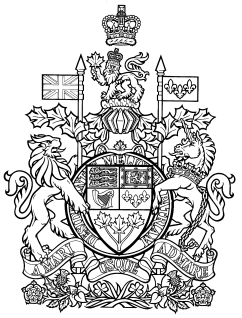

CANADA

Debates of the Senate

2nd SESSION • 37th PARLIAMENT • VOLUME 140 • NUMBER 59

OFFICIAL REPORT
(HANSARD)

Wednesday, May 28, 2003

THE HONOURABLE DAN HAYS
SPEAKER

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

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

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

THE SENATE

Wednesday, May 28, 2003

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

Prayers.

SENATORS' STATEMENTS

SEVENTH ANNUAL ESQUAO AWARDS

Hon. Elizabeth Hubley: Honourable senators, one of the greatest personal pleasures of our work here is the opportunity to become familiar with community organizations across the country. I have always been particularly inspired by groups that have, as their mission, the preservation and celebration of heritage, the promotion of social justice and human rights, and the positive building of Canada through a greater respect for one another.

I encountered such a group two weeks ago, honourable senators, when I took part in the seventh annual Esquao Awards in Edmonton, a program of the Institute for the Advancement of Aboriginal Women designed to recognize and honour the contributions and achievements of Aboriginal women.

What a marvellous evening it was. The theme of the Esquao Awards, "Angels Among Us," points to the vital role First Nations women play in their local communities and throughout Canada as elders, business leaders, educators, mentors, artists and healers. Forty-five remarkable women were recognized that night.

I personally had the honour of presenting a community-involvement award to Ms. Angela Lighting of Calling Lake, Alberta, a young woman who had made a difference by helping to create a minor hockey and minor baseball program and by demonstrating her dedication and loyalty to the youth of her community.

Honourable senators, each year, the institute also presents a special Circle of Honour Award in recognition of a lifetime of achievement and accomplishment in our Aboriginal communities. You will be pleased to know that our esteemed colleague Senator Chalifoux was the recipient of the 2003 Circle of Honour Award. I was among those who spoke in tribute to Senator Chalifoux that evening, and I am sure I did so with your enthusiastic consent and support.

Several years ago, our colleague was the recipient of another award given by the Edmonton Catholic Services Bureau. At that time, Father James Holland of the Sacred Heart Church spoke about Thelma's spirit, her inner strength and resolve to help the Metis people, as well as her wisdom, her broad knowledge and life experience, qualities I believe that she continues to exemplify as a parliamentarian.

Honourable senators, I know that you will join with me today in recognizing Senator Chalifoux as well as the other outstanding 2003 Esquao Award recipients.

[*Translation*]

HUMAN RESOURCES DEVELOPMENT

YOUTH EMPLOYMENT STRATEGY

Hon. Lucie Pépin: Honourable senators, the transition from school to work is not always easy for young people. Lacking experience, a number of young Canadians do not manage to find permanent jobs.

The Government of Canada has created the Youth Employment Strategy in order to help young people acquire the necessary skills to succeed in getting into the work force.

Last week, on behalf of the Honourable Jane Stewart, I launched two major projects within that program for the youth of the senatorial division of Chaouinigane, which I represent here in the Senate of Canada. The Société d'aménagement et de mise en valeur du bassin de la Batiscan received a financial assistance of $139,442.

The mandate of this body is to encourage activities to improve the water management of the Batiscan River. This funding will enable nine young people to acquire some valuable work experience in the environmental field, and will improve the quality of the water and the wildlife habitat in the Batiscan River catchment area.

Funding was also awarded to the Société d'aide au développement des collectivités de la vallée de Batiscan, and will allow 22 young people to attend workshops that will help them get to know more about themselves and about getting into the work force. They will then do an internship with a local business.

These two projects, funding for which was included in the February 2003 federal budget, are very important for our young people. From them, the participants will gain the necessary tools to become full-fledged members of the work force, with the highly developed skills we need.

• (1340)

ROUTINE PROCEEDINGS

AUDITOR GENERAL

REPORT TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the "Report of the Auditor General of Canada to the House of Commons," dated May 2003.

[*English*]

STUDY ON REPORT ENTITLED: "ENVIRONMENTAL SCAN: ACCESS TO JUSTICE IN BOTH OFFICIAL LANGUAGES"

REPORT OF OFFICIAL LANGUAGES COMMITTEE TABLED

Hon. Wilbert J. Keon: Honourable senators, on behalf of Honourable Senator Losier-Cool, I have the honour to table the third report of the Standing Senate Committee on Official Languages. This report concludes our study of the Justice Canada document entitled: "Environmental Scan: Access to Justice in Both Official Languages."

STUDY ON POSSIBLE ADHERENCE TO AMERICAN CONVENTION ON HUMAN RIGHTS

REPORT OF HUMAN RIGHTS COMMITTEE TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to table the fourth report of the Standing Senate Committee on Human Rights entitled: "Enhancing Canada's Role in the OAS: Canadian Adherence to the American Convention on Human Rights."

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

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

NATIONAL SECURITY AND DEFENCE

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

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

> That the Standing Senate Committee on National Security and Defence have power to sit on Monday, June 9, 2003, even though the Senate may then be sitting, and that rule 94(4) be suspended in relation thereto.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that on Thursday, May 29, 2003, I will move:

> That the Standing Senate Committee on National Security and Defence be empowered in accordance with rule 95(3)(a) to sit during the adjournment, even though the Senate may be adjourned for a period exceeding one week.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT INTERIM REPORTS WITH CLERK OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that on Thursday, May 29, 2003, I will move:

> The Standing Senate Committee on National Security and Defence be permitted, notwithstanding usual practices, to deposit such interim reports that it may have ready during the adjournment, and that the reports be deemed to have been tabled in the chamber.

QUESTION PERIOD

HEALTH

SEVERE ACUTE RESPIRATORY SYNDROME— RESPONSE TO NEW OUTBREAK— QUARANTINE OF SCHOOL

Hon. Wilbert J. Keon: Honourable senators, I have a question for the Leader of the Government in the Senate. It appears that the SARS virus has spread outside the hospital setting in Toronto and has entered the community. Yesterday, Father Michael McGivney Catholic Academy in Markham was closed and about 1,700 students and teachers were quarantined after it was revealed that a student attended classes while suffering from symptoms of the disease. Could the Leader of the Government in the Senate tell us whether public health officials have been able to trace this latest case to the new cluster?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator is quite right: A school has been closed until June 3. The young boy who is sick had contact with his mother, a health care worker in one of the affected hospitals. She is now a suspected SARS case that is associated with the same cluster. They have been able to identify that the 96-year-old patient we mentioned yesterday in the house did have contact with other health care workers. We are not dealing with a case that was outside the affected area. In other words, it is not a newly determined case, from that perspective.

Senator Keon: Honourable senators, there are also reports today that nurses at two Toronto hospitals expressed concern over patients presenting SARS-like symptoms in the week leading up to the announcement of the new cluster of cases. However, those alarms were not acted upon immediately. The Ontario Nurses Association claims that if a response had come more quickly, hospitals could have been closed sooner, thereby preventing more people from being quarantined or possibly contracting this disease. Management at these hospitals have said that they were unaware of the nurses' expressions of concern at the time.

Could the Leader of the Government in the Senate tell us what the procedure is for hospitals investigating SARS cases and if there will be any change to that procedure in light of the latest development?

Senator Carstairs: The honourable senator has raised a critical issue. When an epidemic such as SARS occurs, no one's information should be taken lightly. If the nurses' observations of symptoms were reported, then they should have been acted upon. However, as the honourable senator knows well, the operations of hospitals fall entirely within provincial jurisdiction. One can only hope that, having been alerted to this particular circumstance, the Government of Ontario, through its health ministry, will put the appropriate changes in place.

