so-called consultants on the permanent staff list, with familiar knowledge of what the Senate is all about and how the committee system works. In that way we would be able to send our message out on a constant basis.

Right now, our message only comes out when a report is ready to be tabled and then the communications consultants and the media are hired. We have a nine-day wonder and then everything fades away again. The knowledge that goes into the work that leads to the result is lacking in our committee work — not the knowledge of the result. I would like to see a system set up whereby we could inform the public on a constant basis about the operations of our committees and not just about the results of certain studies.

Finally, there is one particular item that was not proposed because of the lack of funds: "Implementation of an Armed Component." I will read the proposal:

> As approved by the Committee on Internal Economy, Budgets and Administration in June 2000 and October 2001, the Protective Service has been authorized to create an armed component.

That is a radical change in the security in this place. While the Internal Economy Committee supports this proposal, I hope that nothing further will be done until all members of the Senate are asked for their opinion. This suggestion is far from being unanimous. I am open-minded on this matter.

[*Translation*]

In my caucus, opinion is divided. I do not know about the other side.

[*English*]

The point is that on the agenda for Internal Economy Committee meeting the other day, this item was indicated not for this year but as a possibility for a future year.

**Senator Bacon:** We have not made a firm decision yet on arming Senate guards. We are discussing security, but no decision has yet been made on that point.

In respect of the remaining items, I welcome the suggestions by the Leader of the Opposition. I must say that we had a pretty good discussion last Tuesday on modernizing the way in which we work. I intend to work closely with the members of the Rules Committee to change the rules such that committee chairs present to us their proposals for funding before they seek terms of reference from the chamber. If we do not have the funds, committees will simply have to wait another year. This is part of our ongoing discussion at the committee level.

**Senator Lynch-Staunton:** Note 13 in the estimates portion of the agenda states:

> Consequently, armed plain-clothes personnel will be deployed at all Senate main entrances, public committee hearings, scanning posts and will provide for VIP escorts within the Senate precinct.

If it is a suggestion, that is one thing, but after reading this agenda, it is more than a suggestion; it is a decision already taken by the Internal Economy Committee.

**Senator Banks:** Honourable senators, I noticed that the opposition was referring to several pieces of paper, which I have not seen. What are those papers? Where did they come from? Could I have one?

**Senator Lynch Staunton:** Honourable senators, the paper to which I am referring is the agenda of the Internal Economy Committee meeting for December 10, 2002. Perhaps I am violating a confidence, but the point is that the committee has approved armed guards. If it has not approved, why are the figures in a document, which perhaps I should not be reading. I apologize but I do not see "confidential" written on the document.

**Senator Banks:** Honourable senators, I would like to ask the Leader of the Opposition if there are Senate committee documents that are secret to other senators.

**Senator Lynch-Staunton:** Senator Banks, any senator may attend any committee and receive all the documents there, whether or not he or she is a member of that committee.

**Senator Banks:** If I were to request that document from a committee chair, would I be entitled to receive it?

**Senator Lynch-Staunton:** The deputy leaders and leaders on both sides are automatically ex officio members, so they may automatically receive the agenda. A member of this place who is not a member of the committee has to go to the committee, if the document is confidential. This one is noted "*in camera,*" but it does not say "confidential." If it is a public document, we are all entitled to receive it.

**Hon. Joan Fraser:** I have a question for the Leader of the Opposition. I have enormous sympathy with his views that we should examine our means before we make decisions. I was surprised when I first came to the Senate to realize how the system works. However, as we have seen with committee work over the past year, it seems to work remarkably effectively.

I was disappointed to learn that the Honourable Leader of the Opposition will vote against the media study simply because, as I understood him to say, the Transport Committee is following the rules as they now exist: obtain an order of reference from the Senate; have the committee approve a budget; and go before the Internal Economy Committee to obtain the funding. I am delighted to hear Senator Bacon say that she would like to adjust the system, but that takes time, too. Did I hear you wrong? Were you saying we should not be following the rules in the Transport Committee?

