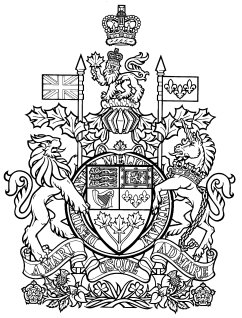

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OFFICIAL REPORT
(HANSARD)

Tuesday, May 27, 2003

THE HONOURABLE DAN HAYS
SPEAKER

CONTENTS

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THE SENATE

Tuesday, May 27, 2003

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

Prayers.

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

Hon. Gerald J. Comeau: Honourable senators, pursuant to rule 43(3), I have given earlier notice to the clerk that I intend to raise today a question of privilege arising from the unauthorized disclosure of a confidential draft report of the Standing Senate Committee on Fisheries and Oceans.

[*Translation*]

When the Senate invites me to do so later on today, I will summarize the events and indicate the steps we intend to take.

[*English*]

PROTECTING CANADIAN DEMOCRACY: THE SENATE YOU NEVER KNEW

BOOK LAUNCH

Hon. Serge Joyal: Honourable senators, it is my pleasure today to report, on behalf of Honourable Senators Lowell Murray and Michael Pitfield, that, after so many months and years of labouring, the result of our work has finally given birth to a book, in both official languages, entitled: *Protecting Canadian Democracy: The Senate You Never Knew*.

Hon. Senators: Hear, hear!

Senator Joyal: This has been a non-partisan endeavour, Senator Lowell Murray having contributed with his original personal style and Senator Pitfield having written the foreword of the book. The book is co-published by McGill-Queen's University Press and the Canadian Centre for Management Development. Copyrights have been handled through the Canadian Centre for Management Development, so none of us, of course, will draw any income, royalties or copyrights from this book.

Some Hon. Senators: Oh, oh!

Senator Joyal: On the other hand, today we must thank the seven learned Canadian professors who contributed to this book, professors drawn from the Universities of Manitoba, Saskatchewan, McMaster, Queen's and, of course, l'École nationale d'administration publique in Quebec.

Honourable senators, this book is important because many of you supported the initiative. Some of you have given us advice — for example, former Senator John B. Stewart from Nova Scotia. Throughout the process, Senators Grafstein, Pitfield and Murray have had the opportunity to contribute to the content of the book.

I will end by quoting from the conclusion of the book. This book is about an institution, an institution that embodies the federal principle, a Senate that is much different than its political caricature. Let me remind you of its essential conclusion. The Senate is a complementary chamber to the House of Commons. It is an essential part of our parliamentary architecture. As an integral component of that system, it has a unique role and function. The conclusion reads, in part, at page 307:

> Earnest and well-meaning attempts to reform the Senate are to be commended — but they should not serve as the pretence for weakening the constitutional protection of sectional interests and of minority and human rights built into our legislative process. The Fathers of Confederation designed our system of government to reflect a particular set of values. Enshrined in our Constitution is the expression of fundamental humanist principles: the recognition and valorization of the rights of linguistic and cultural minorities; the affirmation, rather than assimilation, of regional identities; and, more recently, the paramountcy of human rights and freedoms over government decisions and legislation.

Honourable senators, with great pride, I thank all of you and invite you, at the adjournment of our sitting this afternoon, to the launch of this book, a copy of which will be made available to you in the language of your choice.

JUSTICE

CRIMINAL CODE LOOPHOLE—
HATE CRIMES BASED ON NATIONAL ORIGIN

Hon. Gerry St. Germain: Honourable senators, in Canada we have long been proud of our freedom of speech, of our ability to express ourselves without fear of being censored because someone or some group disagrees with the views we are expressing.

We, as Canadians, have also understood that with those privileges come certain responsibilities. Most important is the responsibility we have to avoid publicly speaking out in a way that might incite hatred. We have proudly accepted limits on our freedom of expression in the form of criminal laws aimed at preventing the worst discrimination — the incitement of hatred against certain people.

Section 319 of the Criminal Code makes it a serious offence to communicate statements in a public place that incite hatred against people defined by their colour, race, religion or ethnic origin. These protections do not go far enough, obviously, honourable senators. A member in the other place has introduced a private member's bill that proposes to amend the Criminal Code to expand the definition of identifiable cultural groups in relation to the area of hate propaganda. The member in the other place proposes, including those distinguished by their sexual orientation, to ensure they are protected as an identifiable group. Another identifiable group must be protected, honourable senators, and that is people who can be identified by their national origin.

The Criminal Code offers no protection to those who may be singled out in a hateful, verbal attack merely because they are citizens of a particular nation. This loophole has real implications; it allows hate-mongers to incite hatred against citizens of other countries.

One clear example is an incident that occurred two years ago, shortly after the tragic events of September 11, 2001. The former Chair of the National Action Committee on the Status of Women launched into a vicious and hateful attack against Americans at a public meeting here in Ottawa. That incident was investigated by the Ottawa Police as a possible hate crimes offence. Given the loophole in the Criminal Code, where national origin is not included in the definition of identifiable groups, the horribly malicious and venomous statements of this vicious critic went without consequence.

In fact, honourable senators, some misguided people jumped to her defence in the name of free speech. They ignored the fact that, had this person made the same statements against persons who could be identified by their racial or ethnic origins, she would have been charged with a hate crime.

• (1410)

Our good friends in the United States of America certainly did not deserve to be treated in such a horrible manner. They, like all citizens of the world, deserve the same protections we offer people who might be defined by their race, colour, ethnic origin or religion. Hate-mongers should not be allowed to incite hatred against people based on their country of origin.

Honourable senators, section 318 of the Criminal Code should be amended to protect our American friends and others from hateful behaviour. I call upon the Government of Canada to rectify this deficiency in the hate crime laws.

[*Translation*]

QUEBEC

SAINT-LÉONARD— LEONARDO DA VINCI COMMUNITY CENTRE

Hon. Marisa Ferretti Barth: Honourable senators, I would like to take a few minutes to speak to you about a very ambitious project, begun several years ago, which saw the light of day last year. The Leonardo da Vinci Centre, located in Saint-Léonard, will be one year old this month.

This long-awaited project was a collaborative effort by the entire Italian community, through its contributions and the dogged efforts of the trustees of the Fondation communautaire canadienne-italienne du Québec.

The Leonardo da Vinci Centre is a multi-functional building, housing, under a single roof, a number of cultural, sports and community activities. These include a theatre inspired by Milan's La Scala, a piazza for enjoying an espresso in a Latin ambiance, a bocce court, a sports club, a chapel, an art gallery, a day care centre, a training and meeting space, a youth centre, an administrative centre and a municipal court.

With all these activities, the Leonardo da Vinci Centre is above all a lively, friendly and fun space, where communities and generations can meet and share the same passions.

Honourable senators, I would like to stress the importance of this community centre, inspired by the master of the Renaissance, Leonardo da Vinci, sculptor, painter, architect, engineer and scientist. His love of learning and his numerous masterpieces left their mark on his own era and are a precious legacy for the world community.

The Leonardo da Vinci Centre represents a great accomplishment for the entire Italian community and will, I am sure, help communicate Italian culture. I am very proud of this achievement, which proves that, with determination and perseverance, and a sprinkling of Latin passion, all things are possible.

[*English*]

AGRICULTURE

ALBERTA—CASE OF BOVINE SPONGIFORM ENCEPHALOPATHY

Hon. Joyce Fairbairn: Honourable senators, I wish to take the first opportunity, on our return from the parliamentary break, to share with colleagues the concerns and the courage of all of those in my province of Alberta where lives have been touched by the events surrounding the discovery of one cow suffering from bovine spongiform encephalopathy, also known as mad cow disease.

Although this animal did not enter the food chain, it has caused the depopulation of more than one herd, the quarantine of animals on 17 farms — 12 in Alberta, two in Saskatchewan and three in British Columbia. This single case has closed our border for beef exports to the United States, with similar instructions to other partners, which is clearly a devastating blow to the cattle industry in Canada and all business and industries related to it.

Underlying these actions is the fact that the animal science system in Canada, through the Canadian Food Inspection Agency and its provincial partners, is clearly working. As well, our reputation for excellence in animal identification has been evident in the backward and forward tracking system that is tracing the history of the single cow. The very fact of the quarantines themselves underlines the protection our system offers while testing is done.

Honourable senators, this country has been tremendously well served through the cooperation, and indeed friendship, between two dedicated agriculture ministers: Lyle Vanclief on the federal side, and his counterpart, Shirley McLellan of Alberta. Others have been involved as the situation has developed. They have all been upright, honest and dedicated in their efforts to set a tone of cooperation and determination for success on this tremendously difficult and dangerous issue.

We have also had quick and helpful support from the United States, Britain and other trading partners. We have had very responsive cooperation from the farmers involved.

Without doubt, none of us can truly imagine the anguish of individuals losing a herd, closing empty auction houses, seeing packing plants shut down and feeding stations overrun with animals and no place to send them. The farmers directly involved will receive compensation for lost animals.

I hope that, together, governments will find ways to assist those whose livelihoods have been abruptly halted through circumstances beyond their control. I say this from the heart because many of these individuals, families and businesses reside in southern Alberta.

I know all of us would wish a swift and thorough conclusion to this nightmare for all Canadians, wherever they live and work, and for the continued strength of our nation.

ROUTINE PROCEEDINGS

THE ESTIMATES, 2003-04

SECOND INTERIM REPORT OF NATIONAL FINANCE COMMITTEE PRESENTED

Hon. Lowell Murray: Honourable senators, I have the honour to present the sixth report of the Standing Senate Committee on National Finance, which deals with the 2003-04 Estimates, second interim report.

(For text of the report, see today's Journals of the Senate, *p. 854.)*

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

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

SCRUTINY OF REGULATIONS

JOINT COMMITTEE AUTHORIZED TO PERMIT ELECTRONIC COVERAGE

Hon. Wilfred P. Moore: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

That the Standing Joint Committee for the Scrutiny of Regulations be authorized to permit coverage by electronic media of its public proceedings on Thursday, May 29, 2003 with the least possible disruption of its hearings.

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

Hon. Senators: Agreed.

Motion agreed to.

• (1420)

ABORIGINAL PEOPLES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF ISSUES AFFECTING ABORIGINAL YOUTH

Hon. Thelma J. Chalifoux: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That notwithstanding the Order of the Senate adopted on October 29, 2002, the date for the final report by the Standing Senate Committee on Aboriginal Peoples in its study of issues affecting urban Aboriginal youth be extended from June 27, 2003, to October 30, 2003.

QUESTION PERIOD

AGRICULTURE

BOVINE SPONGIFORM ENCEPHALOPATHY— UNITED STATES TRADE RESTRICTIONS

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. It pertains to the investigation process in which the Canadian Food Inspection Agency is engaged in the case of BSE that was recently discovered in a cow in Alberta. As we have learned in press reports on the issue, the United States has representatives who are also involved in the process to determine the origins of the case of BSE in Alberta. The Canada Beef Export Federation is saying that the United States wants the federal government to meet key conditions, including the tracking and killing of the diseased cow's offspring, as well as tracing animals that may have been exposed to feed containing products from the BSE-infected cow.

Could the Leader of the Government in the Senate tell us what conditions must be met by Canada before the Americans are ready to certify our beef and beef products as safe for export to the United States of America? Has the American government communicated this information to us and do the Americans also want assurances about the Canadian beef regulatory system?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question this afternoon. It is important to note that Canada has one of the best beef-tracking systems in the world. In particular, it is somewhat better than what exists south of the border. To answer the honourable senator's question, that is exactly what the governments, both provincial and federal, are doing at the present time. That is why 17 herds have been quarantined and why one herd has been completely destroyed. Tests have come back to indicate that only that one cow was infected.

I understand that another herd will be destroyed, either today or tomorrow, and that those cows will also be tested. The authorities are testing forward and they are testing backward and tracing both. For example, we know that the BSE-infected cow lived on a number of farms, which is why those farms have been quarantined. Officials are now examining where that cow's offspring have gone. Those cows are being traced, which is why additional farms have had their cattle quarantined.

The honourable senator is quite correct that the Americans have sent individuals, at our request, because the most important thing for us to do, as quickly and as safely as possible, is to reopen the border between Canada and the United States, as 80 per cent of our beef exports go to the United States. Clearly, we will meet the standards that they set, wherever those standards are reasonable.

Senator Oliver: Can the honourable leader give assurances to honourable senators here today to review the ongoing measures the Government of Canada is taking to communicate to our trading partners in the United States of America the safety of our beef and the status of the investigation into the origin of the BSE that was discovered in Alberta?

Finally, can the minister comment on the common practice of using the remnants of sick cows as feed for non-ruminant animals such as chickens, dogs and cats? As there is the possibility that such feed could make its way back into the food chain of ruminant animals, will the government re-evaluate this practice?

Senator Carstairs: The honourable senator's first question is readily answered. Yesterday, I met with the Minister of Agriculture for a briefing. He implied that he and his counterpart in the United States are now joined at the hip. They have exchanged cell phone numbers and are in conversation on a daily basis. In that way, there will be no breakdown in communications. It is important, as well, to note that it was the Canadian government that informed the American government as to what was happening in this case.

With regard to the use of ruminant animals as feed, which the honourable senator knows is restricted to non-ruminant animals, Britain is the only country in the world that does not permit that practice. Once we get to the bottom of this matter, the policy of using those remnants to feed chickens, pigs, dogs and cats will also have to be evaluated.

HEALTH

BOVINE SPONGIFORM ENCEPHALOPATHY— IMPLEMENTATION OF EUROPEAN UNION RECOMMENDATIONS

Hon. Mira Spivak: Honourable senators, several years ago I asked a question in the Senate about whether the government was heeding European Union recommendations, very specific to Canada, to prevent BSE. The EU scientists examined our prevention methods and found that they should and could be improved. They made a number of recommendations in a July 2000 report. They indicated that we should stop rendering specific cattle organs, such as the brain and the spinal cord, that carry the highest risk of transmitting mad cow disease; that we should stop rendering all fallen stock or diseased animals; that we should require our rendering plants to use better processes with a better potential to deactivate BSE; that we should improve compliance with the ban on feeding the remnants of ruminant animals to other ruminant animals, which the government has said has been in place since 1997; and that we should deal with the issue of the potential cross-contamination in 11 of our 13 rendering plants, about 600 feed mills, and thousands of trucks — wherever cattle feed and feed products are not segregated from pig or poultry feed.

The government's response several years ago — I do not want to quote it — was vague and basically said no. In other words, it would not look at the EU recommendations.