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

Hon. Brenda M. Robertson: Honourable senators, I, too, have a question for the Leader of the Government in the Senate that deals with the SARS outbreak in Toronto. On Monday, Health Minister Anne McLellan told reporters: "We are fairly secure in the knowledge there will be no travel advisory issued from the World Health Organization as long as there is no community spread and as long as there is no evidence of exportation."

In light of the report of community spread of the disease in Toronto, could the Leader of the Government in the Senate tell honourable senators whether Health Canada is now concerned about a possible reinstatement of the travel advisory by the World Health Organization?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as I indicated to Senator Keon, the definition of "community spread" would include someone other than those within the health care cluster that was causing the spread of the disease. The identified case may have initially appeared to spread outside of the hospital collective. However, that was not the case because the boy is the son of a health care worker. Therefore, the cluster remains the same and there is no expectation that the WHO would issue a travel advisory.

I should like to add to the information that I gave the Honourable Senator Robertson yesterday. Today, the minister made it clear that there is no intention of removing the scanners, which were installed as a pilot project, from the airports, at this time. Should it be discovered that one specific technology does not work as effectively as another, the government would then ensure that the technology would be replaced by something better. This is being done in conversation and contact with the WHO.

SEVERE ACUTE RESPIRATORY SYNDROME— EFFECT ON STUDENT SUMMER EMPLOYMENT

Hon. Brenda M. Robertson: We pray that another cluster does not start from the school of that young boy.

Honourable senators, the Toronto Board of Trade reports that three out of four businesses in the city have been negatively affected by SARS. Ten per cent of businesses have already laid staff off with another ten per cent expected to follow suit. The Board of Trade says that, as a result of the layoffs, most students will not be able to find summer jobs in the coming weeks.

• (1350)

My question is simply this: Is the federal government considering boosting existing student employment programs or creating new ones to help Toronto-area students find summer work?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for her question. In response to a question from Senator Grafstein yesterday, I indicated that a special cabinet committee, under the leadership of the Honourable Allan Rock, will be looking at the economic implications of this, not just in Toronto, but elsewhere. Senator Robertson's suggestion today is a valid one, and I will make sure that the committee is made aware of it.

FISHERIES AND OCEANS

NUNAVUT—ACCESS TO SHRIMP FISHERY

Hon. Gerald J. Comeau: Honourable senators, I also have a question for the Leader of the Government in the Senate.

On February 28, 2003, the Government of Nunavut was assured, in writing, that the Minister of Fisheries had accepted the recommendations of an independent panel on access criteria. No additional access to the northern shrimp fishery would be granted to non-Nunavut interests in waters adjacent to Nunavut until the territory had achieved access to the major share of this resource.

On May 26, the federal government announced that half of the increased shrimp fishery in Nunavut's adjacent waters would be allocated to outside interests.

Would the minister explain to this house why the government has broken its promise to the people of Nunavut?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am not sure that a commitment was made. The acceptance of a report does not necessarily mean that governments will not make decisions in the future.

However, with respect to this specific question, I do not have the information the honourable senator is requesting. I will take his question as notice and make any information I receive available to him.

Senator Comeau: Honourable senators, I would draw the attention of the minister to a letter written on February 28, 2003, from the Department of Fisheries and Oceans, under the signature of Alain Jolicoeur, the Deputy Minister of Indian Affairs and Northern Development, and Jean-Claude Bouchard, Associate Deputy Minister of Fisheries and Oceans. In that letter, it is stated that no new licences would be issued to non-Nunavut interests until Nunavut interests have achieved access to the major share of the adjacent fishery. The minister may wish to see that letter, and if so, I will provide her with a copy.

The people of Nunavut have made it abundantly clear that they wish to become self-reliant in their own territory, and access to resources off their shores was key to achieving that. The Premier of Nunavut has said that the federal government is condemning the Nunavummiut to poverty and unemployment by giving away their resources.

Will the Leader of the Government in the Senate agree to fight to restore the promises made to the people of Nunavut?

Senator Carstairs: Honourable senators, as I indicated, this is an issue on which I do not have background information. I will find that background information, and when I have determined that I am sufficiently informed, I will make sure that the honourable senator is informed.

Hon. Willie Adams: Honourable senators, I have a supplementary question regarding Nunavut shrimp quotas. The Government of Canada made a commitment to the Nunavummiut in Article 15.3.7 of the Nunavut Land Claims Agreement in relation to wildlife management. Now the Departments of Fisheries and Oceans and Indian Affairs and Northern Development have broken Minister Thibault's promise to issue no new licences to non-Nunavut interests as stated in their letter of February 28. In my estimate, over 1,000 tons — $3 million worth of shrimp — have been given away. The people of Nunavut should be compensated to the extent of the value of the fish no longer available to the fishers of Nunavut.

Senator Carstairs: I thank the honourable senator for his question. As I have already indicated to Senator Comeau, since I am not briefed on this particular file, I will pass the honourable senator's question on to the Minister of Fisheries, as well.

THE SENATE

DEBATE ON BILL ON HUMAN REPRODUCTION

Hon. Douglas Roche: Honourable senators, can the Leader of the Government confirm that Bill C-13, respecting human reproduction, which will likely arrive in the Senate shortly, will not be rushed through this house but that we will be given sufficient time for a thorough second reading debate and adequate hearings in committee in order to hear from a range of important witnesses?

Hon. Sharon Carstairs (Leader of the Government): I would assure honourable senators that because of its wide-ranging ramifications, we will deal with this bill, as we deal with all others, with care and caution. We will take our time.

Senator Roche: I thank the minister. Bill C-13 is an omnibus bill. One part of it prohibits the cloning of human beings and another part deals with the regulation of research activities. Many authorities have requested the government to split the bill into two. The provisions dealing with the prohibition of cloning could be passed quickly. The regulation of research activities, because it touches on the sanctity of human life, could then be treated separately, and the time required to develop regulations would be available without rushing the passage of the bill.

Why did the government refuse to split this controversial bill?

Senator Carstairs: Honourable senators, obviously the honourable senator has not been paying a lot of attention to what has been going on with respect to the split bill, which is now Bill C-10A and Bill C-10B. Had he been monitoring that process carefully, he would recognize that it was not an action that was particularly appreciated either in this house or in the other place. We did do it. We had the authority to do it, but frankly, it was and is a complex process. It is not one that senators or members of the House of Commons favour, so I think it would be preferable that we deal with Bill C-13 in its entirety, with care and caution.

Senator Roche: Requests from many authorities in the health field to split this bill were made in the pre-introduction stage. That is when it could have been done.

HEALTH

BOVINE SPONGIFORM ENCEPHALOPATHY— TESTING REGIME

Hon. Mira Spivak: Honourable senators, my question today is again about Canada's response to the detection of mad cow disease.

In November 2000, when Germany first detected the disease in its herds, within eight days that government decided to mandate the testing of cows, and within six weeks its labs were able to test more than 85 per cent of all slaughtered cows.

Rapid tests are used in Japan. They were introduced after Japan discovered a single case of mad cow disease in August 2001.

In many parts of Europe, one in four cows over 30 months of age is tested on slaughter. As I understand it, here it is about one in 10,000. Therefore, our surveillance program is testing approximately .02 per cent of our cattle. The same is true in the United States.

My question is this: Now that I understand that there will be a review of the surveillance procedure, in order to beef it up, is the government considering testing here so that consumers and beef producers can be protected?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, let us be very clear. At this point in Canada, one cow has been detected to have had mad cow disease.

In talking about what happened in Europe, we must keep in mind that upwards of 2 million cows had to be dealt with. There is a substantial difference between what is going on in this country and what went on in Europe.

Having said that, I do want to assure the honourable senator that, while all of the processes are being reviewed, I would suggest that the testing process, and the amount of testing that we perform, should also be examined to ensure that we are following the correct procedures.