• (1800)

**The Hon. the Speaker:** Honourable senators, it is six o'clock. Is it your pleasure that I not see the clock?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I would give leave to conclude this item.

**The Hon. the Speaker:** Leave to not see the clock is being given conditionally, and that is to conclude the item we are on. Is this the agreement of the chamber?

**Hon. Senators:** Agreed.

**Senator Lynch-Staunton:** To answer Senator Fraser, I understand from the discussions on the budget that we do not have funds for additional studies or anything out of the ordinary for this fiscal year. Also, when it comes time to discuss the actual proposal, I will have a great many questions on how the proposal is worded, but that is a debate for another time. My discussion now is on priorities and the availability of funds, and I gather that there are no more funds available for special studies.

**The Hon. the Speaker:** Do you have questions, Senator Stratton?

**Hon. Terry Stratton:** No, mine is a brief statement concerning the budget.

**The Hon. the Speaker:** Senator LaPierre, a question?

**Hon. Laurier L. LaPierre:** I wish to participate in the debate. Is it possible, or is it over now?

**The Hon. the Speaker:** We will get everyone's views.

**Hon. E. Leo Kolber:** Am I allowed to ask for leave to move the motions standing in my name?

**The Hon. the Speaker:** We could come to that. It is rather unusual to have conditional leave, but we have rulings stating that it is appropriate to do so, provided the request for leave is clear and understood.

My understanding of Senator Kinsella's response to the question when leave was asked not to see the clock is that we not see the clock to complete this item. Is that correct, Senator Kinsella?

**Senator Kinsella:** That is what I said, honourable senators, but only because we had received a courtesy from the government side, which was well appreciated, when we had our Christmas party, and we are trying to facilitate a return of the courtesy. If my suggestion is problematic, I would be happy to withdraw the condition. I am in the hands of the Deputy Leader of the Government.

[*Translation*]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I am caught between a rock and a hard place. There are certain items, including committee budgets, which we must deal with and which have been on the Order Paper for quite some time. Some senators are asking if we will sit late. I would like to finish with the item currently being considered and finish with the most important work as quickly as possible. I hope to have your cooperation. We will have the same problem again tomorrow. I move that we not see the clock and finish as early as possible.

**Senator LaPierre:** Honourable senators, does this mean that we must get through all of the Orders of the Day? Must we get through every page of the Orders of the Day? We are now on page 11, and there are 22 pages. Can we debate every item on these pages if we wish? Why would other senators not be given the right to speak?

[*English*]

**The Hon. the Speaker:** The question highlights one of the difficulties of not having a "yes" or "no" answer. The exchange between the two senators most responsible for house business, namely the deputy leaders, seems to be an understanding of, for instance, the problem of Senator Kolber, who has been waiting to move his motions.

There is agreement to proceed — that is, not to see the clock — to deal with the item that senators are debating. However, I am not too clear on how we would get through the rest of the Order Paper without going through it item by item. Perhaps it would be helpful to the leadership if senators who intend to address items on the rest of the Order Paper were to indicate it now so that they know how long it will take.

**Hon. Herbert O. Sparrow:** I thought the Deputy Leader of the Opposition agreed to give leave to not see the clock for that one item of business. I believe that the Senate agreed. Now we are changing that decision, for whatever reason, and it may be an important reason. His Honour has now asked senators to indicate who wishes to speak to the remaining Order Paper items. I do not believe that is in any rules of this chamber and I will not grant leave for that. However, if we were to extend the time, then the time would have to be extended to anyone wishing to speak. That has always been the case.

**The Hon. the Speaker:** I guess that answers the question, honourable senators. Leave is granted only for the item currently under discussion. Senator Sparrow has resolved the issue for us.

**Senator Kinsella:** Agreed.

**Hon. Eymard G. Corbin:** I thought that Senator Kinsella had backed up a bit. We all heard Senator Kolber's request for leave. I am not sure leave was granted, but that seems to be what Senator Robichaud called "an important matter." Why would His Honour not seek leave to allow Senator Kolber to move his motions at this time, following which we could perhaps agree to stand all remaining items?