In May 2000, two years ago, the government did admit that Health Canada was conducting a scientific risk assessment on the use of brains and the spinal cords of Canadian cattle. Could the Leader of the Government tell us, today, the results of that risk assessment and whether the government has adopted any of the reasonable measures recommended by the EU committee three years ago?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can tell the honourable senator that rendering plants conduct an examination for brain and spinal cord parts. However, this examination is done by sight. There is apparently a new testing mechanism to identify such remnants, and the government is seriously considering instituting that test nationwide in Canada to be able to know for sure whether there are brain or spinal cord remnants left in the feed.

This is a very important issue. Brain and spinal cord remnants, as the honourable senator knows but I suspect other honourable senators do not, can aid the transmission of BSE. That is why the government is examining it.

I do not have information with regard to the results of the risk assessment, but I will obtain it for the honourable senator.

Senator Spivak: Researchers are looking at these brains and spinal cords, but the department has not yet banned the use of them, as was recommended. What about the other recommendations, such as not rendering fallen stock or diseased animals, cross-contamination and improved compliance? Does the Leader of the Government in the Senate know whether any of the measures recommended three years ago were implemented or are being considered? What is their status?

• (1430)

Senator Carstairs: Honourable senators, the senator is right when she says they have not been banned but, if there are brain and spinal cord parts, they are removed so that they, in fact, do not end up in feed. However, as I have indicated, only a visual test is conducted. Apparently, however, the science has progressed to the extent that a physical test of the rendered materials can determine whether, in fact, any brain and spinal cord parts are present. That is what is being considered at the present time.

As to the other recommendations made by the EU, to date they have not been implemented because they were not considered necessary to be implemented in this country. However, in light of what has happened, clearly, all necessary re-evaluation will have to take place now.

[*Translation*]

AGRICULTURE AND AGRI-FOOD

BOVINE SPONGIFORM ENCEPHALOPATHY— COMPENSATION TO PROVINCE INDIRECTLY AFFECTED

Hon. Jean-Claude Rivest: Honourable senators, when the government considers the compensation plan for producers suffering from this unfortunate incident, will it take into consideration not only the provinces directly affected by this situation but also those provinces indirectly affected? The Union des producteurs agricoles du Québec, for one, is deeply concerned because, since this situation began, all beef cattle transactions have been suspended. Every delay in this sector causes considerable damage to all producers. The Maritime provinces and Ontario, among others, certainly share this concern.

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Senator Rivest has asked a very important question. Although it was a cow in Alberta that was diagnosed with BSE, the fact that the ban has been imposed by the United States, where 80 per cent of our exports go, and by a number of other countries where, quite frankly, it would not have the same economic impact, not only affects those cattle producers in the province of Alberta, it also affects cattle producers across the country.

At the outset, all honourable senators should recognize that the farmer whose cattle were slaughtered is covered up to a maximum of $2500 a head. A cow is examined for the purposes of determining its value. In other words, a cow is given a valuation prior to being slaughtered. A calf is obviously less valuable than a full-grown cow. Those who have lost animals will be compensated in accordance with the established value.

The government is examining the issue of how we will respond to assist other farmers who may be caught in this very difficult situation. Much will depend on the length of the ban. If the ban is short-lived, the loss will be quite minimal. If, however, the ban goes on for an extended period of time, which we hope will not happen, serious compensation issues will have to be examined.

HEALTH

SEVERE ACUTE RESPIRATORY SYNDROME— RESPONSE TO NEW OUTBREAK

Hon. Wilbert J. Keon: Honourable senators, unfortunately it has been reported that there is a resurgence of SARS cases in Toronto-area hospitals, namely, North York General Hospital, St. John's Rehabilitation Hospital, Scarborough Hospital and, I understand, others are being reported today.

Could the Leader of the Government in the Senate tell us whether new actions have been undertaken to expediently address this present situation, or whether the previous procedures that were in place prior to us having thought the problem was under control have been re-instituted?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator has raised the issue that we all thought had been brought to a successful conclusion. Until the announcement of the most recent cases, there were only seven SARS patients left in Toronto hospitals. We now know that there are eight probable and 26 suspected cases, and hundreds of Canadians have gone into voluntary quarantine as a result of this additional outbreak.

I suppose one can say that the good news is that it is still restricted to the hospital population. It is not in the population as a whole. The bad news is it appears that restrictions were lifted too quickly and that it should not have been indicated that the problem was solved before it was entirely solved.

As to the honourable senator's question about what standards are now in place, the honourable senator will remember that there were two sets of standards. There was a first set of standards, which was then declared to be inadequate, and a higher standard, with, hopefully, a lower risk value to those who came in contact, was put into place. That standard was lowered and the current outbreak occurred. We have now returned to the much stricter standard. That is why some hospitals have again eliminated visitors — some to wards and some throughout the entire hospital system.

Senator Keon: Honourable senators, it appears that the source of this new outbreak is linked to an elderly man at the North York General Hospital who was diagnosed with post-operative pneumonia. However, the facts seem unclear as to the linkage to this particular patient. Could the leader enlighten us about that?

Senator Carstairs: The honourable senator is correct; the linkage is not totally clear at this time. Part of that, I understand, has to do with the condition of the individual. This is a 96-year-old man suffering from multiple complications. That is, unfortunately, why the diagnosis of SARS was not made. They did believe he was suffering from post-surgical pneumonia and so he was not tested for SARS until after he had come into contact with a great many people.

Unfortunately, we still do not know the epidemiological basis of where he actually contracted the SARS. However, I will make that information available as soon as it is received.

SEVERE ACUTE RESPIRATORY SYNDROME—WORLD HEALTH ORGANIZATION RESPONSE TO NEW OUTBREAK—CUTBACKS TO SCREENING PROCEDURES

Hon. Brenda M. Robertson: Honourable senators, as a result of the new SARS cases, the World Health Organization has once again placed Toronto on its list of areas where the disease is spreading. When the World Health Organization gave its travel advisory against the city last month, it did so without visiting Toronto. However, some concern was expressed about the amount of interaction between Health Canada officials and their World Health Organization counterparts.

Could the Leader of the Government in the Senate tell us the status of Health Canada's communication with the World Health Organization and if World Health officials have been asked to go to Toronto to observe the situation first-hand?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator has indicated that the travel advisory was lifted by the WHO, and then it removed Toronto from the list of SARS-affected areas. Toronto has, once again, been listed by the WHO as a SARS-affected area. However, there is no travel advisory against Toronto because it is very clear, as I said to Senator Keon, that this infection is hospital-based and has not been related to people coming into or leaving the country.

The Honourable Minister of Health is in touch with WHO officials. We do not want a further breakdown. WHO officials would be welcome to visit Toronto, should they so wish.

• (1440)

Senator Robertson: However, honourable senators, the World Health Organization decided, of course, to lift the travel ban against Toronto last month, in part because Health Canada promised to provide better passenger screening at Pearson International Airport. In the media this morning, the Minister of Health is reported to have said that Health Canada may drop five of the 12 SARS screening machines because of passenger complaints that they are too intrusive. Could the Leader of the Government in the Senate tell us whether cutting back on SARS screening has been cleared with the World Health Organization?

Senator Carstairs: Honourable senators, what has continued to operate is that quarantine officers from Health Canada remain on site in Vancouver, Toronto and at Dorval airport. These health professionals continue to monitor all incoming passengers from SARS-affected countries. A quarantine officer immediately assesses airplane passengers on flights from Asia who are discovered to be ill en route to Canada. Travellers entering Canada on direct flights from Asia must complete key health-related questions on yellow health alert notices. Flight attendants are asking passengers to fill out a traveller tracing form that will enable health authorities to contact passengers. Many procedures have been put into place.

Temperature monitoring equipment is in place. There are six machines in Vancouver and six in Toronto. Health officials are monitoring their effectiveness and will continue to do so.

SEVERE ACUTE RESPIRATORY SYNDROME—ECONOMIC FALLOUT

Hon. Jerahmiel S. Grafstein: Honourable senators, on the same topic but from a different perspective, the SARS crisis in Toronto has erupted again and intensified the economic damage not only to Toronto, which is in the eye of the storm, but also to travel and tourism across Canada. All parts of Canada, this spring, are suffering deeply. Could the Leader of the Government advise what plans the federal government has to alleviate the economic plight of workers and small business, especially in Toronto?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can inform the honourable senator that a special cabinet committee, headed by Minister Rock, has been put into place to evaluate the problems that not only, as he so wisely has said, are having an impact on Toronto but are also being felt across the country. The airline industry, the tourism industry and many workers have been impacted.

FISHERIES AND OCEANS

BRITISH COLUMBIA—JOB COMPETITION FOCUSING ON VISIBLE MINORITY CONTESTANTS

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate. The question presents itself from the *Victoria Times Colonist*, which contains the following headline: "Whites not wanted in federal job." The article states that Public Service Commission of Canada spokeswoman Kathy Trim acknowledged the posting for a job in the Department of Fisheries and Oceans that pays $100,000 annually excludes the majority of Canadians who are white. The article continues:

> ...she said the goal — a more ethnically diverse public service that taps the talents of under-represented groups — expands the overall talent pool and therefore adheres to the merit principle.

I do not know how that makes sense. The article states:

> "If you look at this at the level of individual transactions, yep, sometimes it takes some imagination to see it," Trim said.

> "But we look at things from a systemic perspective, and the fact is that visible minorities are under-represented in the public service."

Could the minister explain to the Senate and to Canadians what this is? Is it social engineering, political correctness or affirmative action at its highest level? Can she explain what is going on?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is certainly affirmative action, and it is affirmative action based on the principles of the Government of Canada, which are that we should reach out to members of communities that have been traditionally under-represented in federal government positions. That is what this advertisement is attempting to do, and I hope that its achievement will result in a higher representation of members of visible minority communities in positions of authority in the Public Service of Canada.

I am surprised that my honourable friend rose on this particular question today. I thought he would have been rejoicing the preliminary report out of the WTO that U.S. countervailing duties on softwood lumber have been determined to be inconsistent with WTO provisions.

Hon. Senators: Hear, hear!

Senator St. Germain: Honourable senators, I should have mentioned it. This is a great win for Canada — a great win for all of us. Let us applaud the WTO ruling. However, it does not negate the importance of what the honourable leader just said. I honestly believe we should reach out, but I do not think we should overrule merit, which obviously could happen in this case.

The other thing I want to tell the honourable senator is the article refers to women, the disabled, Aboriginal and non-Aboriginal visible minorities. I happen to be an Aboriginal as defined in the Constitution. I can tell the honourable leader that I do not need special treatment to compete with her or any of the other Whites in this place. Get this straight: We do not want special treatment. We want a level playing field, and we will compete with any one of you. I suffered a similar experience in the air force. I was told that because I had a French-Canadian name, I had a better chance of being promoted, strictly because of that. I told them at the time that I was as good a pilot and a student as anyone there and did not need special treatment.

If the honourable senator thinks that she has to give me special treatment, I will compete with her any time of the week and with any one of these other White senators in here.

Senator Carstairs: Clearly, the honourable senator can compete on a level playing field. On the other hand, I had an experience in my career where I was told that I would not be considered to be a vice-principal of a school because I was female. Frankly, in terms of the need for a government to take affirmative action, it is clear that if we treated members of visible minorities in this country equally with White people in this country, they would have an appropriate proportion of the jobs in the public service, and they do not.

Some Hon. Senators: Hear, hear!

Senator Forrestall: That did not happen in Nova Scotia.

Senator Carstairs: No, it did not. It happened in Alberta.

SOLICITOR GENERAL

ROYAL CANADIAN MOUNTED POLICE— CHARGES AGAINST EUROCOPTER

Hon. J. Michael Forrestall: Honourable senators, can the Leader of the Government in the Senate confirm that the Royal Canadian Mounted Police have now charged Eurocopter of Canada with fraud?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, no, I cannot confirm that. Obviously, only the RCMP could confirm that.

Senator Forrestall: Honourable senators, I had the impression that the RCMP reported to someone once in a while. Can the Leader of the Government tell the chamber why a company charged with fraud or facing fraud charges would be allowed to compete for the Sea King replacement when the Maritime Helicopter Request for Proposal, Volume 1, General Instructions to Bidders, states that Canada will reject bids from companies that have engaged in fraud in the past? I ask the Leader of the Government to explain yet again why the rules are being bent in favour of Eurocopter.

Senator Carstairs: Honourable senators, with the greatest respect to the honourable senator, I believe in the rule of law. The rule of law states that an individual or a corporation or anyone else charged with a criminal offence is innocent until proven guilty. Therefore, to assume that individuals or companies are guilty of fraud because they may have been charged with fraud is in violation of our democratic principles.

Senator Forrestall: Honourable senators, I would quote from the government's request for proposal:

> Evidence, satisfactory to Canada, of fraud, bribery, fraudulent misrepresentation or failure to comply...

Evidence satisfactory to Canada is the basis upon which I have put the question. I would appreciate it if the leader could find out a little more about this matter, and, at a later date, give us some indication of whether charges have been initiated and, in fact, are moving forward.

Senator Carstairs: Honourable senators, I can certainly find out for the honourable senator, although I would suspect that if a company of that nature has been charged, it would be in the newspaper very rapidly. I would indicate to the honourable senator that, in our rule of law, evidence satisfactory would, under most circumstances, be considered to have been a conviction.

• (1450)

TREASURY BOARD

AUDITOR GENERAL'S REPORT—EFFECT OF RECLASSIFICATION PROCESS ON PROMOTIONS

Hon. Terry Stratton: Honourable senators, my question is directed to the Leader of the Government in the Senate. The report of the Auditor General released just this morning states, in part, as follows:

> Over the past 10 years, the Secretariat did not exercise sufficient control over the classification of positions in the public service to ensure that positions were classified accurately. Between 1993 and 1999, about 28,000 promotions — almost one third of all promotions — were awarded through the reclassification of positions. The Secretariat does not know how many of these positions may have been overclassified.

Could the Leader of the Government in the Senate tell us why the government has failed to take adequate steps to monitor reclassification? What is the government's best guess as to how much it is overpaying some of its employees? I know the minister will not be able to answer that question.

The question that arises is this: How does the government monitor 28,000 promotions done through reclassification? Is a monitoring process now underway or will it be taken in the future?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I did not expect the honourable senator to give all the good news that came out in this particular report of the Auditor General. When I met with the Auditor General yesterday, I was pleasantly surprised that she had far more positive things than negative things to say about the government. That is an unusual circumstance when I meet with the Auditor General.