It might be of interest to Senator Spivak to know that, as of today, federal laboratories are completely up to date with animal testing, and I am told that within eight days all provincial testing will also be up to date.

Senator Spivak: Honourable senators, I would point out that Japan went to rapid testing after the discovery of just one case.

As to the review of the surveillance, is it being considered that Canada should follow the example of the Europeans, and ban feeding of any animal remains to any animal to be used for food, not just the feeding of ruminants to ruminants? Is that consideration being put into the mix?

• (1400)

Senator Carstairs: Honourable senators, I do not think that is being put into the mix. The issue is clearly ruminants, and that is being examined. Beyond that, there is no plan to examine further because there has been absolutely no indication that this disease can spread other than through ruminant to ruminant.

JUSTICE

BILL ON DECRIMINALIZING MARIJUANA— FUNDING FOR DRUG STRATEGY— EFFECT ON CIGARETTE SMOKING

Hon. Gerry St. Germain: Honourable senators, my question is also to the Leader of the Government in the Senate. Yesterday, as part of its new national drug strategy, the government introduced Bill C-38, proposed legislation to decriminalize the possession of so-called small amounts of marijuana. The bill is considerably less harsh on young people under 18 caught with less than 15 grams of marijuana than it is on adults. The fine for those under 18 would be $100, while adults would be subject to a $150 fine. Honourable senators, this essentially gives young people a discount on the consequences for marijuana possession.

Can the Leader of the Government in the Senate tell us how this meshes with the strategy to reduce smoking, which has been castigated and criticized throughout the country, and to reduce drug use? The Prime Minister indicated that he is pro-choice, that the President of the United States is pro-life. I, too, am pro-life.

I would ask the Leader of the Government in the Senate to explain this strategy and how it will be enforced. What does this mean for our young people?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I think it means a great deal. I know that Senator St. Germain has children, as have I. I know also that the fine would probably have meant much less to my children than my being informed of their unacceptable behaviour. The penalty is indeed $100 for those under 18, but their parents will be informed as well. For individuals older than 18, there will be a fine of $150 but their parents will not be informed.

Based on my experience with my children, the tougher penalty is the one for those under 18.

Senator St. Germain: I am sure that would be the case, honourable senators. I will not cast any doubt on that point, nor do I think will any other senator.

Honourable senators, we should consider the comments made with regard to the utilization of marijuana by our closest allies and our greatest trading partner. As the Prime Minister said yesterday, the United States and Canada are still the best of friends, truckin' on down the road.

With regard to a strategy to counter the spike in use that some say will occur, the 2000 Liberal election platform allocated $440 million to the drug strategy. However, yesterday, we heard that $49 million per annum will be spent over five years, considerably less than $440 million.

I believe it is incumbent on the government to explain to Canadians that the funding for this strategy is tied into Bill C-38, as the minister so adeptly pointed out to me in response to a question in this place a short time ago. How does the government rationalize the fact that the promised $440 million for the drug strategy is now down to about $250 million?

Senator Carstairs: Honourable senators, there is already considerable money in the drug strategy. The $245 million over five years is in addition to what has already been put into the drug strategy.

It is important to examine the science worldwide. It is interesting to note that, in Australia, where about half of the states have decided to decriminalize, they have not seen the spike that has been forecast.

Honourable senators, I would suggest that, unfortunately, the spike is already with us. We have seen a steady increase in the use of marijuana since the early 1990s. Recent studies indicate that 100,000 Canadians use marijuana on a daily basis. I think the spike is here. We must now try to prevent other people from using marijuana, by means of a comprehensive drug strategy.

The honourable senator mentioned the use of tobacco. Fines are not levied against people for smoking tobacco, despite the fact that many of us believe that smoking cigarettes is far more harmful than cannabis use, as the Senate study indicated.

Senator St. Germain: Honourable senators, it is true that we do not fine people for smoking cigarettes; however, cigarette smokers are harassed in every imaginable way. I do not smoke, although I was a heavy smoker at one time. However, I have never used drugs whatsoever. Unlike the Prime Minister's best friend, Bill Clinton, I neither smoked nor inhaled the stuff.

Honourable senators, how can the government rationalize proposed legislation that will exacerbate the smoking of any carcinogenic product, which marijuana is, while continuing to harass smokers, including some of my good friends in here? I see them smoking outside the Victoria Building, being harassed by the system that is now, in essence, advocating smoking marijuana.

Senator Carstairs: Honourable senators, it may come as a surprise, but smoking is how one ingests marijuana. Therefore, cannabis users will experience the same harassment smokers experience.

My view is that we should "harass the life out of them in order to protect their life."

NATIONAL DEFENCE

CONTRACT TO PURCHASE TECHNOLOGY FOR AURORA AIRCRAFT

Hon. J. Michael Forrestall: Honourable senators, I also have a question related to addiction to ask of the Leader of the Government in the Senate. The addiction I am referring to is the government's absolute inability to maintain our military equipment in working order.

My understanding is that an avionics package communications management system was just awarded to Thales for the Aurora life extension. The package, purchased in a competition that I am told was red flagged, included old analogue technology. If you will remember, we had to go to Russia to buy vacuum tubes to make some of our equipment work. This is the same situation. It now appears that the United States has wisely refused to grant the licences for the system.

Can the minister confirm this? If so, would she request that the contract award be reconsidered, based on the fact that we agreed to purchase ancient technology, at least in military terms, and now cannot get licences to use it?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator asks a very interesting question, as always. I have no idea whether we have signed a contract to purchase outdated equipment. I will draw this question to the attention of the minister this afternoon, with a view to receiving a rapid reply.

LOCATION OF UNSPENT AMMUNITION TAKEN FOR JOINT EXERCISE WITH UNITED STATES MILITARY

Hon. J. Michael Forrestall: Honourable senators, on a related matter, it has come to my attention, and been confirmed through an Access to Information Act request, that a reserve army unit from the Land Forces Atlantic Area took a substantial amount of ammunition to Fort Indiantown Gap in Pennsylvania for Exercise Southbound Trooper in 2001. A substantial amount of ammunition remained unspent at the end of the exercise and this ammunition remained behind, unaccounted for, in Canadian terms, in the United States. It also appears that this ammunition was written off illegally and not in accordance with both Queen's Regulations and Orders and the Canadian Forces Administration Orders.

There may be a Special Investigation Unit investigation into this whole affair. As the minister knows, if this ammunition is unaccounted for and finds its way into criminal hands, the Canadian government will be liable.

• (1410)

Will the Leader of the Government inquire as to the status of the investigation, if there is one? If there is not, would she urge her colleague, in the appropriate way, to look at this matter to ensure that we are not incurring substantial potential liability?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator has raised a serious question, and I will take that issue directly to the Minister of Defence.

FINANCE

SUPERINTENDENT OF FINANCIAL INSTITUTIONS— SOLVENCY OF PENSION PLANS

Hon. David Tkachuk: Honourable senators, six months ago, 50 federally regulated pension plans were in financial trouble. Today, that number has climbed to 75. Mr. Nicholas Le Pan, Superintendent of Financial Institutions, stated on May 21, 2003, that several of these plans may not be able to provide employees with the benefits that they have been promised. The plans are simply not solvent.

Part of the problem is the result of employers enriching benefits without putting enough additional money into the plan to pay for it. Mr. La Pan said that, five years ago, he asked the government to implement legislation giving him the power to block such plan enrichments for plans that cannot afford them.

Could the Leader of the Government in the Senate, advise why this has not been done, and why there is a delay in enacting such legislation?

Hon. Sharon Carstairs (Leader of the Government): My understanding, honourable senators, is that the majority of these plans do not fall under federal jurisdiction. They fall under provincial jurisdiction, and therefore, it is up to the provincial government to pass that legislation.

Senator Tkachuk: Honourable senators, could the minister tell us if there has ever been any efforts by the federal government to talk to their provincial partners to enact such legislation? Has such legislation been contemplated for federally incorporated corporations?