**The Hon. the Speaker:** I would like to accommodate Senator Corbin's request, but I have a senator saying that either we give leave or we do not give leave, if I understand Senator Sparrow correctly. Leave is only granted without a dissenting voice and I hear a dissenting voice.

**Senator Corbin:** Will His Honour put the question again?

**The Hon. the Speaker:** Yes. My understanding, and Senator Sparrow can clarify, is that there is objection to the Speaker interfering in the business of the house in terms of trying to assess how much more business there is to do. That is not provided for anywhere in the rules, and he is quite correct. It would be improper for me to participate any further.

Senator Sparrow is one member of this house. If his answer is no — and I understand that it is — to debating more than this item, then that is a dissenting voice. That ends it.

I think I understand Senator Sparrow clearly, do I not?

**Senator Sparrow:** The matter may be resolved if, in turn, Senator Kolber would ask for leave to present his motion. I would give leave for that one motion, if the Deputy Leader of the Opposition has retracted his vote, which I do not think he has the right to do, but I will give him that right at this particular time.

**The Hon. the Speaker:** I wonder for sake of certainty, honourable senators, if we could finish the item we are on and not see the clock. Then when we have finished the item we are on, I will rise again to see if there is leave to not see the clock again. Provided there is no dissenting voice, perhaps Senator Kolber could then rise to ask for leave not to see the clock to deal with his items. Is leave granted to proceed in that fashion?

**Senator LaPierre:** I would like to finish this debate by moving the adjournment of this item in my name. I wish to speak to it. I am befuddled by all of these rules and regulations. I do not think it is very fair that we should choose who will speak and who will not speak.

• (1810)

**An Hon. Senator:** Out of order!

**Senator LaPierre:** What is out of order? My sitting down? I am standing up now. I repeat what I said: I would move the adjournment of this item in my name.

**The Hon. the Speaker:** It is moved by the Honourable Senator LaPierre, seconded by the Honourable Senator Hubley, that further debate be adjourned to the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motion to adjourn please say "yea"?

**Some Hon. Senators:** Yea.

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

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe it is even, honourable senators. I must ask again: Will those in favour of the motion to adjourn please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those opposed to the motion to adjourn please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** I believe the "yeas" have it.

Motion agreed to, on division.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, we are now at a point where you may wish to ask for leave not to see the clock in order to deal with a further item.

**Hon. E. Leo Kolber:** I would ask permission not to see the clock for my three motions.

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

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** There may not be leave.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** I agree to give leave. However, it must be understood that the other items will be stood and retain their place on the Order Paper. They should not be subject to the clock that counts the days those items have been on the Order Paper.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

## BANKING, TRADE AND COMMERCE

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

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Banking, Trade and Commerce (budget—study on the domestic and International Financial System) presented in the Senate on December 9, 2002.—(*Honourable Senator Kolber*).

**Hon. E. Leo Kolber** moved the adoption of the report.

Motion agreed to and report adopted.

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

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Banking, Trade and Commerce (budget—study on the Bankruptcy and Insolvency Act) presented in the Senate on December 9, 2002.—(*Honourable Senator Kolber*).

**Hon. E. Leo Kolber** moved the adoption of the report.

Motion agreed to and report adopted.

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

The Senate proceeded to consideration of the fifth report of the Standing Senate Committee on Banking, Trade and Commerce (budget—study on the public interest implications for large bank mergers) presented in the Senate on December 9, 2002.—(*Honourable Senator Kolber*).

**Hon. E. Leo Kolber** moved the adoption of the report.

Motion agreed to and report adopted.

## BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, it being six o'clock, in accordance with the *Rules of the Senate of Canada*, the Senate is automatically adjourned, as I understand it.

[*Translation*]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate to defer until the next sitting of the Senate all items that have not been considered, I move that the Senate do now adjourn.

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

**Hon. senators:** Agreed.

Motion agreed to.

The Senate adjourned until Thursday, December 12, 2002, at 1:30 p.m.

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