In terms of the reclassification process, I think the honourable senator knows just how complex this system is. Many classifications for positions have not been changed in 40 years. The government has been actively working on this since 1991. It was announced by the President of the Treasury Board in May 2002 that the government would do its best in a step-by-step approach tailored to specific occupational groups. It is an ongoing issue, one that is not easily resolved.

[*Translation*]

NATIONAL DEFENCE

COLD LAKE, ALBERTA— CRASH OF CF-18 FIGHTER PLANE

Hon. Marcel Prud'homme: Honourable senators, there has been a very unfortunate incident in Alberta. A CF-18 has crashed during a training exercise. Training is always risky. On behalf of all the honourable senators, I offer my sincere condolences to the victim's family.

My question is very specific. Since the exact cause of the plane crash is unknown, does the Minister of National Defence intend to order that the CF-18s — now quite ancient — be grounded until a satisfactory answer has been obtained?

[*English*]

As is said in English, it is grounded until any further discovery is made. Everything is so vague. There has been some talk about sabotage, while others have talked about bad gasoline. We now have problems in the Atlantic. It saddens me that there has been another incident with these very aged planes. Was any action taken along this line?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his question. I join him, as do, I am sure, all members of this chamber, in expressing our deepest sympathy to the family and loved ones of Captain Kevin Naismith.

As the honourable senator knows, a flight safety investigation, which will take some time, is underway. We have no idea what caused this incident. What we do know, however, is that the structure of the CF-18 aircraft is sound and will remain so for a number of years.

There is a modernization program underway. Let me be very clear, honourable senators, that it is related to the in-flight equipment, in particular, its computers, and not related to the plane structure itself.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table, in this house, three delayed answers. I have a delayed answer to a question raised by Senator Di Nino on April 1, 2003, regarding the war with Iraq and the activities of Syria. I have a delayed answer to questions raised by Senator Forrestall on May 6, 2003, regarding the Maritime Helicopter Project and a delayed answer to a question raised by Senator Keon on May 14, 2003, regarding the effects of metal toxins.

FOREIGN AFFAIRS

WAR WITH IRAQ—ACTIVITIES OF SYRIA

(Response to question raised by Hon. Consiglio Di Nino on April 1, 2003.)

> The Government is aware of the concerns expressed by the United States Government about Syrian actions during the recent conflict in Iraq. Secretary of State Colin Powell visited Damascus on May 3 at which time he met with President Bashar al-Assad and other senior officials of the Government of Syria. These meetings permitted a full exchange of views.

Any credible allegation that the Government of Syria supplied military equipment to Iraq or that it stored Iraqi military equipment would create serious concern. UN sanctions against the former Iraqi regime prohibited, among other things, the export of military goods to Iraq.

Throughout the conflict, Canada urged all parties in the region to make every effort to avoid inflaming the situation. In the aftermath of the hostilities, Canada calls on all countries to join in the effort to restore stability to Iraq and the region as a whole. The Government considers that Syria, as the only Arab member state currently serving on the UN Security Council, can play a positive role in this regard and urges it to do so.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— E-MAIL FROM AMBASSADOR TO FRANCE TO OFFICIALS IN PRIME MINISTER'S OFFICE REGARDING EUROCOPTER

(Response to question raised by Hon. J. Michael Forrestall on May 6, 2003.)

The Government's goal has always been and remains to get the right aircraft for the Canadian Forces as soon as possible, at the lowest possible cost.

When spending taxpayers' money, the Government takes very seriously its responsibility to decide on and implement the correct procurement strategy. Ministers are accountable to Parliament and to Canadians for the decisions they take. It is the role of officials to support Ministers in the discharge of their responsibilities, and that is equally the case in managing any complex Major Crown Procurement.

It is the normal duty of ambassadors to report their analysis on any particular issue of importance to Canada and the countries where they are posted. It is also their responsibility to inform local business people about investment potential in Canada and the open and transparent process to follow to make such investments.

HEALTH

EFFECT OF METAL TOXINS

(Response to question raised by Hon. Wilbert J. Keon on May 14, 2003.)

Health Canada does not agree with the interpretation of our Total Diet Survey results as expressed in the Environmental Defence Canada report.

Health Canada scientists have been studying the potential health impact of dietary exposure to heavy metals, such as lead and cadmium, since the 1970s. Monitoring efforts since that time have shown a clear downward trend in the levels of such heavy metals. For example, the elimination of leaded gasoline and the replacement of lead-soldered food cans have had a significant impact in reducing lead levels in the food supply. Despite these efforts, it is important to recognize that metals, such as those indicated in the Environmental Defence Canada report, occur naturally in the environment and, therefore, cannot be totally avoided. With the use of the sensitive analytical methods available today, they can be found in virtually all foods at trace amounts. The levels of metals in foods sold in Canada are similar to or lower than levels of these metals reported in other industrialized countries such as the United States, countries of the European Community, Australia/New Zealand, Japan, et cetera.

Health Canada scientists have also participated in international expert committees, which have been reviewing research findings relating to the toxicity of metals for many years. One of these expert committees known as the Joint Food and Agriculture Organization/ World Health Organization Expert Committee on Food Additives has set tolerable weekly intake levels for the metals of greatest concern based upon:

(*a*) the weight of scientific evidence collected to date on a global scale; and

(*b*) established and reasonable safety factors.

Monitoring data generated by Health Canada has shown that the exposure of Canadian consumers to these metals is currently well below these tolerable intake levels.

Despite these achievements, Health Canada agrees that we must not be complacent about this issue. Health Canada scientists will continue to closely monitor the results of new research from around the world relating to the toxicity of these metals.

In addition, monitoring efforts, such as Health Canada's Total Diet Survey, a program that was initiated in the late 1960s, will continue with a view to ensuring that Canadian consumers are not exposed to unacceptable levels of these and other chemical contaminants.

[*English*]

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, I have the pleasure to introduce some guest pages from the House of Commons.

Let me begin with Catherine Holloway of Beaconsfield, Quebec, who is pursuing her studies at the Faculty of Humanities at Carleton University. She is majoring in humanities and English literature.

[*Translation*]

Nicholas Lavoie of Cornwall, Ontario, is studying in the Faculty of Arts at the University of Ottawa, and is taking an honours degree in history. I welcome you to the Senate.

[*English*]

Finally, we have Elizabeth Schwartz of Ottawa, Ontario, who is pursuing studies at Carleton University, majoring in public affairs and policy management.

Welcome to the Senate of Canada.

ORDERS OF THE DAY

STATISTICS ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Chalifoux, for the third reading of Bill S-13, to amend the Statistics Act.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the various issues concerning this measure have been sufficiently canvassed and placed on the record. Arguments for this measure and the important arguments concerning its difficulties have been identified by honourable senators.

Therefore, the house is at the point where honourable senators are ready for the question.

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

Hon. Senators: Agreed.

Senator Kinsella: On division.

Motion agreed to and bill read third time and passed, on division.

LOBBYISTS REGISTRATION ACT

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

Hon. Bill Rompkey moved the third reading of Bill C-15, to amend the Lobbyists Registration Act, as amended.

He said: Honourable senators, one amendment has been proposed to this bill, that is, to apply the experience and the record of those who have served in the House of Commons not only to consultants who work with corporations but to all consultants across the board.

When the bill came to us, the setting on the record of past experience was limited to certain consultants. This proposed amendment would apply that to all consultants.

That is the only amendment that has been made to the bill. I hope that honourable senators will accept it.

• (1500)

Hon. Consiglio Di Nino: Honourable senators, I rise today to participate in third reading debate on Bill C-15, to amend the Lobbyist Registration Act. This bill and its predecessors acknowledge that lobbying the government is a proper and legitimate activity. Bill C-15 attempts to improve the transparency of lobbying and to increase the effectiveness of the legislation that governs it. I believe that, in principle, Bill C-15 does both. In committee hearings, though, a number of concerns were raised about this bill, and I should like to elaborate on three such concerns, which are as follows: the enforceability of the lobbyist code of conduct; the disclosure of the cost of lobbying campaigns; and exempting lobbyists from registration if communication with a public office-holder is limited to a request for information.

Conflicting opinions were expressed regarding the ability of the code of conduct to be enforced. Frankly, I remain unconvinced that the code is truly enforceable. In addition, the noticeable absence of penalties for failing to abide by the code continues to be of concern. I urge close monitoring of the code in the coming months and years to properly assess its effectiveness.

As well, a number of witnesses raised concerns about the lack of disclosure of lobbying campaign costs. The government has repeatedly stated that Bill C-15 will increase transparency and yet, during testimony, Mr. Rock expressed the view that disclosing lobbying budgets would not improve the legislation.

I am strongly in favour of disclosing lobbying costs, particularly in light of the electoral financing reform legislation being considered by the other place at this time. Bill C-24, as it is known, effectively eliminates corporate donations to political parties. If passed, this bill may result in the displacement of funds traditionally donated to political parties into lobbying campaigns. This area must also be regularly and closely monitored and reported on when the act is revisited in five years' time or earlier if a potential problem is detected.

Honourable senators, whether a request for information should trigger registration is another issue that has been debated repeatedly since Bill C-15 was introduced. One of the stated goals of the proposed legislation is to clearly specify what qualifies as lobbying. It is questionable whether the bill actually accomplishes this.

According to a number of lobbyists who appeared during committee hearings, information-seeking comprises a significant portion of lobbyists' activities. Where a request for information ends and lobbying begins is often very difficult to discern. Making this distinction is essential to preserving the integrity of the interactions between lobbyists and public office-holders. A clear definition of what is meant by a "request for information" would clarify this for both lobbyists and government officials charged with enforcing the act.

As it currently stands, Bill C-15 does not require lobbyists to register if communication is restricted to a request for information. Clearly, this exemption is an important one. I agree that if all requests for information triggered registration, the lobbyist registry would be awash with useless records. However, despite this, many concerns have been raised about the potential abuse of this particular clause as a loophole, one that may be used by lobbyists as an excuse not to register.

Let me be clear: The vast majority of lobbying activities have been, and I am confident will continue to be, conducted within the laws and rules established, and the vast majority of lobbyists will recognize the value of registering. It is the rotten apple that we need to be prepared for. Providing a clear definition of what is meant by a request for information would go a long way toward eliminating such a loophole.

The lack of a consensus on what constitutes a "request for information" may have a significant legal implication as well. Mr. John Chenier, a long-time follower of lobbying activities, pointed out that attempts to prosecute lobbyists under this clause may prove very difficult indeed because of the absence of this definition. The courts are likely to have as much difficulty trying to sort out how one defines a request for information as they did trying to determine what was meant by "an attempt to influence."

There is also evidence that lobbyists desire a clear definition of what constitutes a request for information. Ms. Carole Presseault, President of the Government Relations Institute of Canada, a coalition of some 130 lobbyists, indicated the following:

> In order for legislation and the registry to be meaningful, only those activities that constitute legitimate lobbying activities — versus research for example, or collecting information — should be reported.
>
> Clarity is a critical factor in ensuring compliance. To this end, we wish the Committee to consider instructing the Registrar to issue a directive clarifying what constitutes a communication restricted to a request for information, exempt from registration under the proposed section 4(2)(*c*) of the act.

Honourable senators, although the passage of Bill C-15 will, in my opinion, improve the legislation governing lobbying activities, I believe the potential loophole created by the lack of a clear definition of a request for information or for information is a major weakness of this bill.

MOTION IN AMENDMENT

Hon. Consiglio Di Nino: For this reason, I propose, seconded by Senator Murray:

> That Bill C-15 be not now read a third time but it be amended in clause 3, on page 2, by adding after line 18 the following:
>
> "**(3) Section 4 of the Act is amended by adding the following after subsection (2):**
>
> (2.1) The Governor in Council shall make regulations respecting the meaning of the word "information" and specifying any circumstances under which a communication shall be considered not to be restricted to a request for information, for the purposes of paragraph 2 (*c*).
>
> (2.2) Before the Governor in Council makes regulations under subsection (2.1), the proposed regulations shall be laid before each House of Parliament and shall be referred to the committee of each House that may be designated or established for that purpose.
>
> (2.3) The Governor in Council may make regulations under section (2.1) only if
>
> (*a*) neither House has concurred in any report from a committee respecting the proposed regulations within thirty sitting days following the day on which the proposed regulations were laid before the House, in which case the regulations may only be made in the form laid;
>
> (*b*) both Houses have concurred in a report from a committee approving the proposed regulations, in which case the regulations may only be made in the form concurred in; or
>
> (*c*) either House has concurred in a report from a committee approving an amended version of the regulations and the other House has concurred in that amended version, in which case the regulations may only be made in the form concurred in.
>
> (2.4) For the purpose of subsection (2.3), "sitting day" means, in respect of either House of Parliament, a day on which the House sits.".

• (1510)

Hon. Jerahmiel S. Grafstein: Honourable senators, would Senator Di Nino take one question? I have not had an opportunity to consider this amendment. I was a member of the committee, but it is important that all senators have an opportunity to carefully examine this rather complex amendment. Could the honourable senator tell me whether he shares my concern that the definition of the "target of lobbyists" treats the ministries, the ministers, the members of the House of Commons and senators equally as targets of lobbying? Does the honourable senator think that this is appropriate under our constitutional sharing of powers between the executive, the House of Commons and the Senate?

Senator Di Nino: Honourable senators, Senator Grafstein and I sat on the committee and I recall that issue being raised. I agree with the honourable senator that there should be some distinction. I directed my attention specifically to those three areas, which I pursued during my participation at committee. I do share the concern that there is a difference between lobbying a senator and lobbying a minister of the Crown. I not only agree with Senator Grafstein on this issue, but I also wish that the honourable senator would propose an amendment to this effect, which I would be happy to second.

Senator Grafstein: Honourable senators, I have a final question on the scope of the bill, which is broader than any bill I have seen. It includes any discussion or any contemplation of a future policy. Does it cause concern for the honourable senator that this might be almost impossible to enforce because of the vagueness of the contours of the jurisdiction set out in the bill?

Senator Di Nino: Again, I must agree in general with the honourable senator on this point. I am somewhat concerned that this bill is being rushed through the house, particularly when it affects every single member of both Houses of Parliament and, effectively, every single employee of the Government of Canada. The house has heard from those who have responded to questions on this issue that this bill has been around for a few months.

Obviously, Senator Grafstein was in committee, as I was. I certainly think that a great deal more thought is needed. I could have proposed an amendment on the three points that I raised and on other points that were raised during committee. The problem is that, once this bill is enacted, it will be almost impossible to amend because any commentary or any criticism would be seen as self-serving. Anyone who would be directly involved could be accused of a conflict of interest — of trying to diminish his or her responsibility — which is far from the case.