Senator Carstairs: Honourable senators, with the greatest of respect, it is up to the provinces to determine what laws they need to pass, because the majority, as I indicated, of these large defined benefit pension plans are provincially registered, not federally registered.

OSFI supervises only federally registered pension plans to protect the interests of members from undue loss. It is reviewing and assessing whether guidelines and financial practices need updating and strengthening in light of recent weak market declines. They will make recommendations to the Government of Canada.

Senator Tkachuk: Honourable senators, I will try to wrap up two points in one. Perhaps it is a leadership question, because those plans seem to be following the same practices that the Canada Pension Plan follows. The Canada Pension Plan lost $4 billion in the stock market last year, offset by a $3 billion profit, giving a net loss of $1 billion. It has been going through the same kind of problems for the same reasons.

The benefits have expanded since inception. The benefits were originally provided at the age of 68, then lowered to the age of 65 and then lowered to the age of 60. Life insurance and other goodies were added without increasing the amount of charges. Recent actuarial reports state that the CPP was sound at a 9.9 per cent combined employer-employee premium rate based on conditions as they existed at the end of the year 2000, shortly after the equity markets peaked. There has been no actuarial evaluation since then. One will not be done until the end of this year.

Can the Leader of the Government assure the Senate that the Canada Pension Plan is still viable at its current premium levels, or is it expected that the future will bring even higher premiums?

Air Canada is a federally regulated body, a federal corporation. That is who I was referring to in the earlier question. Legislation should be introduced with regard to such corporations.

Senator Carstairs: Honourable senators, that is why I indicated that the OSFI is reviewing their standards and guidelines at the present time. If they indicate that legislation is required, then we will proceed with legislation.

In regard to the comments of the honourable senator about CPP, as he knows, a new actuarial study will be conducted this year. The last study found that it was a very sound program.

Interestingly enough, when I was in Spain a year ago, at a conference on aging, it was commented repeatedly that Canada was the only nation in the Western world that had put its social security system, in terms of its pension plans, on a firm financial footing.

VISITOR IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery of Sephiri Enoch Montanyane, the Deputy Speaker of the National Assembly of the Kingdom of Lesotho.

On behalf of all senators, I welcome you to the Senate of Canada.

THE SENATE

DEPARTURE OF PAGE MAXIME GAGNÉ

The Hon. the Speaker: While I am standing, honourable senators, I would like to note a happy and a sad event, which is the fact that Maxime Gagné will be leaving the Senate today.

[*Translation*]

Maxime Gagné is from Alma, in the Saguenay-Lac-Saint-Jean area of Quebec. He has been with the Senate Page Program for the past three years, two of those years as the Assistant Head Page.

[*English*]

He is leaving to work with the law firm of Stikeman Elliot in Montreal. He hopes to start work as a lawyer at that firm in 2006.

[*Translation*]

He will return to Ottawa to finish his Licence in Civil Law at the University of Ottawa. He would like to thank the entire Senate family for having made his experience within the Page Program a memorable one.

[*English*]

ORDERS OF THE DAY

LOBBYISTS REGISTRATION ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Milne, for the third reading of Bill C-15, to amend the Lobbyists Registration Act, as amended,
>
> And on the motion in amendment of the Honourable Senator Di Nino, seconded by the Honourable Senator Murray, P.C., that the Bill, as amended, be not now read a third time but that it be further 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 subsection (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.".

The Hon. the Speaker: Honourable senators, are we ready for the question on the motion in amendment?

Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Di Nino, seconded by the Honourable Senator Murray, that the bill, as amended, be not now read a third time but that it be further amended in clause 3, on page 2, by adding after line 18, the following —

Senator Carstairs: Dispense.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it. The motion in amendment is negatived, on division.

Hon. Lowell Murray: Honourable senators, Senator Di Nino and I have another amendment to propose. I will briefly, but I hope thoroughly, explain the need for and the background to this amendment. Here is the problem. There is nothing to prevent a lobbyist from holding a contract with the government or one of its departments and, at the same time, lobbying that department or some other department of government on behalf of a private sector client. I think most of us agree that it is wrong. How prevalent the practice is, I have no idea. I do know, as I think all honourable senators know, that consultant lobbyists these days are not often one-man or one-woman shops. They belong to larger firms, which engage in a variety of activities.

• (1420)

Some members of the firm lobby the government on behalf of private sector clients; others, perhaps, do communications contracts or other advisory contracts for government ministers or departments. Whether it happens that the same people are engaged in those two activities, I do not know, but there is nothing to prevent it, that I know of, under our present practices.

The more ethical people and firms will say they have a so-called Chinese wall in their firm to prevent any improper communication — as between a person who may be lobbying the government for a private sector colleague for a fee and one who may be working for the government — perhaps that very same minister or department.

That is the only assurance or guarantee we have on these matters. I think we have to do better.

While Senator Di Nino — who I think will be my seconder — and I have discussed this matter and thought about it, and while we know that the amendment we propose may create some difficulty for private firms, our conviction is that those consultant lobbyists will have to make a choice. They can either work for the government or they can lobby the government. They cannot do both.

Honourable senators, with those few words, I will propose an amendment. Before I do that, I would like to try to put the government's position on the record. I cannot really do that, but I can say that it is significant.

On May 14, in the Standing Committee on Rules, Procedures and the Rights of Parliament, I asked the senior public servant who appeared before us, Mr. Howard Wilson, the Ethics Counsellor, what he thought of this, as well as a number of other amendments that had been floated by various witnesses before the committee. He commented on most of them. This is somehow significant, although what it is significant of I am not sure. I will leave that to honourable senators to judge. He said:

> I will not comment on whether lobbyists should work for the government. That is a broader issue.

Indeed. Just so, who better to deal with broader issues than ourselves here in the Senate?

MOTION IN AMENDMENT

Hon. Lowell Murray: To deal with this issue and to start the debate, I move:

> That Bill C-15 be not now read a third time but that it be amended in clause 8, on page 10, by adding after line 32, the following:
>
> "(1.1) The Ethics Counsellor shall include in the Code provisions to prohibit a consultant lobbyist from engaging in lobbying activities while the lobbyist, or the lobbyist's firm, holds any office, commission or employment in the service of the Government of Canada or has any contract for the provision of goods or services with that Government or any of its departments or officers.
>
> (1.2) For the purpose of subsection (1.1), "lobbyist's firm" means a person, partnership, association or firm by whom or by which the consultant lobbyist is employed, or with whom or with which the consultant lobbyist is professionally associated, for the purpose of engaging in the business of consultant lobbying.".

I have copies, of course, in both of our official languages. I will ask the page to take half a dozen copies in both official languages over to our friend Senator Rompkey, who was deprived yesterday.

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

Senator Murray: Honourable senators, I have just one more word of explanation. An amendment that would instruct the Ethics Counsellor to include these provisions of the code is really the only way to go in terms of this legislation. We have to do it in a slightly indirect way because the bill itself is the lobbyists registration bill. In terms of stating what they may or may not do, that would have to be put in the code; the device we are using is an amendment that would instruct the Ethics Counsellor to do so.

Hon. Bill Rompkey: Honourable senators, I was not totally deprived yesterday because Senator Murray was gracious enough to let me know in the Reading Room, *sotto voce*, what he was proposing for today. I heard what he said then and told him that I did not agree and would try to tell him why.

This is not a new issue. The Ethics Counsellor, as a matter of fact, dealt with it in his code of conduct annual report to Parliament for the year ending March 31, 1999. The issue of an organization handling conflicting issues has been dealt with also by the Supreme Court of Canada in the case of *Martin v. Gray*, involving a lawyer joining a new law firm that was acting against that lawyer's former clients. The court concluded that the confidential information could be protected by the establishment of measures that Senator Murray has already alluded to, that would include mechanisms such as Chinese walls and codes of silence — such as Maxwell Smart used in his term of office.