Honourable senators heard more than once during committee that there is no problem, other than — perhaps, in perception or in reality on occasion — with the highest level of the executive. Members of the House of Commons or members of the Senate have rarely been confronted with such a situation as could be prompted by this proposed legislation.

If the honourable senator is suggesting that this should have much more thought and discussion and that we should debate this issue further, then I am in total agreement.

Hon. Bill Rompkey: I hate to disagree, honourable senators, but there is an old adage that reminds us that we should not let the perfect be the enemy of the good. Bill C-15 is good; it is an amendment because it proposes to close loopholes and tighten existing legislation that, as Senator Di Nino said a moment ago, has not been the cause of great problems. The bill does not deal with grand criminal activity, but it does deal with an important piece of legislation, which the bill proposes to improve, and an amendment has already been adopted.

Honourable senators could continue to propose amendments to try to make Bill C-15 perfect. However, I would suggest that there will be time to do that later. Honourable senators could draw the legislation back at any time. If the house were to propose further amendments, it would require time for further consideration. The bill is at third reading, and I suggest that we move it forward and leave further consideration to another time.

Senator Di Nino: Honourable senators, was that a question? Although the words of Senator Rompkey were not phrased as a question, it would be appropriate for me to respond. I did acknowledge, in my presentation, that the bill moves us forward, although it creates a different set of problems.

The house has not addressed, at least to my satisfaction, the issue to which I spoke earlier concerning the request for information. Would it mean that one would ask: Mr. Minister, Mr. ADM, or Mr. Senator, when is this meeting to take place? Would it lead to such questions as: Who will be at the meeting? Would that information be useful to a lobbyist who should, in effect, then register as a lobbyist if he or she seeks out information? Such a discussion could continue for 15 minutes and could include the latest score of the Blue Jays baseball game as well as how many witnesses the other side has.

At some point in time, this fuzzy, uncertain term, "request for information" could lead to problems. Most lobbyists will do their job well and they understand the value of complying with the rules of the game. Those who may wish to abuse those rules, in my opinion, may well find that we will be creating a new loophole with the passage of this bill. For my purposes, allow me to put on the record that some honourable senators are concerned about some of these issues.

Hon. Lowell Murray: Honourable senators, I agree with the Honourable Senator Rompkey that this proposed legislation is a step forward. I may also say that the committee has done an excellent job. It has thoroughly explored the proposed provisions contained in the bill, and heard representations from various interested parties and expert witnesses. I do not take much credit for that, although I am a member of the committee. Members of the committee are aware that I have been able to attend only the Wednesday meetings of the committee because the Tuesday meetings conflict with the meeting time of the Standing Senate Committee on National Finance, which I chair.

I read the transcripts of all the meetings, especially those when I was unable to attend, as carefully as I could. I disagree with Senator Rompkey on the question of whether we should give consideration to further amendments at third reading.

One amendment has been adopted, so the bill will go back to the House of Commons anyway. Senator Di Nino has proposed an amendment that was quite thoroughly discussed at committee. The honourable senator does us a service by bringing the amendment forward now and by exposing, for the house, the arguments that were made in favour of that particular amendment.

• (1520)

Senator Rompkey has not offered a reasoned opposition to the substance of the amendment. He has simply brushed it off by saying, "Now is not the time; another time we can come to that," as indeed we may.

I should like to say a word or two in support of the amendment. As a matter of fact, I have another amendment to propose, but I will do that after this one has been disposed of.

In the interests of balance and equity, let me state the provision of the bill that causes the concern. While I do not have the bill in front of me, our friend Senator Joyal read into the record one day at the committee the text of the provision that we are dealing

with. It is an exception to the requirement for registration, and it is section 6 of the act. The exception is formulated as follows: "Any communication for the sole purpose of inquiring as to the nature or scope of the legal rights or obligations of the client and enterprise or a group does not constitute a lobbying activity and, as such, is excluded from the application of this act." That is the provision that Senator Di Nino wants to change — indeed, wants to eliminate.

As Senator Rompkey did not do so, if he had decided to make a reasoned argument against the amendment, here is what he would have said. I will offer him the words of Mr. Wilson, the Ethics Counsellor, who is a public servant and did appear as a witness before the committee. While he was not vigorous as befits a public servant in his opposition to this amendment, he gave, I suppose, a reasoned comment as to why it is not necessary. He said:

> Our conclusion was that lobbying is not a single event. It is usually part of a broader process....
>
> The simple act of obtaining a piece of information, very singular, may have legitimacy in a certain circumstance where you have been asked for a piece of information. We thought that that should not necessarily bring forward a registration....
>
> Our view was that this exception —

— and that is what Senator Di Nino is talking about —

> — would enable a number of lobbying firms to ensure that staff could phone and obtain information as to when an event or meeting would take place. That would not affect the overriding requirement that the lobbyist would have other encounters over a period of time, all of which would bring forth a requirement to register.
>
> We did not see this as creating an exception that would cause a loophole, nor would it ignore the reality that conversations are often very complex.

That is the position of the government, I think, on this matter so far, unless I can persuade honourable senators opposite to support Senator Di Nino's amendment.

The argument I would make in favour of this amendment — and it was reinforced by testimony from other witnesses at the committee, to which I will refer — is that most of the lobbying activity in this town at least starts with telephone calls or meetings purportedly seeking information. Anyone who has been on the receiving end of these calls knows that the first thing they say is, "I am just calling for a bit of information." Then they go on to seek information — often that they are not entitled to, they should not have, but probably have anyway and are calling to confirm. I will not go into that in great detail, although I did at committee.

Mr. Chenier, the editor of ARC publications, who is the editor of the *Lobby Monitor*, described the situation very well. He said:

> ...this bill, like its predecessors, continues to leave out much lobbying activity, making reporting and disclosure almost voluntary. That is predominantly because of the information-seeking clause that has been inserted in this bill.

He goes on later during questioning:

> ...it seems to me a typical lobby campaign in Ottawa involves probably 80 to 90 per cent information seeking. Where do people stand on the issue? Who are the key players? What are the key issues being discussed? Who is the opposition? Much of the lobby core in Ottawa, much of the government relations core, spend most of their time simply finding out the answers to that by using their contacts. Many of them come from government, as you know, either from ministerial offices or government departments, and they use their contacts to find out what is happening on an issue on behalf of their client. Then they go back in and they sit down with their client and strategize. What will we do? Who do we have to see? What are their weak points? What are their good points? Who should we send in?

He goes on:

> Under the current act and under the proposed act that is not a registerable activity, yet that accounts for most of the work of the lobby community in Ottawa.

I take Senator Rompkey's point that we are not talking here — I hope and believe — about trying to stop blatantly criminal activity or anything of the kind. What we are talking about is putting as much transparency as we can into this system so that all of what common sense tells us is lobbying activity is registered and is open to public scrutiny.

As Mr. Chenier said:

> You just take away the information-seeking aspect because, believe me, they are not seeking information just out of curiosity. They are seeking answers because it is part of a strategy, part of a campaign in which they are engaged.

I believe there is a provision in the bill that a corporate person who spends less than 20 per cent of his time lobbying need not register as a lobbyist. Where a consultant lobbyist calls ministers, ministers' staffs, members of Parliament or senior public servants, ostensibly to get information, and trades information — because that is the way the system works in this town — that is the first phase; he or she does not have to register that activity.

The second phase is a corporate executive, who does less than 20 per cent of his time lobbying, and comes in to make the case. How much of the whole exercise on that particular policy, that particular bill, that particular decision is transparent and open? The answer is almost none of it.

There is a great deal of merit in the amendment Senator Di Nino has proposed. I will certainly vote for it. It is a simple but very substantial improvement in the bill as it is now written.

The Hon. the Speaker: Are honourable senators ready for the question on the amendment proposed by Senator Di Nino?

Senator Grafstein: I find myself at a bit of a disadvantage. I have not yet looked at the text or been given the text of Senator Di Nino's amendment which, on the surface, seems interesting. I do not want to commit myself to that. I would hope that, with the indulgence of senators, I could take the adjournment and perhaps address that amendment in some of my other comments as soon as possible tomorrow.

• (1530)

Senator Murray: Are we adjourning debate on this amendment? I have another amendment. I can talk to it today, or I can talk to it tomorrow, as the Senate wishes. I see a shaking of the head.

The Hon. the Speaker: The whip has a comment.

Hon. Terry Stratton: I suggest we deal with it now, one at a time.

The Hon. the Speaker: Senator Grafstein, you were about to make a motion to adjourn. The suggestion has been made by some honourable senators that we deal with this amendment now.

Senator Grafstein: I prefer to hear all the amendments from the opposition side. That will give me an opportunity to review them all and to comment.

The Hon. the Speaker: Honourable Senator Grafstein, unless there is unanimous agreement to do so, the amendments must be dealt with seriatim. You will not hear them all unless there is unanimous agreement.

Senator Grafstein: I will withdraw my motion to adjourn and see where we go.

The Hon. the Speaker: I will ask again, honourable senators: Is the house ready for the question on the motion of Senator Di Nino to amend the bill?

Senator Murray: Do you want to hear my amendment or not? Is it in order, or not?

The Hon. the Speaker: Honourable senators, we could have an amendment with one subamendment, but unless there is unanimous agreement, we cannot hear another amendment until we deal with this one before the house.

Senator Di Nino: Honourable senators, I must apologize. When I was given the amendment by the legal department, I was only given it in English. One of the Table officers, I believe, is working on this as we speak. Perhaps we could go on, with the indulgence of our colleagues, with Senator Murray's amendment and then deal with them both in a few minutes.

Senator Prud'homme: No.

The Hon. the Speaker: We would require unanimous consent to hear another amendment at this time. Perhaps Senator Grafstein's motion to adjourn is not such a bad idea. It would give the Table time to translate.

Senator Grafstein: Honourable senators, with respect to having an amendment that is not in both official languages, I will take the adjournment.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, when senators have amendments to introduce, I would invite them, if possible, to produce enough copies to be distributed in both languages. That way, all senators will be able to acquaint themselves with the substance of the amendment and will not be faced with something they are not familiar with and be unable to speak on topic.

[*English*]

The Hon. the Speaker: We are dealing with a matter of house business.

Senator Di Nino: I apologize to my colleagues. The Law Clerk's office prepared the amendment. I am 99 per cent certain that I saw the French version. I probably did not pick it up. As we know, information is not normally provided only in one language. I thought I had it with me when I came into the chamber, but it did not occur to me to make enough copies for distribution. I extend my apologies to colleagues.

Senator Rompkey: I wish I had stood before the apology, because I wanted to comment on process. Senator Murray made the comment that I did not talk too much about substance. The fact is that I had not seen an amendment. I heard a verbal representation of the amendment by Senator Di Nino, but I did not see it.

It is true that we did discuss certain topics in committee, but as to process, we did submit an amendment to the committee. It was distributed. Everyone saw it. We read it. We reflected on it. We debated it. We passed it. Now, several weeks later, after having heard that discussion in committee and trying to figure out what the amendments will be, we suddenly, on the floor of the chamber, have a verbal representation of an amendment that we have not seen on paper and that has not been distributed to us in either official language.

As I say, I wish I had stood up before the apology was made because I really do not think that this is how we should be proceeding. These are serious topics, although they may not be urgent topics. My belief is that we have had a good run at this bill. We have examined it. We have proposed an amendment. We should now pass it and get on with our amendments at some later date.

The Hon. the Speaker: Honourable senators, these matters will be dealt with at our next sitting.

On motion of Senator Grafstein, debate adjourned.

CRIMINAL CODE

BILL TO AMEND—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Legal and Constitutional Affairs (Bill C-10B, to amend the Criminal Code (cruelty to animals), with amendments) presented in the Senate on May 15, 2003.

Hon. George J. Furey moved the adoption of the report.

He said: Honourable senators, I am pleased to move the adoption of this report. I thank the committee members and the many witnesses who helped us in our deliberation on this very, at times, difficult topic. I also thank the deputy chair and my colleague, Senator Beaudoin, for being kind enough to present the report at the last sitting of the Senate, when I was unable to be in Ottawa.

At this point, I should like to make some comments pursuant to Senate rule 99 to provide honourable senators with some reasoning for the amendments proposed and some possible effects that the committee expects such amendments may have.

Senators are aware that, some time ago, the government introduced legislation modernizing the animal cruelty section of the Criminal Code. There was a sense that these provisions of the code needed revision to address certain societal concerns. The evidence that our committee heard suggested that, indeed, a legislative response was needed to address an increasing number of incidents of reported cruelty. Your committee accepted this rationale, and Bill C-10B addresses this primary issue by amending the current Criminal Code provisions by increasing the length of sentences for acts of cruelty against animals.

Department of Justice officials informed our committee that it was not the intent of the bill to create new law, but rather to significantly increase the penalties for those found guilty of abusing animals. Your committee fully accepts, endorses and, indeed, adopts this policy and, to this end, absolutely no changes have been made to the significantly increased penalty provisions of this bill.

The government brought forward a number of other changes in the bill that your committee studied carefully. The government thought it wise to remove the animal cruelty provisions from the property section of the Criminal Code. There was some concern raised about the possibility that the courts would no longer see animals as property. The government assured the committee, and various legal experts commented, that the movement of these provisions would not affect the property status of animals. However, it became clear to your committee that the words of Mr. Justice Lamer, spoken in 1977 in the celebrated *Menard* case, have become the guiding animal cruelty principles for Canadians.

Justice Lamer, in this important animal cruelty case, stated that by making provisions for animals in the Criminal Code, we do not give animals rights per se. Rather, we impose on ourselves certain minimum standards of conduct when we go about our daily lives using animals for our needs. Justice Lamer stated that we are free to kill animals and we are free to cause pain to animals but, when we do so, we must take care that we are doing it for a legitimate purpose, and that we are only inflicting pain that is necessary to accomplish our human needs.

• (1540)

The government informed your committee that its purpose in introducing Bill C-10B was to retain and emphasize the principles laid down by Justice Lamer in this 1978 Quebec case *R. v. Menard*. The committee was encouraged by the government's reassurance on this point because, as you might expect, we did not want to arrive at a state of affairs in criminal law where ordinary activities that are perfectly acceptable, such as hunting and shooting wild game, might be prohibited under this amendment.

The committee has now reported the bill back to the Senate for your consideration. The committee has suggested four substantive amendments to the bill that the committee believes are important improvements to the original version.

I should point out that there is a fifth amendment, but honourable senators will know that the fifth amendment is purely a housekeeping amendment. It merely changes one word in the French version from "des" to "aux." It is purely a grammatical change and has nothing to do with the substance of the bill.

The four other amendments are substantive. They are as follows: One, we are recommending the definition of animal be changed. Two, the bill creates a new crime of wilfully killing an animal without lawful excuse and the committee is recommending that this be removed. Three, the traditional defence of colour of right no longer applies as the bill is written. Your committee is recommending that the defence be retained with explicit language in the bill. Four, we recommend that a clause be added stating that traditional Aboriginal hunting practices should be considered lawful but should, nonetheless, be subject to the general law against animal cruelty.

Honourable senators, I shall attempt to explain to this chamber the rationale behind these proposed amendments. The first is the definition of "animal." The government's proposed section 182.1 reads as follows:

> In this Part, "animal" means a vertebrate, other than a human being, and any other animal that has the capacity to feel pain.

Because of our concerns that ordinary activities of Canadians, such as fishing and hunting, not be put into question, the committee called for evidence from a number of witnesses. For instance, pain experts testified and suggested to us that the state of science regarding certain types of animals was vague and uncertain regarding pain. This evidence was important because the government had chosen to introduce a definition of animal in Bill C-10B which would have made it a crime to cause unnecessary pain to animals other than vertebrates who have the capacity to feel such pain.

The experts informed us that this was problematic in a number of areas, most importantly regarding a group of animals called cephlopods. Cephlopods have a developed cortex and, as such, it is questionable whether they have the ability to actually feel pain. The cephlopods in question are squid, octopus and cuttlefish.

The committee thought it wise to amend the definition of "animal" to include only vertebrates, those animals that we would traditionally think of as appropriately covered by the Criminal Code. Indeed, the Department of Justice officials have agreed with this change. They would prefer different wording.

I urge senators, therefore, to support your committee's proposed amendment to the change in the definition clause of Bill C-10B.

The second issue to which the committee turned its attention was a provision introduced by the government making it a crime to wilfully kill an animal without lawful excuse. Government officials informed the committee that it wanted to ensure that the illegitimate killing of an animal, without inflicting any excessive pain, was made a crime. The position of the government was that the act of simply killing an animal without pain had to be addressed.

Your committee was deeply concerned with this new crime. The present Criminal Code does not make it a crime to kill wild animals. It is a crime if one kills an animal causing unnecessary pain or suffering; however, many of the activities that Canadians legitimately engage in would be threatened by this new crime. The government assured your committee that the provision was acceptable because it allowed people to plead lawful excuse if they were charged.

However, honourable senators, the effect of this provision is that a charge could be laid against a person who holds a provincial hunting licence for carrying out the ordinary activity of wilfully killing a moose. The person would essentially be guilty in law and would be required to show a judge that he should be excused from the offence because he held a provincial permit. The committee did not think it was the intention of Parliament to radically alter the legal status of the hunting and fishing activities of ordinary Canadians.

The committee investigated this issue further and heard evidence that in fact provincial hunting permits would likely not constitute excuses under the Criminal Code. A provincial law cannot constitute an excuse under a federal statute, particularly under a federal statute such as the Criminal Code. This is a well-recognized principle that this chamber dealt with in the lotteries legislation several years ago.

The Supreme Court of Canada, in the case of *R. v. Jorgensen*, has clearly stated that provincial permits are not lawful excuses. Because this was a significant change to the bill, we believed we had to address the removal of the new offence and find another way to address the concerns of the Department of Justice. We wanted to make the whole concept of not killing animals far less ambiguous.

Honourable senators, to add to the committee's worry on this particular issue, the committee was told that provincial hunting permits would be a defence to the new killing provision because hunting has always been a common-law right and therefore would be a lawful excuse. However, your committee was concerned that, if the offence were codified, it would extinguish the common-law right and defences as well. Of equal concern to your committee was the notion that a provincial permit does not constitute a lawful excuse. As was pointed out in *R. v. Jorgensen*, an adult video-store owner had obtained a provincial permit to rent a particular video from his store. The provincial permit specifically stated that the video was not obscene. The police charged the owner under the Criminal Code and the Supreme Court of Canada stated that his provincial permit was not a lawful excuse for the Criminal Code charge.

While that ambiguity exists, honourable senators, we felt it was too much to think that, down the road, ordinary Canadians engaged in the ordinary activities of hunting moose, deer and caribou would find that they were doing it with provincial permits which some judge would tell them could not be used as a lawful excuse. Surely that is not what Parliament intended.

This was a clear case and a clear signal to the committee that we had to take care not to put provincial conservation regimes in jeopardy. The committee considered that the best approach was to remove this new crime and to address the government's main rationale for introducing this concept elsewhere. Hence the amendment accomplishes the goal of the department officials without creating a new offence. The revision would be added toward the end of proposed section 182.2(1)(*a*) and would read that one could not cause "unnecessary pain, suffering, injury to, or the unnecessary death of, an animal."

• (1550)

Some members of the committee would argue that injury would include death because the ultimate injury or harm to an animal would be taking the life of the animal. However, to satisfy the Department of Justice officials, we added the words "or the unnecessary death of."

Honourable senators, the third issue concerns colour of right. The committee turned its attention to this issue because the government was moving the animal cruelty provisions out of the property section of the Criminal Code where those provisions are today. People who are charged under these sections may avail themselves of a specific defence available for property-related crimes. Today, people charged under the property section of the Criminal Code may argue that they had a colour of right to deal with the animal in the manner that they did. As the government was removing the cruelty provisions from the property section, it followed that the colour of right defence set out in section 429 would be unavailable to people charged under the new cruelty provisions.

The committee heard much evidence on this issue. The government suggested that the colour of right defence was included implicitly in another section of the Criminal Code, section 8(3). Therefore, there was no need to worry about this elimination of specific reference to the colour of right defence.

Your committee heard experts suggest that the specific words should be retained in order to allow a person to use the defence. More important, your committee considered what the Supreme Court of Canada said about the necessity of referring directly to the defence of colour of right.

The Supreme Court of Canada stated that in order to use the colour of right defence, it must be specifically mentioned in the Criminal Code offence section. In the well-known case of *R. v. Jones and Pamajewon* in 1991, Justice Stevenson, speaking for the court, rejected that the colour of right defence did not need to be specifically written into the offence section.

This was the approach taken by the defendant in the *Jones* case. The court rejected this defence, stating that, "The appellants cited no authority for the proposition that colour of right is relevant to any crime which does not embrace the concept within its definition."

The Hon. the Speaker: Honourable Senator Furey, I am sorry to interrupt, but it is a report and unfortunately only 15 minutes is allowed, which has expired.

Senator Cools: Let him speak.

The Hon. the Speaker: Honourable senators, is leave granted to allow Senator Furey to continue?

Hon. Senators: Agreed.

Senator Furey: Thank you.

Honourable senators, due to the concern that defences not be removed from the code inadvertently and because it was the explicit purpose of the government to not change the substance of the legislation, the committee thought it best to add the colour of right defence to the bill, which we have done.

Justice department officials agreed with us that it should be in the bill. However, the wording that they presented for a colour of right defence did not meet the standard for the committee. Therefore, we changed the wording a bit. I am not sure if the Department of Justice is happy with the wording, but there have been some changes to what they suggested. The bottom line is that the Department of Justice officials did agree with us that specific reference to colour of right defence should be in the bill.

Finally, the committee turned to perhaps the most controversial issue — that is, whether the bill would affect Aboriginal hunting practices. The committee was concerned that traditional Aboriginal hunting practices might become subject to criminal charges because of the increased importance that society and Parliament places on the humane treatment of animals. The committee carefully considered this issue, and senators were unanimous that the same rules of conduct would apply to all Canadians.

The committee carefully reviewed the case law and realized that Justice Lamer in *R. v. Menard* did not specifically include the practices of our Aboriginal Canadians in his analysis. This does not mean that their practices would not be considered lawful — quite the opposite. There is a growing body of case law in Canada that specifically discusses the legitimacy of traditional Aboriginal practices. The committee was interested in codifying the legitimacy of traditional Aboriginal practices.

Honourable senators, let me make it perfectly clear that this is not an amendment exempting Aboriginal persons from the cruelty provisions of the bill. In this amendment, your committee specifically states that traditional Aboriginal practices are lawful. However, most important, the amendment goes on to state that those practices are lawful only insofar as they impose reasonably necessary pain on the animal.

A careful consideration of these words will demonstrate that this is precisely the same rule that applies to all in the treatment of animals in Canada. This rule is no stricter and certainly no more forgiving of unnecessary pain caused to animals.

Your committee wanted an amendment that ensured that traditional Aboriginal hunting and fishing rights are not abrogated or derogated from by this bill. At the same time, your committee wanted to make it abundantly clear that the federal government has the right, and indeed the responsibility, to regulate the exercise of those rights.

Hence, the amendment clearly states that it does not give Aboriginal peoples or anyone else the right to cause more pain to animals than necessary. There is no exemption here.

In conclusion, honourable senators, I think that I am accurate in saying the amendments to Bill C-10B proposed by your committee focus on maintaining the critical distinction in Canadian law between legitimate activities that Canadians cherish and the pain and suffering committed on animals that is unnecessary.

Honourable senators will be interested to note that Canadians have always thought similarly about this issue. Inaccurate publicity sometimes leads one to suspect that Canadians in the past were less sensitive than they are today regarding the issue of animal cruelty. This is not so. It has never been so. The twenty-eighth law that our young country passed on June 22, 1869 was entitled: "An Act respecting cruelty to Animals." This law was considered important enough that it was moved by Sir John A. Macdonald and seconded by George-Étienne Cartier.

The act read:

> Whosoever wantonly, cruelly or unnecessarily beats, binds, ill-treats, abuses or tortures any Horse, Mare, Gelding, Bull, Ox, Cow Heifer, Steer, Mule, Ass, Sheep, Lamb, Pig or other cattle or any Poultry or Dog or Domestic Animal or Bird (is guilty of an offence).

Those senators who might be concerned that it would be improper for the Senate to suggest to the Commons certain amendments to this legislation may take comfort in the words that Sir John A. Macdonald used in third reading in the House. He said:

The House concurred in the amendments made by the Senate to the Bill to avoid the necessity of having the Documents engrossed on Parchment.

Honourable senators, I recommend the report of the committee to this chamber and I humbly seek your support.

Hon. Yves Morin: Honourable senators, did the committee consider referring to the guidelines of the Canadian Council of Animal Care under which virtually all scientific research in Canada is conducted? There are precedents for this.

For example, Bill C-13, which we will be receiving soon, refers to guidelines from CIHR. It would have been simple and easy for all scientific research to refer to CIHR, which conducts scientific research in this country.

• (1600)

Senator Furey: Honourable senators, the committee did indeed consider the CIHR reports. We have had those for a number of months. There are some very fine and noble ideals for the treatment of animals in the reports. We were quite happy with them. However, we did not adopt them in the bill because we wanted to deal with what is currently the law in Canada, which is based on the *Menard* case. We wanted to import the defences and concepts from the *Menard* case so that people such as those engaged in experimentation or those engaged in any type of animal husbandry, including slaughter of animals for legitimate reasons, would be protected. Indeed, they are protected if the approach they take is humane and does not cause more pain than is necessary in the circumstances.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, the primary objective of Bill C-10B was to modernize the provisions of the Criminal Code dealing with cruelty to animals.

The highlights of the bill were the following: to provide a definition of "animal," to create a new part to the Criminal Code for offences relating to animal cruelty, to expand certain provisions and increase the maximum penalties that are available.

Extensive consideration of the bill has highlighted a number of concerns that witnesses and senators have. One of these concerns has to do with the stiffer penalties for cruelty to animals. Under the current provisions, the offences are generally summary conviction offences. This means that the accused is liable to a maximum of six months' imprisonment and/or a fine of not more than $2,000.

Under the new provisions of Bill C-10B, the offences would be hybrid offences punishable on indictment, by a maximum of five years' imprisonment, or by way of summary conviction, by 18 months' imprisonment and/or a $10,000 fine.

Also, the bill adds a new feature to the provisions dealing with cruelty to animals by authorizing a court to order, on application by the Attorney General or on its own motion, that the accused pay reasonable costs incurred to take care of the animal. Payment could be made to any individual or organization that cared for the animal and would include such costs as veterinarians' bills and shelter costs, if these were readily ascertainable. There should no longer be any doubt that our hope is that crimes against animals will not be taken as lightly as previously by the judicial system and that cruelty to animals will be dealt with more effectively.

The committee adopted five major amendments.

First, the definition of the word "animal" had to be amended. For the application of the current provisions, the word "animal" was not defined.

The capacity to feel pain is a controversial notion. Scientists are divided on the issue of knowing which animals can feel pain, and to what extent. Scientific evidence seems to indicate that most invertebrates do not feel pain. Therefore, the legislation would not apply to them, until the contrary could be proven. The fact that vertebrates can feel pain has been established much more clearly.

The definition of animal in Bill C-10B is far too vague and could criminalize people who, in all likelihood, would have no way of knowing that their actions could be considered a criminal act for which they could be held responsible. Deciding if a living being can feel pain is one thing when viewed from the medical or scientific angle; however, it is quite another thing when dealing with criminal provisions. The perspective of science is very different from that of the law.

The definition of animal in Bill C-10B was not static and could have changed over time, which means that it could one day become incompatible with the objectives of the bill without there being any debate about this. Parliament must not abdicate its responsibility and leave the matter to the courts. It is up to Parliament to establish the scope of criminal laws. We can always change the definition, should scientific facts demonstrate that the definition needs to be expanded to include other species.

Clause 8 of Bill C-10B creates a new Part V.1 of the Criminal Code entitled: "Cruelty to Animals." The bill would move the cruelty to animals provisions that are currently found in Part XI, entitled: "Wilful and Forbidden Acts to Certain Property" to this new Part V.1.

Some worry that this change will translate into a philosophy based on animal rights and that the ideological movement that supports the emancipation of animals is making progress. However, I believe that the issue of a new part of the Criminal Code for offences involving animals is appropriate to highlight that animals are not objects that humans can use as they see fit, but living creatures that deserve to be treated in a way that is free of cruelty.

The committee's main concern in this connection relates to the defences available to an accused person. The current provisions state "No person shall be convicted of an offence under sections 430 to 446 where he proves that he acted with legal justification or excuse and with colour of right." The provisions in Bill C10-B stated that, in certain cases, there would be an offence if the person acted "without lawful excuse."