What are effective Chinese walls? The Canadian Bar Association produced a report in 1993 that provided guidelines for setting up Chinese walls to deal with conflicting issues within one organization. The Law Society of Upper Canada adopted and incorporated those guidelines into their rules of professional conduct.

The issue arose in the United Kingdom in relation to accounting firms. The House of Lords, in deciding the issue, stated:

> There is no rule of law that Chinese walls or other arrangements of a similar kind are insufficient to eliminate the risk.

The Ethics Counsellor concluded that if Chinese walls are now acceptable for the legal profession, they should be acceptable for the lobbying profession. These measures would ensure that information confidential to each of the two clients, one private and the other public, is not inadvertently used to the advantage or disadvantage of the other.

• (1430)

The preamble to the Lobbyists Registration Act recognizes lobbying as a legitimate activity. The lobbying profession should not be singled out and dealt with differently from any other profession.

The attitude that I detect on this side, honourable senators, is that we should treat lobbyists, who are more and more being treated as professionals in a recognized occupation, as we treat others in similar fields, and that the same rules should apply to them. Therefore, I oppose this amendment.

Senator Murray: If I understood the honourable senator correctly, he states that the Canadian Bar Association has developed a code for their members, the members of the legal profession, and that they have also outlined how the so-called "Chinese walls" would function. How do we know that those exist in the case of consultant lobbyists? How can we know the details of how they function? Where is the code setting out the mechanisms for so-called "Chinese walls" as it would apply to and be binding upon consultant lobbyists? Does the honourable senator know the answer to those questions?

Senator Rompkey: I am not sure that I have a specific answer, honourable senators, other than to repeat what I said before. We should treat lobbyists as we treat other professions. Most in that category are self-regulating. If that is not the case, it should be and will be the case with lobbyists.

The main point is that we should treat them in the same way as we treat people in other, similar organizations.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, on the basis of process, I would make the argument that Senator Murray's amendment should be adopted by the Senate, notwithstanding that the chief government whip has already given a signal to his troops to vote against it, with the thumbs-down sign duly displayed.

Honourable senators, the point is this: Why not give our friends in the other place an opportunity to consider this? They will be receiving this bill with an amendment already attached to it. By adopting this amendment, they could reflect upon this proposal that deals with something that is quite real.

If, in their wisdom, the members of the House of Commons decide not to accept this particular amendment, then so be it. Nothing will be lost. Adopting this amendment to a bill that has already been amended and returning it to the other place so that they might take a look at it, could achieve a significant good that would be in the public interest.

A great deal of work and reflection has gone into trying to make the relations of parliamentarians, whether in this house or in the other place, as pure as pure can be. Even members of Parliament are sometimes criticized for what, in days gone by, would have been considered not lobbying but simply performing duties as members of Parliament representing the interests of their constituents by going to a government department to ensure that the citizens in their constituency are having as fair a chance as anyone else to benefit from the programs and services offered by given ministries.

We have put all kinds of rules and norms in place, and we continue to do that, to regulate the interactions between parliamentarians and agents in the machinery of government.

Here, we have nothing that seems to be dealing with the situation where people who are direct employees of ministries at the same time lobby on matters directly touching on the file with which that employee may be dealing and for which effort he or she is receiving remuneration.

Senator Murray has put his finger on an important issue that we should at least allow the members of the other place to reflect upon. Therefore, I would encourage the government to support this amendment.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I encourage my members not to support this amendment this afternoon for the eloquent reasons given by the Honourable Senator Rompkey, the whip on this side of the chamber.

First, we should not send to the House of Commons amendments that the vast majority of us do not support, which is what I think perhaps the honourable senator was implying in his statement. If we do not support them, then we should not send them, with the bill, back to the other place.

Bill C-15 has developed clear rules for lobbyists. I suspect it will not be the last time that a lobbyist registration bill comes before this chamber or before the other place. However, there has been good debate in committee on the basic principles contained in this bill, and we should proceed forthwith.

Senator Murray: Would the Leader of the Government in the Senate consider that this bill, properly strengthened, is a logical companion piece to the political parties' financing bill and, in that context, would she not think of it in terms of her legacy as well as that of the Prime Minister's?

Senator Carstairs: I thank the honourable senator for suggesting that I might leave a legacy. I saw a press release this afternoon which, in light of the fact that I am to receive an honorary degree this weekend, called me "a Canadian icon." Such exaggeration is similar to that expressed by the honourable senator.

Hon. Consiglio Di Nino: Honourable senators, the words of my colleague, Senator Kinsella, have inspired me to give some further thought to this matter. In rising to support Senator Murray's amendment, I should like to remind all honourable senators that our profession — and I believe it is a profession, and a good one — has suffered greatly in the last number of years, because of inaction on our part in dealing with a number of issues that have clouded our relationship with certain segments of the public, such as lobbyists. We have seen a number of incidents recently, including the one quoted in a newspaper this morning, about how a person can influence the system.

I would hope that colleagues on both sides of the chamber would consider this. Here is an opportunity for us, since this bill will be returned to the other place, to express a concern that we, as the chamber of sober second thought, have about a particular component of this bill, which is, should someone who has a contract with the government or a ministry also be allowed to lobby for another ministry or have other involvement of that nature in the lobbying profession.

Our role is to ask such questions. That is why we are here. We are here to point out that we have a concern that members in the other place should consider. We think it would be worthwhile to take a look at this. This bill is to be returned, in any event. It would be useful for us to send this information to the other place so that they may have an opportunity to discuss it. Perhaps we could invite some of the lobbyists to put forward an opinion on it.

• (1440)

I suspect that if most lobbyists were asked, they would probably not disagree with this. As I said yesterday in my remarks, it is not the majority about whom we need to be concerned. We need be concerned about only those rotten apples, those few who would look for a loophole to abuse the system for their personal benefit. As such, I do not think that the lobbying profession would be opposed to this kind of amendment.

Therefore, I urge honourable senators to continue to think about Senator Murray's amendment between now and the time we vote and to support it.

Hon. Joan Fraser: Honourable senators, I do not wish to take too much of your time. I think Senator Rompkey has made the basic case splendidly.

To reiterate the point of the Leader of the Government in the Senate, we should not send an amendment to the other place unless we believe in it. On its plain face, I cannot possibly believe in this amendment. As it is written, it would prohibit, for example, someone lobbying for cod fishermen in Newfoundland if, at the same time, a lawyer five floors up in a skyscraper had been engaged to do a survey of property rights in Banff National Park. This is a sweeping amendment.

I quickly tried to imagine if there were a way in which the terms of the amendment could be narrowed so that I would find myself feeling that, perhaps, I should vote for it. The more I thought about it, the more I decided that I really could not. There are some areas where legislation is better not to go. If we were to walk down this line, I think we would end up with an unwarranted intrusion into freedom of association and freedom of enterprise in this country. We owe it to those freedoms to let the bill go through as it is now drafted. If difficulties emerge, we can take another crack at it. However, absent clear evidence of such difficulties, I could not possibly support an amendment of this nature.

Hon. Jerahmiel S. Grafstein: Honourable senators, I listened carefully to what honourable senators have said on this amendment. I must say that I agree with Senator Rompkey.

I believe Senator Fraser has put her finger on it. Let us take the case of a farmer. In effect, a farmer has a direct contract with the government, a direct benefit, for a specific need, perhaps because of a disaster. Should this prevent him from lobbying for himself, or a group of people who belong to his association, for other benefits or subsidies? I do not think so.

Senator Rompkey has made an excellent point. If we try to draw a legislative line between all of these activities, what we do is inhibit what I consider to be the most important point, which is getting as much information to legislators as possible so that they may make an objective decision on a piece of legislation. Senator Rompkey has convinced me of this, notwithstanding the fact that I have other concerns with this legislation. This is not a salutary amendment.

The Hon. the Speaker: Is the house ready for the question?

Some Hon. Senators: Question!

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it. The motion in amendment is lost, on division.

The question is now on the main motion.

It was moved by the Honourable Senator Rompkey, seconded by the Honourable Senator Milne, that this bill, as amended, be read the third time now. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

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

CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEBATE SUSPENDED

Hon. Mobina S. B. Jaffer moved the third reading of Bill C-10B, to amend the Criminal Code (cruelty to animals), as amended.

POINT OF ORDER

Hon. Anne C. Cools: Honourable senators, I rise on a point of order relating to the third reading of this bill.

My point of order rests on three different major planks. This bill should not move ahead for third reading on the grounds that it has not had first or second readings in this chamber.

The second plank is what I can only describe as the honour of the Speaker of the House of Commons and the need of this chamber to respect and uphold the honour of the Speaker of the House of Commons.

The third plank upon which I will be asking His Honour to rule is the question of the subordination of the proceedings of this chamber to orders of the House of Commons.

I maintain, honourable senators, that bills must have three readings in the Senate and in the House of Commons. Bill C-10B is a new bill, in a new form, that was created totally in the Standing Senate Committee on Legal and Constitutional Affairs when the committee, under an instruction from this chamber, divided Bill C-10 into two bills, being Bill C-10A and Bill C-10B. Bill C-10 had first and second reading in this chamber, but Bill C-10B has not. Bill C-10B is a totally new bill in a totally new form.

Honourable senators, on the question of forms of bills, paragraphs 626 to about 631 of Beauchesne's sixth edition tells us what the form of a bill is and also what are its constituent parts. Essentially, the form of a bill is as follows: First, there is the title, both short and long; the preamble; the enacting clause; the clauses or provisions; and the schedules, if necessary.

If we were to compare Bill C-10B to Bill C-10, we would find that the former is a totally different form of bill. In fact, it is a different bill because the titles are different. The number of clauses is different. The provisions in the clauses are different. I would also submit that even the enacting clause is different.

Honourable senators, I submit that Bill C-10B is a new creation that originated in the Senate committee and that it has not had first and second reading in the Senate. It was not the intention of the Senate committee to deprive the bill of first or second readings. The Senate committee left the option open for this chamber to adopt the divided bills in first and second readings.

Bill C-10B is a new and different bill from Bill C-10 and must have three readings in this place if it is to be called legal.

• (1450)

Honourable senators, the second point is that to proceed with third reading of Bill C-10B would be to compromise and dishonour the Speaker of the House of Commons. Honourable senators will be reminded that it was the accreditation of the Speaker of the House of Commons that allowed Bill C-10 to pass in the House of Commons. Honourable senators will recall that Bill C-10 was a revived Bill C-15B from the previous session.

I have adopted a position that to move on to third reading of Bill C-10B would be to compromise and dishonour the Speaker of the House of Commons. Bill C-15B, to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act, died on the Order Paper in the Senate when Parliament was prorogued on September 16, 2002. Honourable senators were told that Bill C-10 was revived in the House of Commons. Let us look at that process for one moment because we will soon discover that Bill C-10B has not had three readings in the House of Commons either.

The process of resuscitation in the House of Commons was initiated and implemented by the Honourable Don Boudria. On October 4, 2002, Minister Boudria introduced the following motion to reinstate government bills. He moved:

> That, in order to provide for the resumption and continuation of the business of the House begun in the previous Session of Parliament it is ordered:

The motion had several component parts. The second part read as follows:

> 2. That during the first thirty sitting days of the present Session of Parliament, whenever a Minister of the Crown, when proposing a motion for first reading of a public bill, states that the said bill is in the same form as a bill introduced by a Minister of the Crown in the previous Session, if the Speaker is satisfied that the said bill is in the same form as at prorogation, notwithstanding Standing Order 71, the said bill shall be deemed in the current Session to have been considered and approved at all stages completed at the time of prorogation of the previous Session.

In other words, the revival of such a bill in the House of Commons is premised on two things: one, that it be in the same form as its form at the time of prorogation; and two, that the Speaker's accreditation, word, honour and bond that the bill is in the same form is the element on which the House of Commons would rely to deem it passed through all the different stages. Minister Boudria's motion was adopted on October 7, 2002. The revival of the bill took an empowering motion.

Honourable senators, a look at the actual resuscitation and revival of Bill C-10 will show that it was wholly dependent on what I would describe as Speaker Milliken's certification or accreditation that the bill was in the same form as in the previous session. Minister of Justice Cauchon introduced Bill C-10 on October 9, 2002. Remember that the general enabling order was passed on October 7. In his introduction, the minister asked Speaker Milliken to certify that Bill C-10 was in the same form that Bill C-15B was in at prorogation. If honourable senators were to look at the Commons debates of that date, they would see that the Honourable Martin Cauchon, Minister of Justice, moved for leave to introduce Bill C-10. He said:

> Mr. Speaker, this bill is in the same form as Bill C-15B from the first session of this Parliament and it is in accordance with the special order of the House of October 7, 2002. Therefore, I request that it be reinstated at the same stage that it had reached at the time of prorogation.
>
> (Motions deemed adopted, bill read the first time and printed.)

Minister Cauchon rose in the House of Commons and asked the Speaker to take an action, according to October 7, and to state that Bill C-10 was in the same form as Bill C-15B was at the time of the prorogation. Remember that all of this is for the continuation of the business of the House of Commons. In response and in accordance with the order of the House of October 7, the Speaker rose and certified, or accredited, Bill C-10 as being in the same form as Bill C-15B had been.

In response to the minister, Speaker Milliken stated:

> The Chair is satisfied that the bill is in the same form as Bill C-15B was at the time of prorogation of the first session of the 37th Parliament.
>
> Accordingly, pursuant to the order made on Monday, October 7, the bill is deemed adopted at all stages and passed by the House.
>
> (Bill deemed read the second time, considered in committee, reported, concurred in, read the third time, and passed.)

We must understand what is happening here, honourable senators. Because of the Speaker's word — his honour, his bond — Bill C-10 was passed by Commons decree without three readings. The Speaker stated explicitly that Bill C-10 was in the same form as that of Bill C-15B. Therefore, what must be satisfied is the determination that Bill C-10B is in the same form as Bill C-15B, for those who are following my words with care.

Honourable senators, Bill C-10B, the bill now before us, is not the bill that Speaker Milliken certified or accredited in the House of Commons on that day last fall. In addition, Bill C-10B is not in the same form that Bill C-15B was in at prorogation. It has a different title; it has a different set of provisions; and it has a different enacting clause. It is a different bill.

Honourable senators, it is not possible for this chamber or for the Minister of Justice or for any individual to recast the Speaker's certification to apply it to Bill C-10B. The Speaker's certification was particular and peculiar to Bill C-10. The Speaker's certification of Bill C-10 on October 9 did not contemplate, could not have contemplated and did not permit the Senate's division of Bill C-10 into Bill C-10A and Bill C-10B. The Commons rules and procedures do not contemplate such a division. This is borne out in the message from the House of Commons of a few days ago, in which they complained about the Senate infringing on their privileges.

It is inconceivable that the Speaker of the House of Commons could possibly have had in mind that the Senate could possibly commit an infraction, or infringe on the privileges of the House of Commons. These two questions must be taken together and these documents must be read together as one.

Honourable senators, it is improper to suggest that one could simply reapply the Speaker's certification from one bill to another. If it can be applied to a second bill, certainly it can be applied to a third bill or a fourth bill. The Speaker's certification in the House of Commons is simply not that flexible; it cannot be reassigned from one bill to another.

Remember, Bill C-10B is now in a different form from that of Bill C-15B at the time of prorogation.

In fact, Bill C-10B, a new bill in its provisions, number, title, and even its origins, has not had three readings in the House of Commons either. This is very interesting, because we are criminalizing for many Canadians what would have previously been innocent, ordinary behaviour, like hunting and so on.