The exclusion of the defences set out in Criminal Code subsection 429(2) is one of the consequences of having deleted from Part XI of the Code the provisions relating to cruelty to animals, and this was a serious concern for several of the witnesses before the committee. They feared that a number of activities currently in compliance with the law — hunting, trapping, medical research, animal husbandry, et cetera — would, from now on, be considered violations of the animal cruelty provisions. Some of them claimed that, if they could not use the defences set out in 429(2) of the Criminal Code, for example the lawful excuse provision and the colour of right defence in particular, they would lose part of the protection enjoyed under the present provisions. They did not believe that the colour of right defence in 429(2) was maintained in the common law defences in subsection 8(3).

The Department of Justice argued that subsection 429(2) is not crucial for the accused, since accused persons may make use of all means of common law defence, excuses and justifications under subsection 8(3) of the Criminal Code. The Department also stated that 8(3) allows the use of the colour of right defence. The bill read as follows:

> For greater certainty, subsection 8(3) applies in respect of proceedings for an offence under this Part.

• (1610)

We are being told that, since the bill proposed to exempt animal-related offences under subsection 429(2), the courts could ascertain that Parliament no longer wanted to employ the defences set out in subsection 429(2) with respect to these offences. Consequently, the committee felt that specific mention of such defences was not redundant.

The colour of right is a sticky issue. Case law from the Supreme Court of Canada and provincial appeal courts is not clear. It is preferable, therefore, to be prudent and maintain the status quo, to specify the defences that can apply with regard to cruelty to animal-related offences.

As I mentioned, the provisions of Bill C-10B set out that, in certain cases, it would constitute an offence if the person was acting "without lawful excuse." For example, under the legislation, everyone commits an offence who, wilfully or recklessly, kills an animal without lawful excuse. Currently, it is an offence to kill, maim, wound, and voluntarily injure cattle. It is not enough to simply say that the rights of Aboriginals are protected under section 35 of the Constitution Act, 1982, and that it will suffice to submit any problems that may arise to the courts.

The committee therefore agrees to add the following text:

> No person shall be convicted of an offence under paragraph (1)(*a*) if the pain, suffering, injury or death is caused in the course of traditional hunting, trapping or fishing practices carried out by a person who is one of the Aboriginal peoples of Canada in any area in which Aboriginal peoples have harvesting rights under or by virtue of existing aboriginal or treaty rights within the meaning of section 35 of the *Constitution Act, 1982*, and any pain, suffering or injury caused is no more than is reasonably necessary in the carrying out of those traditional practices.

With this addition the committee does not intend to exempt Aboriginals from this legislation, but simply to clarify existing constitutional and ancestral hunting and fishing rights of Aboriginals. The paragraph contains an objective element.

It is important that Parliament establish guidelines for this bill in this regard, rather than letting the courts decide in each instance if the pain, suffering and injuries inflicted on animals are unnecessary. Aboriginals have the right to know in advance what activities will be permitted under the amendments to the Criminal Code proposed in this bill.

The observations appended to the third report of the committee deal with non-derogation clauses in proposed legislation. This is a difficult and complex area of law. The Minister of Justice has made a commitment to review the use of non-derogation clauses in federal statutes. In its observations, the committee said that this is no longer an issue to be addressed in a piecemeal fashion and the committee intends to follow-up on the Minister of Justice's commitment to deal with this issue.

I believe that the amendments made by the committee to Bill C-10B are intended to shed more light on the provisions dealing with cruelty to animals and that these amendments should be adopted.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, may I ask a question of Senator Beaudoin?

[*English*]

The Hon. the Speaker: Senator Beaudoin, I regret to advise that your time for speaking has expired. Are you asking for additional time in order to accept questions?

Senator Beaudoin: I would ask for leave.

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

Hon. Senators: Agreed.

[*Translation*]

Senator Kinsella: My question will be of interest to all honourable senators. Can the honourable senator explain the origin of the English expression "colour of right" and give an example?

Senator Beaudoin: This expression translates into French as "apparence de droit." This principle is related to what an accused person thought he had the right to do. It is a common law rule of interpretation. In civil law, the phrase "apparence de droit" is a close equivalent. It refers to the defence permitted an accused person who has committed a criminal act but believed he was within his rights.

It is only a rule of interpretation, however, and it is up to the court to judge. I always like to quote U.S. Justice Charles Evans-Hughes, who wrote:

[*English*]

The Constitution is what the judges say it is.

[*Translation*]

That is a true statement. Nevertheless, the legislative branch must do its duty. It is up to us to create the best laws possible. If the Constitution is violated, the Supreme Court will point that out.

[*English*]

The Hon. the Speaker: Is the house ready for the question on Senator Furey's motion?

Some Hon. Senators: Question!

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

An Honourable Senator: On division.

Hon. Senators: Agreed.

Motion agreed to and report adopted, on division.

THIRD READING

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

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

• (1620)

AGRICULTURE AND FORESTRY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO HEAR FROM MINISTER OF AGRICULTURE AND AGRI-FOOD AND OFFICIALS ON INCIDENCES OF BOVINE SPONGIFORM ENCEPHALOPATHY

Leave having been given to revert to Notices of Motions:

Hon. Donald H. Oliver: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Agriculture and Forestry be authorized to hear from the Minister of Agriculture and Agri-Food and his officials in order to receive a briefing on incidences of bovine spongiform encephalophy in Canada; and

That the Committee submit its final report no later than November 27, 2003.

[*Translation*]

BUDGET IMPLEMENTATION BILL, 2003

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-28, to implement certain provisions of the budget tabled in Parliament on February 18, 2003.

Bill read first time.

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

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

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, to be heard in this house, a senator must be in his own seat. This is the second time a senator who was not in his own seat has been given the floor. I believe it is time to remind the house of this practice.

[*English*]

The Hon. the Speaker: The point has been made, honourable senators, that if a senator is in the chamber, the expectation is that the senator would speak for himself or herself with respect to items that are standing in his or her name. That is a fair request of honourable senators. Thus, I would request honourable senators to please respect that.

SCOUTS CANADA

PRIVATE BILL TO AMEND ACT OF INCORPORATION— SECOND READING—DEBATE ADJOURNED

Hon. Consiglio Di Nino moved the second reading of Bill S-19, respecting Scouts Canada.

He said: Honourable senators, Boy Scouts of Canada is a corporation that, in cooperation with some 3,000 partners across Canada — including service clubs, cultural, faith and community partners — provides valuable services to our nation's youth.

Some 160,000 young people and adult volunteers are directly involved in its programs.

Boy Scouts of Canada has requested that a private act be introduced before the Parliament of Canada for the following reasons: for the better management of its affairs, to consolidate, update and replace the statutes governing it; to change its name from "Boy Scouts of Canada" to "Scouts Canada" to reflect the broadening of the Scout movement worldwide to include both young men and women; and, to reflect its current status as an independent member of the World Organization of the Scout Movement.

I wish to expand on each of these purposes.

The scouting movement was founded in Great Britain in 1907 by Lord Baden-Powell. The Canadian movement was incorporated on June 12, 1914, under the name "The Canadian General Council of the Boy Scouts Association" by a special act of the Parliament of Canada.

Thereafter, from 1917 through 1969, four further special acts were enacted to amend the initial special act. One such special act changed the name of the corporation to "Boy Scouts of Canada."

It is considered desirable, for the better management of the affairs of Boy Scouts of Canada, to consolidate, update and replace the statutes governing it.

In recent years, a new mission statement has been adopted by the World Organization of the Scout Movement, of which Boy Scouts of Canada is a member. The focus of this new mission is on young people rather than on boys. That is reflected in the bill in the corporate object of the corporation, which is "to promote the mission of Scouting among young persons."

The current mission statement of the World Organization of the Scout Movement, which Boy Scouts of Canada has adopted, is the following:

> ...to contribute to the education of young people, through a value system based on the Scout Promise and Law, to help build a better world where people are self-fulfilled as individuals and play a constructed role in society.

A similar process updating the statutes governing the British branch of the Scouting Movement was recently undertaken. In the Explanation of Amendment to Royal Charter, the following was stated:

> ...in the United Kingdom today, as in Europe and in the rest of the world, boys and girls are more frequently involved in activities together than in the days when the Royal Charter was originally granted. There is today a worldwide Scout Movement. The Council believes it would be right to bring our main purpose in line with that of the World Organization.

It was further stated that:

> ...it should be noted that many Associations in Membership of the World Organization of the Scout Movement throughout Europe and the Commonwealth have male and female memberships over the entire range for which they cater. This does not prevent happy co-existence and cooperation with Associations in membership with the World Association of Girl Guides and Girl Scouts.

In conclusion, the explanation stated the following:

> ...the Council believes there is a demand in some places and in some circumstances for co-educational provision and wishes to be able to offer that in such cases.

• (1630)

Honourable senators, these comments apply directly to the situation in Canada today and to the amendment requested by the Boy Scouts of Canada.

To reflect the changes in the corporate object of Boy Scouts of Canada and to formally recognize the name by which Boy Scouts of Canada is, at present, commonly known, it is proposed that the name of the corporation be amended in English to "Scouts Canada" and in French to "Scouts Canada." Coincidently, they are spelled the same in both official languages.

[*Translation*]

The Association des scouts du Canada was founded to educate boys and teenagers in scouting, as intended by Baden-Powell, based on the principles of the Roman Catholic Church.

The Boy Scouts of Canada and the Association des scouts du Canada have regular cooperation committee meetings. This committee was formed to ensure close cooperation in scouting nationally following an agreement reached between both organizations in 1967 in the presence of the then Governor General, His Excellency the Right Honourable Georges Vanier, Chief Scout of Canada.

The Association des scouts du Canada adopted a resolution whereby it did not oppose changing the official name to Scouts Canada.

[*English*]

At the time of its incorporation, what is today known as Boy Scouts of Canada was a branch of the Scout Association in England. While the name of Boy Scouts of Canada has changed from The Canadian General Council of the Boy Scouts Association, its name at the time of incorporation in 1914, to Boy Scouts of Canada, the name change was not accompanied by appropriate changes to the special act to reflect that an independent scouting movement had been formed in Canada.

Over the years, independent scouting movements were established in Canada and a number of other countries in the world. A review of the present special act shows a number of references to the association. These references refer to the association in England. Such references are contained in the object and elsewhere in the special act.

These should be amended to reflect the current status of the Boy Scouts of Canada within the world organization of the scouting movement. Boy Scouts of Canada is clearly no longer a branch of the English organization constituted to provide and maintain an efficient organization in Canada for the purposes of the English association.

Scouts Canada's commitment to the spiritual, social and personality development of young people is evident in the wide range of programs it offers to youth between the ages of 5 and 26. Outdoor adventure is a key component of these programs. Working in small groups, scouts are challenged to test their limits and to strive to reach personal goals.

Scouts Canada's mission is achieved by involving youth in an informal education process. Scouts are encouraged to become self-reliant, responsible and committed individuals. Scouts Canada also assists youth in establishing a value system based on spiritual, social and personal principles.

Scouting is based on three broad principles. They are duty to God, duty to others, and duty to self.

The scouting movement has been an institution in Canada for nearly a century. Generations of young Canadians have benefited from the leadership skills acquired through scouting programs. Scouts Canada's mission and values are as relevant today as they were when the organization was created, and possibly even more so.

Today's scouting experiences are inclusive of boys and girls and, indeed, of young men and young women. Bill S-19 provides an accurate reflection of the present status and mandate of the organization that has served and continues to serve Canadians so well.

I urge all honourable senators to support speedy passage of this bill.

On motion of Senator Jaffer, debate adjourned.

[*Translation*]

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

SEVENTH REPORT OF COMMITTEE—
MOTION IN AMENDMENT—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Chalifoux, for the adoption of the seventh report of the Standing Committee on Rules, Procedures and the Rights of Parliament (*amendment to Rule 131—request for Government response*) presented in the Senate on February 4, 2003,
>
> And on the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Milne, that subsection (3) of the Committee's recommendations to amend Rule 131 of the *Rules of the Senate* be further amended by replacing the words "communicate the request to the Government Leader who" with the following:
>
> > "immediately communicate the request, and send a copy of the report, to the Government Leader and to each Minister of the Crown expressly identified in the report or in the motion as a Minister responsible for responding to the report, and the Government Leader,"
>
> And on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Prud'homme, P.C., that the motion for the adoption of the seventh report of the Standing Committee on Rules, Procedures and the Rights of Parliament and its motion in amendment be not now adopted, but be referred back to the Standing Committee for further study and report.—(*Honourable Senator Prud'homme, P.C.*).

Hon. Marcel Prud'homme: Honourable senators, I have informed the Honourable Senator Cools that my name will be struck from the Order Paper in connection with this report by the end of this week, at the latest.

Order stands.

STUDY ON THE PROPOSAL OF THE VALIANTS GROUP

REPORT OF NATIONAL SECURITY AND DEFENCE
COMMITTEE—ORDER STANDS

On the Order:

> Resuming debate on the consideration of the fourth report of the Standing Senate Committee on National Security and Defence (*study on the proposal of the Valiants Group*) tabled in the Senate on December 12, 2002.—(*Honourable Senator Prud'homme, P.C.*).

Hon. Marcel Prud'homme: Honourable senators, I have read this report very carefully.

[*English*]

However, no one could give me a copy of it, which is probably due to its popularity. One was printed for me. I read it and made a commitment not to speak to it again. However, I have now heard from Liberal members, and an honourable senator from the Conservatives at the request of Senator Atkins. Thus, I will ask that we adjourn this item in my name. However, I may be unable to participate to the full extent since several orders on the Order Paper stand in my name. In case honourable senators do not know, I recently broke three ribs.

To accommodate both sides, I will adjourn the item in my name. However, I do not want to be asked again by the Honourable Senator Kinsella: When will Senator Prud'homme speak to this item?

Order stands.

THE BUDGET 2003

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Lynch-Staunton calling the attention of the Senate to the Budget presented by the Minister of Finance in the House of Commons on February 18, 2003.—(*Honourable Senator Stratton*).

Hon. Terry Stratton: Honourable senators, I am pleased to rise today to join in the debate on the budget of February 18.

As I read the budget, for a moment I felt I had been taken back in time to the 1970s. Last year, program spending rose by some 11.5 per cent, or $14.3 billion. The last time we had a double-digit spending hike was in 1984 at the end of the Trudeau era.

Over the period 1968 to 1984, program spending rose at an average annual rate of 13.6 per cent, a legacy for which we are still paying as the current Prime Minister tries to create his own.