• (1500)

We cannot proceed to third reading because Bill C-10B is a compromise and a dishonour to Speaker Milliken's word and his bond. It discredits and it undermines his statements to the House of Commons, his assurances to the House of Commons, that he personally can certify that the bill before them was in the same form as Bill C-15B was at prorogation.

My third point has to do with what I consider to be the subordination of Senate proceedings to the House of Commons. I want us to revisit the first part where I began. I said that the premise for the order of the House of Commons of October 7 to revive the bills was the following, and I shall cite Minister Boudria again. On October 4, he moved:

> That, in order to provide for the resumption and continuation of the business of the House begun in the previous session of Parliament, it is ordered:

In other words, the resuscitation process for bills over there is specific to bills that were before the House of Commons, because their order is specifically to provide for the resumption and continuation of the bills of the House of Commons.

I would submit to you here that, at the time of prorogation, Bill C-15B formed no part of the business or proceedings of the House of Commons. For us to view it that way, and for us to conduct ourselves that way, is to subordinate Senate proceedings to orders of the House of Commons. I maintain that Bill C-15B could not have been resuscitated or revived in the House of Commons because the House of Commons had no cognizance at the time of Bill C-15B. I am saying that, when Speaker Milliken certified Bill C-10 as the same form as Bill C-15B, that Bill C-15B at prorogation formed no part of the business of the House of Commons, because Bill C-15B at the time of prorogation was part of the business of the Senate.

Senator Robichaud: This is not a point of order.

Senator Cools: This is a point of order. We cannot proceed to third reading because the bill has not been properly dealt with. This bill has not had three readings in this chamber, and you do not want it to have three readings in this chamber. It has not had three readings in the House of Commons either. That is a serious matter, particularly when we have a message from the House of Commons, which refers to us infringing their privileges.

No order of the House of Commons can retrieve a bill from the Senate, because no order of the House of Commons can have any force over any proceeding whatsoever of the Senate, especially a bill that was committed to a Senate committee.

Hon. Fernand Robichaud (Deputy Leader of the Government): I would point out to His Honour that this is not a point of order.

Senator Cools: — especially a bill that was committed in a Senate committee. That bill would have to be removed from the Senate committee before it could be moved to the House of Commons.

The House order of October 7 can have no application whatsoever in the Senate, because Senate business is no part of the business of the House of Commons.

There is a fourth point, which I do not want to raise today. However, for the record, I would say that I was planning to raise that point at a later time.

If we were to look at the message that we tried to debate here some days ago, the message of Tuesday, May 6 from the House of Commons, we would see that, in the second paragraph, it states:

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

The motion on message was moved by the Minister of Justice, the Attorney General, the very same minister who, in the House of Commons, assured the House of Commons that the bill was in the same form, and asked the Speaker to be satisfied and to certify that Bill C-10 was in the same form as Bill C-15B. This is a matter of substantial importance because the whole matter centres around the question of three readings in the Senate.

Honourable senators will recall the order of the House, which I referred to at the outset. It referred to the motion introduced by Minister Boudria dealing with the resumption of the business of the House and that, during the first 30 sitting days, if a minister states that the bill is in the same form as a bill introduced by a minister of the Crown in the previous session, and if the Speaker is satisfied that the bill is in the same form as at prorogation, notwithstanding Standing Order 71 — and Standing Order 71 is the order of the House of Commons that states very clearly that a bill must have three readings, therefore, we cannot for a moment impugn the Speaker of the House of Commons by suggesting for a moment —

The Hon. the Speaker: Sorry to interrupt, Senator Cools, but some senators are asking whether this is a point of order. How long do you intend to speak?

Senator Cools has the floor. Whether or not there is a point of order will be determined. Senator Cools is making a fourth point and I will hear her. Senator Cools, you have the floor.

Senator Kinsella: Hear, hear!

Senator Cools: I was saying for us to proceed in this way is to impugn the Speaker of the House of Commons. I have deep problems with that. Not only do we impugn him, but also we portray him as a servant of the government. That bothers me deeply. We have had no debate on these questions. When the instruction went to the committee to divide the bill, there was no debate here on the instruction, or why or how that came about.

Senator Robichaud: There was a ruling by the Speaker.

Senator Cools: Your Honour —

Senator Kinsella: Carry on.

Senator Cools: This is very important, because what we are speaking of here is how Parliament conducts itself, and the standards, the principles and the rules that Parliament must observe when Parliament agrees to pass bills that bind the citizens of the nation.

It seems to me a huge door has been opened here by the House of Commons saying, in its message, that they have waived privileges, and we do not know which privileges have been waived or for how long.

It also means that citizens of this land will be able to take actions in courts on the basis of these proceedings, because the House of Commons has waived its privileges. I find that objectionable, and I will never agree to it.

The narrow points here have to do with the fact that privileges cannot be waived. Privileges are a part of the law of the land, and no one can waive the law of privilege any more than they can waive the law of murder. The example that I have heard from colleagues is that, if anybody can ask the House to waive the law of privilege, then a person may ask the courts to waive the laws respecting impaired driving. Privileges cannot be waived. They are a part of the law of the land, and are guaranteed under section 18. There is much authority for that. I will leave that point and fully develop it at another time.

• (1510)

Honourable senators, the government, in its zeal to pass Bill C-10 by last December 31, rushed into a situation that I feel could have been better handled and should have been better handled. It is up to us not to condone this sort of thing.

Senators who were at the committee meetings November can say that I argued, as Senator Sparrow argued, that whatever we created when we were finished dividing that bill would need to be subjected to three readings in each chamber. Again, there was little debate.

I ask honourable senators to take their work very seriously. We are passing laws here that criminalize hunters. As Senator Watt and Senator Adams have both told us, we may be criminalizing many Aboriginal people. We have a duty to proceed properly.

I have the privilege to direct my statements to His Honour. The fact of the matter is that Bill C-10B is a totally different bill from Bill C-10, which was in the same form as its predecessor bill, Bill C-15B. I would submit to all honourable senators that those two bills, Bill C-10A and Bill C-10B, deserved three readings in

each chamber. In this particular instance, it is simply improper to ignore all the rules because the first rule of Parliament is that a bill must have three readings in each House. No one here can make a reasonable argument that Bill C-10B has had three readings in either chamber.

Honourable senators, if Senator Robichaud has something to say, I will be happy to hear him.

Senator Robichaud: Yes, honourable senators, on a point of order, we are hearing the same thing for the third time.

The Hon. the Speaker: Senator Cools, may I ask for a moment?

Senator Cools: I am tired of being interrupted.

The Hon. the Speaker: I wish to make a point. We have spent quite a bit of time on this matter. Senator Cools has elaborated on four different aspects of her point of order. Because time is not unlimited and I believe that other senators wish to speak on this issue, I would ask Senator Cools to conclude her remarks and then I will recognize Senator Robichaud.

Senator Cools: Honourable senators, I was in the process of summing up. In summary, my point of order relates to three areas.

First, Bill C-10B should not proceed now to third reading because it has not had first and second reading in this chamber.

Second, to proceed with third reading is to compromise and to dishonour the Speaker of the House of Commons. It was his accreditation that allowed Bill C-10 to be passed in the House of Commons without three readings because he certified and stated clearly, on his bond, that Bill C-10 was in the exact same form as Bill C-15B was at prorogation.

Third, Senate proceedings cannot be subordinated to House of Commons orders. The House of Commons order of October 7 would have no application to the Senate. The fact of the matter is that at the time of prorogation Bill C-15B was not part of the business of the House of Commons, which is what their order was attempting to resuscitate, and was in point of fact in the cognizance of the Senate. This chamber should not be subjugated to orders of the other House.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I must argue in the strongest possible terms that the Honourable Senator Cools does not have a point of order in any of her points. Let me begin with number one.