Even if you take out one-time measures for health and defence, program spending last year rose by 7.3 per cent. The Minister of Finance saw that he was headed for a surplus last year. Rather than use that money to pay down the debt or to cut taxes, he spent it.

The debt reduction that we have seen to date has been more by accident than by design. It has been only the result of overcharging workers for Employment Insurance and Paul Martin's first term cuts to health and education.

While the government is projecting a balanced budget this year, on an accounting and cash flow basis, there is every possibility that it may have to take on new market debt in the months ahead.

• (1640)

If you run a business you can be breaking even on paper while borrowing money to meet your payroll. The government is no different. The budget predicted net financial requirements of $5.8 billion this year and $2.1 billion next year; in other words, over two years, the government faces a $7.9 billion cash flow shortfall.

This government just does not seem to care. On May 7, the President of the Treasury Board appeared before the Standing Senate Committee on National Finance to defend the government's Main Estimates. Of all the departments in government, you would expect the Treasury Board to lead by example. The President of the Treasury Board is the government's comptroller. Saying "no" to other departments is a key part of that person's job.

Senator Bolduc asked her about spending in her own department. He wanted to know, for example, why the Treasury Board was planning to spend $267 million more than last year, an increase of 12 per cent. Senator Bolduc wanted to know why the Treasury Board's expected spending on personnel, of $1,679 billion, is up 17 per cent from last year's Main Estimates. He asked why the Treasury Board's bill for professional and special services is up by $9 million, or 26 per cent. He wanted to know why Treasury Board Vote 1, operating expenditures, was up 29 per cent from last year. The President of the Treasury Board left us with the impression that she did not know the basic details of her own department's spending plans and let the officials reply instead.

I could understand if the President of the Treasury Board wanted to defer to her officials on the operating budgets of some other department, but this was not some other department, it was her own.

Honourable senators, members from the National Finance Committee have been deeply concerned by both the cost of the gun registry and by the continued use of contingency votes and Supplementary Estimates to fund it. Supplementary Estimates were used 11 times between 1995 and 1996 and 2002-2003 to fund the gun registry. The total obtained this way was $469 million, or more than half the cost of the program to the end of last year. This included six occasions when contingency votes were used to provide $156 million in funding prior to Parliament even seeing the Supplementary Estimates.

This year we are told that the gun registry will need another $113 million.

I asked the President of the Treasury Board if she could assure the National Finance Committee that the government will not seek further funding for the gun registry this year beyond that approved through votes arising from the Main Estimates. She could not. In response to my question, she said:

> We will see what will happen during the year. However, we have Supplementary Estimates precisely to fulfill certain demands that could occur during the fiscal year. It is very difficult for me to say, for any department, "That is it. You have the money April 1, and you will have no more for the rest of the year."

What could happen?

First, from the "Report on Plans and Priorities" for the Justice Department, we learn of additional work by the alternative services delivery contractor that could cost as much as $15 million beyond the current planned spending levels.

Second, the President of the Treasury Board could not tell us with certainty whether all of the costs of moving this hot potato from the hands of the Justice Minister to the lap of the Solicitor General are reflected in the Main Estimates. Even if everyone stays put in the same cubicle, this will cost money. New business cards will have to be printed, new signs installed, new stationary ordered. Someone will have to work overtime to change the e-mail address of every gun registry employee. Someone will have to work overtime, or some computer consultant will have to be hired, to switch the network drive of each employee from one department to another.

Different departments have different record management processes, which will require employees to be trained, likely in rented conference rooms.

Different departments use different software and sometimes different hardware to allow their employees to access their office computers from home or from office laptops, so new software and hardware will have to be bought and installed all over again.

I would hope that the government finds some ways to absorb these costs within the gun registry budget without coming back to Parliament, but I would not count on that happening, given its previous history.

The Minister of Finance has laid down instructions to his cabinet colleagues to come up with $1 billion in spending cuts. Ironically, that $1 billion is about equal to what the government has wasted on the gun registry.

Missing from this budget is any serious tax relief for the middle class. The budget increases the RRSP contribution limit to $18,000 a year, which is where it would have gone anyway with normal indexing, had Paul Martin not reduced and frozen RRSP limits a few years ago. I do welcome this as I would welcome any measure that helps Canadians prepare for retirement. The only problem is that the $18,000 limit is only available to those with earned incomes in excess of $100,000 per year. It gives no additional tax relief to the middle class.

The government could have taken one simple step, at virtually no cost, to help all Canadians, regardless of income, to build their retirement savings. It could have raised the foreign content limit on RRSPs and pension plans. Limits on where you or your pension plan can invest your retirement savings means less retirement income. Why is government not willing to give Canadians greater freedom to invest their retirement savings where they see fit by lifting the foreign investment ceiling from the current 30 per cent?

Honourable senators, if your income is below $35,000, the budget gave you an increase in your child benefit supplement, and it gave you a further tax credit if you have disabled children. If your earned income is above $100,000, you get an $18,000 RRSP limit. If you are a middle-income earner, there is nothing. So much for the legacy.

Canadians do not mind spending when the government gets things right. There are basic things that governments must do in the public interest.

A case in points is the international bridges that span the Niagara and Detroit rivers. We rely upon trade for 40 per cent of our national income, yet this government sees no urgency in breaking the log-jam that sometimes sees trucks backed up for hours. This is not 1963, when "just in time" meant getting home seconds before the curfew set by your parents. This is 2003, when "just in time" is how factories manage inventories and shipments.

One the biggest economic issues facing Canada today is the movement of trade through the Canada-U.S. border. The budget did next to nothing to ensure the flow of trade and commerce with our largest trading partner. This government would rather blow hundreds of millions of dollars on phoney GST rebates; allow medical equipment money to be spent to buy lawn mowers; hand out HRDC grants to shift jobs from one southern Ontario town to another southern Ontario town; or pay friends like Groupaction for work that was never done.

The Globe and Mail yesterday wrote about the ad agencies in trouble again by inflating the cost of contracts by 17.6 per cent. This was a Public Works internal report obtained by *The Globe and Mail*.

> The internal report, obtained by The Globe, said that the $40 million-a-year program was marred by this web of firms, in which advertising agencies added a 17.65 per cent commission on federal work that was subcontracted to affiliated firms.

It states that the affiliated firms were business partners, sons, political allies, and even themselves. So much for good management.

• (1650)

In his budget, the Minister of Finance said the government would retain the power to set EI premiums for yet another year and with great fanfare announced what he called "a cut in EI premiums." In fact, honourable senators, what he really did was block an even deeper cut in premiums. Under the law as it stood prior to the budget, the independent EI Commission would have been back in the business of setting premiums this fall. Given the size of the EI surplus and given the rules for premium setting, the commission would have had little choice but to cut premiums to a maximum of $1.75 and probably lower. Indeed, the government could announce a three-year premium holiday and still have a surplus in the EI account. Mr. Manley's excuse is that the government needs to consult on a new premium-setting process for 2005.

Honourable senators, when the government took control of the premium-setting process back in the fall of 2000, it used the pretext of studying the way rates are set. By controlling the way rates are set, it was able to keep premiums much higher than needed to give the huge surpluses that were being racked up. Almost three years later, with the EI surplus approaching $50 billion, why does the government need yet another year to study the way in which rates are set? Why has it not held these consultations previously? Because the longer it can stall, the longer it can keep EI premiums artificially high.

The Minister of Finance may also have bent the truth when he told us that $1.98 would be a break-even premium. This is at odds with the figure of $1.75 given by the EI actuary. There was no explanation anywhere in the budget papers, so we asked the Department of Finance to explain the difference. The answer was that while a couple of pennies represent the cost of the new compassionate leave benefits, virtually all of the difference is interest on the EI surplus.

John Manley does not want to credit interest on that $50 billion that he has borrowed from Canadian workers and those who employ them. Rather, he wants to render the entire surplus moot. This could have been a budget from the seventies, as I have said. It spends; it does not reduce taxes; and it does little to make us the "northern tiger" promised by Minister Manley.

Honourable senators, I want to close by referring to another article in *The Globe and Mail* of May 26, 2003, entitled: "High taxes the key to Canada's surplus: report." It states that:

> Canada's superior fiscal position to the United States in recent years is a function of higher taxes, a report says, not a stronger economy or superior financial management.

Surprise, surprise.

On motion of Senator Robertson, debate adjourned.

GREECE

MOTION TO ENCOURAGE THE UNITED KINGDOM TO RETURN PARTHENON MARBLES ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Maheu, seconded by the Honourable Senator Bacon:
>
> That the Senate call on the Government of Canada to encourage the Government of the United Kingdom to cause the return of the Parthenon Marbles to Greece in time for the Opening Ceremony of the 2004 Olympic Games in Athens.—(*Honourable Senator Merchant*).

Hon. Pana Merchant: Honourable senators, it is humbling to be able to include in the word "colleagues" so many great Canadians. I am humbled by your qualities of mind and experience and I am enjoying immensely the opportunity to participate with you in the work that we do for the betterment of Canada and the world.

Senator Sparrow and Senator Wiebe have been good friends of our family for over four decades. Senator Andreychuk was a gracious classmate of my husband in law school. Senator Tkachuk has been a friend, first in the Liberal Party before he fell victim to impure Conservative thoughts. Senator Gustafson has been a sound Prairie advocate. Seeing these wise choices from Saskatchewan by many prime ministers, it is with pride that I say to all of them that I now serve as the junior senator from Saskatchewan. For a long time I have known and admired Senator Carstairs and I have enjoyed her friendship.

I rise today filled with pride and emotion as the first Greek-born woman to serve in this chamber. Conscious of the great privilege that has been afforded me by this generous country, my adopted country Canada, I praise a group of Canadians — Greek immigrants and their offspring — who have woven their joie de vivre, their hard work ethic, their humour, their belief in God, their commitment to the democratic process and the openness of their hearts, all these things, into the rich tapestry of Canada.

The motion before honourable senators urges the Government of Great Britain to return the Parthenon Marbles to Greece, the country of my birth. There are legal arguments regarding the Parthenon Marbles, but first there is the wider, deeper issue of pride of nation — the pride of Greece. This issue causes me to say, as I stand in this place a member of the Canadian Senate, that I am a proud Greek and a proud Canadian, just as other honourable senators and their families say that they are proud to be Italian and Canadian or Chinese and Canadian or Jamaican and Canadian or Catholic and Canadian or Quebecois and Canadian or Westerner and Canadian.

[*Translation*]

Difference is based on our sense of identity, our sense of where we are and our sense of existence, which makes us important and motivates us to make a contribution. All senators are proud Canadians from different backgrounds.

[*English*]

Canada revels in diversity. Indeed, we constantly describe ourselves as different from our neighbours to the south because of our cultural mosaic rather than their melting pot, which we subconsciously think is little more than a means of submerging the French in Louisiana, the Chinese in San Francisco, the Greeks in Chicago and the Mexicans in Texas into one prototype of an American citizen.

The challenge becomes how we celebrate difference and how we deal with those who are different from us.

[*Translation*]

Again, Canada is proud of its diversity. Canada is a nation based on differences and the respect of differences. We have a legal structure that includes the Canadian Charter of Rights and Freedoms, which allows us to protect these differences.

However, this structure is just that: a legal structure. It is through our leadership and that of thousand of others responsible for community associations and organizations, through talking with friends and family members, that differences are respected in daily realities and that we continue to enjoy these differences of which we are so proud.

The fact that I can say in this chamber that I am Greek and Canadian will encourage others to also express their pride.

[*English*]

There are dangers in difference — dangers in the darker side of difference. Our greatest weapon against the dangers of difference is our memories, which must include, in Canada, our memory of the internment of the Japanese and many Germans, and before that many Ukrainians; our memory of the Chinese head tax; and our memory of our treatment of Canada's First Nations.

• (1700)

We are a nation founded in large part by the people and ideas of Great Britain and the people and ideas of France. We are a Parliament modeled on the mother of parliaments, from Great Britain. From Canada, then, it is most appropriate that our Parliament advise and request the mother of parliaments to mandate the return of the Athenian marbles to Greece prior to the 2004 Olympic Games in Athens, recognizing their profound historical significance and the importance these marbles play in the place and worth of Greek history and to the Greek sense of self.

Deep seated in the historic reluctance of dominant countries to return treasures to the country of origin is the subconscious view that our difference really means we are safer, more stable and a haven for treasures.

[*Translation*]

This idea of equality, that all men are created equal and that people have inalienable rights as individuals is so entrenched these days in Canadian culture that we seem to forget that this is a new concept. This concept dates back to the end of the 20th century and may spread around the rest of the world during the 21st century. This is not a commonly held idea in certain countries in Europe or in South America and in Asia. The idea that one culture should not try to dominate another is an even more recent concept.

[*English*]

Those who collected the treasures of prior times, largely, for some hundreds of years, the French, English and later the Germans, Napoleon in Egypt, Elgin and others who filled the European museums, did protect assets which might not have survived forever. However, it is time for Great Britain to consider what I hope will be the recommendation of this body, as it is the recommendation of the other place, that these monuments return to the country not just from which they came but the country in which they are a national treasure. In foreign museums, they are little more than an interesting view of antiquity.

Rest assured that the British museum, for which I have great respect, and the British government, deep down, are reluctant to return the Parthenon marbles because the difference between the British and the Greeks creates doubt that these treasures will be safe in Greece. Safe today, they think, but what about in 20 or 100 years? By that reasoning, the treasures of the world should currently all be in the United States, and 100 years before that in Great Britain, 100 years before that in France or Italy, and 500 years before that probably in the only truly civilized country in the then-world, which was China. Did Britain empty itself of Ming vases or the treasures of Luxor or the Athenian marbles when Hitler approached their beaches, a week before Waterloo, or when the Spanish Armada approached their shores?

Consider the unethical manner by which Lord Elgin forcibly removed these Greek antiquities, not to save them but simply to decorate his estate, and then in 1816 to sell them to the British government for 35,000 pounds.

The tortuous journey of the Parthenon marbles is troublesome. Having bribed the Turkish conqueror of Greece, 300 of Elgin's men, over a period of 10 years, dismembered the Parthenon, using great saws and crowbars. Some of its most beautiful pieces — 247 feet of the original 520 feet of its frieze, 32 metopes, numerous figures from the pediments, and several other pieces of marble sculpture — were loaded on ships to be taken to England.

Many were submerged — corroding in the salt water and thrashing about in storms when one of the ships sank. Then, they lay on the shores of Malta for five months covered with seaweed. They were not cleaned or unpacked for years once they reached England. Some of the marbles never made it.

Those that arrived were assaulted anew by their British "caretakers." In an effort to sell copies of the marbles, molds were made of them repeatedly, a process that stripped off their original paint. Perhaps the most serious damage was done in the 1930s, when British museum curators decided in ignorance to "clean" them. Not realizing that the Parthenon was intended to have colouring, they attempted, with the use of copper tools and cleaning solvents, to strip them of their hues, which resulted in the destruction of several layers of the marble itself. Almost as offensive as the damage was the fact that the British museum deliberately covered up the incident until 1998, some 60 years later.

Yet, the facts and legality of the taking of the marbles are not the primary focus of those of us who advocate their return. For the people of Greece and people of Greek heritage worldwide — millions of us in Australia, South America, Chicago, Toronto, Moose Jaw — part of our pride of self is the difference that we made through a contribution two and a half millennia ago, back to the time of Solon and the beginnings of democracy. While I am not a government interventionist, we should urge the Government of Great Britain to press and urge the British Museum to return the Parthenon marbles to the country in which they will be fully cherished — to the country where they speak of our identity and link us to our history.

The restitution of the Parthenon marbles from London to their natural home, Athens, is not a nationalistic claim. The restitution of the marbles and, therefore, the restoration of the Parthenon sculptural decoration, the Frieze sculptures, is the claim of the mutilated monument itself. The marbles cannot be considered a movable monument, as is the case of the other sculptures of antiquity, the Aphrodite of Melos or the Nike of Samothrace. The marbles are inseparable parts of the Parthenon, the great immovable monument of classical antiquity — the most important architectural monuments of the Classical period. Based on current views on the protection of our global cultural heritage and the principles of UNESCO, the restitution of the marbles to Athens should be, above all, approached with the political, historical and cultural sensitivity befitting a country such as Great Britain.

At the foot of the Acropolis and in direct view of the Parthenon, the new exquisitely designed museum of the Acropolis is being built. A special hall will exhibit, in its entirety, the Parthenon's sculptural serenity. If the marbles are not restored, the inauguration of the Acropolis museum and the special restoration of a large area of the Parthenon will emphasize the mutilated sculptures and point out the fact that many are absent.

The Greek position has been that the restitution of the marbles be carried out in the form of a long-term loan, without addressing the issue of the ownership of the marbles. It envisions the exhibition of the Parthenon sculptures coming together as a joint project of the new Acropolis museum and the British museum. In exchange for this cooperation, the Greek government assumes responsibility for organizing important temporary exhibitions of Greek antiquities in the British Museum to continually generate international public interest.

• (1710)

Honourable senators, permit me to conclude with the moving plea of Melina Mercouri, the then Greek Minister of Culture, at the 1982 meeting of UNESCO in Mexico. There she said:

> ...the time has come, for these Marbles to come home to their rightful place, the blue skies of Attica, where they form a structural and functional part of a unique entity. The day may come, when the world will conceive of other visions, other notions about ownership, cultural heritage, and human creativity. And we fully appreciate that museums cannot be emptied. But in the case of the Acropolis Marbles, we are not asking for the return of a painting or a statue... (but)...for the restitution of part of a unique monument, the particular symbol of a civilisation...

Honourable senators, as a proud Canadian of Greek birth and heritage, I call upon my colleagues to support this motion, to support justice, to support democratic fairness, and to support the nation we call Hellas.

Together, we can right a significant wrong.

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

Motion agreed to.

AGRICULTURE AND FORESTRY

FINDINGS IN REPORT ENTITLED: "CANADIAN FARMERS AT RISK"—INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Oliver calling the attention of the Senate to the findings contained in the report of the Standing Senate Committee on Agriculture and Forestry entitled: *Canadian Farmers at Risk*, tabled in the Senate on June 13, 2002, during the First Session of the Thirty-seventh Parliament. —(*Honourable Senator Stratton*).

Hon. Terry Stratton: Honourable senators, I wish to speak briefly today to the report of the Standing Senate Committee on Agriculture and Forestry entitled: "Canadian Farmers at Risk," tabled last June. The report is particularly relevant in light of the current crisis in the Canadian beef industry. It deals with the fact that Canada has been very fortunate not to have experienced serious food-safety incidents. The report also deals with the growing movement within the Canadian retail sector for trace-ability. That is the ability to trace back any food-safety problem to its origins.

Honourable senators will know about the current mad cow or BSE investigation on the one cow that was diagnosed last week. Current officials of the Canadian Food Inspection Agency are conducting trace-backs of that cow. Those investigations are not yet completed. I should like to be able to come back and discuss more fully the ramifications for Canadian agriculture and farmers, once the CFIA has more information on the BSE investigations.

The recommendations raised in this report are timely and deserve full consideration in light of this current crisis. Therefore, I move the adjournment of the debate in my name for the remaining time.

On motion of Senator Stratton, debate adjourned.

QUESTION OF PRIVILEGE

Hon. Gerald J. Comeau: Honourable senators, I rise today to ask His Honour the Speaker to find a prima facie case of a breach of privilege which has arisen and which affects both the Standing Senate Committee on Fisheries and Oceans and the Senate as an institution.

Here are the facts:

[*Translation*]

On the afternoon of Thursday, May 8, 2003, the committee clerk and the committee research analyst delivered by hand to the office of each of the eleven committee members a hard copy of the confidential draft of the fifth report my committee is in the process of finalizing on straddling stocks in the North Atlantic. Each copy was marked "Confidential, not for public discussion or for release."

[*English*]

On Tuesday morning, May 13, 2003, the clerk of the committee e-mailed to all members four more pages containing the confidential recommendations that were missing from the paper copy of the confidential draft of the fifth report distributed by hand on May 8.

On Tuesday evening, May 13, 2003, your committee met in camera in room 505 of the Victoria Building to discuss its confidential draft fifth report. Members present were given a revised paper copy of the confidential draft fifth report that merged both the version they had received on May 8 and the recommendations that had been e-mailed to them earlier that day.

Unlike the May 8 version, the consolidated version was not stamped "confidential" but all members present were reminded orally of the confidential nature of the document and that, in fact, they were looking at a confidential draft report.

Present at the May 13 in camera meeting, in addition to myself, were the Honourable Senators Adams, Baker, Cochrane, Cook, Hubley and Watt. Also present in the room, in addition to the clerk and the research analyst of the committee, were the research assistants to the Honourable Senators Mahovlich and Cochrane, as well as two interpreters, the Senate page and the committee attendant. These staff members were allowed to stay in the room during the in camera meeting by a duly recorded resolution of the committee members.

[*Translation*]

At the end of the meeting, the clerk of the committee gathered up all the paper copies distributed on May 8. But he left the members the new paper copies distributed that very evening in preparation for the second in camera meeting the committee will hold on that draft report later this evening.

[*English*]

On Thursday, May 15, I received a call from Bob Fife of the *National Post* asking questions about artificial reefs as it pertained to a fisheries report. The call was made to me. I did not make the call to Mr. Fife. In case there may be any doubt, I want to make this absolutely clear: The call came to me.

Also, on Thursday, May 15, 2003, the Canadian Press ran a story dealing with artificial reefs. Artificial reefs were the subject of portions of the confidential draft fifth report. This story, written by Stephen Thorne, quoted from the body of the draft report.

On Friday, May 16, 2003, the following papers picked up the CP story: *The Chronicle-Herald*, *The Edmonton Sun*, the *Guardian*, the Montreal *Gazette*, the *National Post*, *Le Soleil* and the *Evening Telegram*. The CP story was also picked up by the seafood.com Web site.

• (1720)

From reading the quotes in this Canadian Press story, one can assume that Mr. Thorne managed to get his hands on a copy of the confidential draft fifth report. One, however, cannot so state categorically until after having asked Mr. Thorne directly.

The *National Post* article, however, clearly states, "according to the report obtained by the *National Post*." This is a direct quote from the story.

One can, therefore, safely presume that at least one copy of the confidential draft fifth report was leaked to the *National Post*. An unauthorized disclosure of confidential information has taken place, thereby breaching the privileges of my committee and those of the Senate and all senators.

[Senator Comeau]

[*Translation*]

Honourable senators, in conclusion, I will ask the Hon. the Speaker to rule on whether or not there was an actual violation of our privileges and, in accordance with Appendix IV of the *Rules of the Senate*, adjourn any consequent motions until my committee has completed its examination of this leak and tabled its report to the Senate.

[*English*]

SPEAKER'S RULING

The Hon. the Speaker: I thank the honourable senator for the elaboration on the matter of privilege.

I wish to confirm my understanding that this leak of information as described by the Honourable Senator Comeau occurred during the break week. This is timely, both in that respect and in respect to the notice given and the proceedings that we have taken today, including the honourable senator's notice during Senators' Statements and his comments at this time.

I do not intend to spend much time on this matter because there are a number of precedents. Whenever there has been an incident like this, it has been found that that constitutes a prima facie case of privilege.

In this case, Honourable Senator Comeau recommends that we proceed as provided for in appendix IV to the *Rules of the Senate*. We also have the benefit of having done that on one previous occasion with respect to a leaked report from Standing Senate Committee on Banking, Trade and Commerce.

Accordingly, I find that there is a prima facie case and that this matter should proceed in accordance with our rules. That means that the Fisheries and Oceans Committee should now carry out an investigation and bring a report back to the Senate as a whole, which is a debatable report. That report may or may not be referred to our Standing Committee on Rules, Procedures and the Rights of Parliament.

That is my ruling.

HUMAN RIGHTS

COMMITTEE AUTHORIZED
TO STUDY SPECIFIC CONCERNS

Hon. Shirley Maheu, pursuant to notice of May 14, 2003, moved:

> That the Standing Senate Committee on Human Rights be authorized to hear from time to time witnesses, including both individuals and representatives from organizations, with specific human rights concerns; and
>
> That the Committee report to the Senate from time to time and table its final report no later than March 31, 2004.

Motion agreed to.

THE SENATE

WORLD HEALTH ORGANIZATION— MOTION REQUESTING GOVERNMENT SUPPORT FOR TAIWAN'S REQUEST FOR OBSERVER STATUS— DEBATE ADJOURNED

Hon. Consiglio Di Nino, pursuant to notice of May 15, 2003, moved:

> That the Senate call on the Government of Canada to support the request of the Government of Taiwan to obtain observer status at the World Health Organization (WHO).

He said: Honourable senators, I am pleased to speak on the motion in support of the request of the Government of Taiwan to obtain observer status at the World Health Organization.

On May 19, 2003, the World Health Assembly once again rejected Taiwan's application for observer status at the WHO. At that meeting, in support of Taiwan's application, Mr. Tommy Thompson, U.S. Health and Human Services Secretary, said:

> The need for effective public health exists among all peoples. That's why the United States has strongly supported Taiwan's inclusion in efforts against SARS and beyond. If we are truly serious about stopping this disease in its tracks, then we cannot ignore millions of people who are at risk. One lesson from SARS is that public health knows no borders — and no politics.

The United States Congress also recently passed a resolution endorsing Taiwan's bid.

The World Health Organization, an agency of the UN, was founded in 1947 with the goal of improving the dialogue between countries on issues relating to health. The preamble of the WHO constitution states:

> The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social conditions.

In today's world, disease cannot be contained by state borders. The recent spread of severe acute respiratory syndrome demonstrated the ease with which a regional outbreak can become a global epidemic.

Taiwan's request for observer status is not about politics. It is about health — the health of its 23 million citizens and indeed the citizens of all countries of the world.

Taiwan has one of the highest life expectancy levels in the world. It boasts top-notch research and medical facilities and no fewer than 14 internationally recognized medical schools. Not only would Taiwan benefit from observer status at the WHO, but the world would surely profit from Taiwan's expertise and knowledge.

Honourable senators, China continues to oppose Taiwan's bid to obtain observer status at the WHO, citing that this would violate China's sovereignty and undermine its ability to address Taiwan's health concerns. As a result of China's opposition, Taiwan decided not to seek full status at the WHO and instead applied for observer status only as a "health entity."

To date, a number of "health entities" have been awarded observer status, including the Holy See, Palestine, the Order of Malta and the PLO.

On April 3, 2003, the Standing Committee on Foreign Affairs of the other place passed a motion supporting Taiwan's request to obtain observer status. Yesterday, a similar motion was extensively debated in the other place. Today, I am delighted to report that today the motion was passed by a majority of 167 to 63. I applaud all honourable members of the other place.

During debate, the honourable Liberal member from Yukon, speaking out against some of his party's position, indicated that the current SARS crisis is not the first example of medical information and assistance being denied to the Taiwanese because they are not WHO members. The member cited a 1998 enterovirus outbreak in Taiwan that resulted in the death of over 80 Taiwanese, many of them children. At the time, the WHO had in their possession antibodies that could have been of assistance in the outbreak. Although a request for help was sent to the WHO, no response was received.

The consequences of Taiwan's exclusion from the World Health Organization were also evident when Taiwan requested WHO support at the outset of the SARS outbreak and was denied assistance. Vital information provided by the WHO Global Outbreak Alert and Response Network was withheld from Taiwan because it was not a member of the organization, slowing its response to the outbreak.

• (1730)

Honourable senators, Canada has a vested interest in supporting Taiwan's bid to obtain observer status at the World Health Organization. Each year, over 150,000 Taiwanese visit Canada, enriching our nation, and a further 100,000 Taiwanese students and immigrants call Canada home. The Taiwanese government is disappointed at the rejection of their application, but their efforts will continue.

The Senate of Canada can send a strong message in support of this effort, as the other place did today. I urge honourable senators to support this motion, which is an important step toward making access to medical information and assistance truly universal.

On motion of Senator Poy, debate adjourned.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, Senator Di Nino has asked for the floor to request leave with respect to a motion he made earlier today.

Hon. Consiglio Di Nino: Honourable senators, Senator Jaffer and I have been working together on Bill S-19, dealing with the change to the Scout organization, and when I stood to move second reading of the bill, she wanted to be recorded as being the seconder of that motion. However, the Speaker recognized Senator Keon, who has graciously agreed to allow Senator Jaffer's name to replace his as the seconder of the motion, so I would ask for the leave of honourable senators to permit that to be done.

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

Hon. Senators: Agreed.

The Hon. the Speaker: The seconder will appear as Senator Jaffer, who was in attendance in the chamber at the time second reading was moved.

The Senate adjourned until Wednesday, May 28, 2003, at 1:30 p.m.

CONTENTS

Tuesday, May 27, 2003

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