We have had the first and second reading of Bill C-10B. We had it in the form of Bill C-10, which the Senate, in its wisdom, agreed to separate into 10A and 10B. We then gave passage to 10A. We are now hopefully going to give passage to 10B, and we have not one but two Speakers' rulings to that effect.

In terms of the second argument that the honourable senator puts forward that we have compromised the Speaker of the other place, of course we have not. We do not, quite frankly, have anything to do with the Speaker of the other place. However, the other place has rules. One of their rules allows them to resuscitate legislation between one session of one Parliament and another session of the same Parliament. That is not permitted if there has been an election because then there is a new Parliament, but it does provide them with the ability to resuscitate between sessions.

Using their House order and by request of the Leader of the Government in the House of Commons, the Honourable Don Boudria, the Speaker of the other place recognized that a new bill called Bill C-10 was exactly the same as Bill C-15B.

Clearly, at any time in the proceeding of a bill, with the exception of first reading because it is simply pro forma, whether in second reading and indeed in third reading, that bill can be changed. Therefore, to argue one can never change a bill from its original form to the form in which it is finally debated and accepted or rejected by this chamber is not valid; otherwise, we would never be allowed to amend legislation. Clearly, we would choose to do so on a number of occasions.

The Speaker in the other place ruled, as per their rules, that the bill should be resuscitated. We do not have the same rule here; therefore, we could not deal with that bill until we had received a message from the House of Commons. Whether they should have that rule is up to them; it is not up to us. Having their rule, they resuscitated the bill. They then sent a message to us, and we then received that bill.

Finally, with respect to the subordination of the Senate to the House of Commons, clearly we are not subordinate in any way, shape or form. The very fact that this bill has now had a number of amendments made to it — and my understanding is that, despite my objections as the Leader of the Government in the Senate, these amendments may well go forward to the other place — is an indication that we take pieces of legislation, we study them carefully and we do with them what we think should be done.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, I would like to come back to something that seems to have been forgotten. We have created a precedent. This is the first time in parliamentary history that a bill has been divided in such a manner.

I will not talk about the privileges of the other place nor of our own. That is another matter altogether. The fact is that we started with Bill C-10. At one point, both sides of this House were of the opinion that the bill had to be divided. We acted accordingly. We considered documents C-10A and C-10B. We did what was expected of us. We asked the other House to agree to divide the original bill. The House had before it only Bill C-10, which passed through first and second reading in both Houses, as we all know.

• (1520)

We asked for the concurrence of the House of Commons. In English, we were very careful. We said, "We concur," and the other Chamber said, "We concur."

The bill was divided. It was all legal and parliamentary. They had the right to say no, but they said yes, and the bill was divided in two. After we completed consideration of Bill C-10A, we moved on to consideration of Bill C-10B in committee. At the committee's first meeting on this subject, I mentioned, for the record, that we were studying C-10B. Still it was not a bill, but a study, a document. We did our work. A point of order was raised in this chamber, and it led to a Speaker's ruling. We were then able to complete consideration of Bill C-10B.

When Bill C-10 was divided, we had Bills C-10A and C-10B as a result. Now we are at third reading. If we pass this bill today, third reading will have been given to Bills C-10A and C-10B. We cannot go on saying these things over and over. We followed procedure.

When we asked the House of Commons to divide Bill C-10, it concurred. That is the end of the discussion. Yesterday, the committee reported the bill with amendments, and the report was accepted. Today, we are at third reading, and, if the bill passes, it is over. We are not going to rehash these problems. We have created a precedent, but there is nothing unconstitutional about it.

[*English*]

The Hon. the Speaker: Honourable senators, I see Senator Andreychuk rising on this point of order, and Senator Cools is rising again. If there is no objection, I would ask honourable senators to be brief. We have spent quite a bit of time on it, and I understand the points very well.

Hon. A. Raynell Andreychuk: I have always been brief, honourable senators, so I will continue to be so in this case. I would simply ask His Honour to include, in whatever findings he makes, a comment addressing the third point raised in Senator Cools' statement.

Her first point is a rather intriguing and interesting argument. However, I think it has been elaborated upon differently and that it deserves some comment.

With respect to the third point, it is true that we have responsibility for the conduct of our own house as do the members of the House of Commons for the conduct of their House. My difficulty with the message from the other House is that it sets a condition precedent. They say that they accept splitting the bill, but, while disapproving of any infraction of their privileges or rights by the other House, in this case they waive their claim to insist upon such rights and privileges. In other words, they know we have intruded on their rights and privileges, or they claim we have done so, and they accept it. It is their right to do so. However, they go on to say that the waiver of said rights and privileges is not to be drawn into a precedent. It does not say whether it is a precedent for the House of Commons or a precedent for the Senate.

If we accept this message from the House, both paragraphs as is, we, not the House of Commons, are setting a precedent for ourselves, and that precedent is that the House of Commons can disapprove of our actions. Previously, the House either accepted or declined our actions, with respect, and we, with respect, accepted or declined their actions. We interpret our own rules; we interpret our own procedures; and we can even test the waters, so to speak, as we did in Bill C-10. It goes one step further to say it is not a precedent, and , in my opinion, that should be clearly noted. If we accept that the House of Commons is not accepting it as a precedent, then we are taking the step of saying that we will not take it to be a precedent. Further, we are accepting the House of Commons commenting on us.

I am not commenting on what the House of Commons is doing. I am not saying that the Speaker of the House was right or that he was wrong, and I am not saying that the House was right or that the House was wrong. I am not saying that the House imposed a majority and caused us the conundrum. However, I am saying, clearly, by my interpretation, if we accept the message and go to third reading, we have in fact created a precedent that allows the House of Commons to comment on our procedures. We go one step further to say that what we have done, despite information and advice that we received here, will not be a precedent. We have not enlarged our sphere of influence or rights or privileges. We have in fact curtailed them, because we have now given the House of Commons the right to comment on us.

It is our actions that I would wish a comment on. I have not seen a full assessment of a situation such as this, but it would seem to me that it will be the first time we are in fact curtailing our own rights and privileges and giving the House the right to comment on our actions and behaviours in this house. I believe that can be properly commented on in point three of the point of order.

The Hon. the Speaker: Before I recognize Senator Cools, does anyone else wish to intervene?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I will be brief, honourable senators. On the ultimate point that Senator Andreychuk has raised, I would respectfully submit to His Honour that this is novel. This is the first time this situation has presented itself. Therefore, perhaps some creativity in the manner in which the message is drafted that we send to the other place with the bill might be part of the solution. For example, we might say in our message that this house does not concur in their observation, or something like that.

The Hon. the Speaker: I will hear a final comment from Senator Cools. Be brief, please.

Senator Cools: I just want to respond to what has been said.

Senator Beaudoin has said that, in dividing the bill, this chamber has set a precedent. Senator Andreychuk's remarks cover that quite brilliantly, because the message from the House of Commons states very clearly that it is not a precedent. The House of Commons has commented on what Senator Beaudoin has said. Senator Beaudoin said that we have set a precedent. The message from the House of Commons states that we have not. The House of Commons has rejected what Senator Beaudoin has said.

Turning now to Senator Carstairs' comments, I never for a moment argued that to amend a bill is to change the form of a bill. I never put that argument forward, although Senator Carstairs seems to think that I said that. However, I have said that the division of a bill is not an amendment to a bill, and is a totally different process.

• (1530)

The honourable leader has made another mistake. She says that we have no rules here to resuscitate bills that die at prorogation but the Commons does. Senator Carstairs is mistaken. The House of Commons was not operating under any rule at the time. It was operating under an order created for that particular reason. I read it at the outset when I said that Minister Boudria moved the motion to create the order. It was an order to provide for the resumption and continuation of the business of the House begun in the previous session.

Therefore, the House of Commons was not operating by any rule. It was operating by an order that allowed them to do what they did. In fact, the Speaker's involvement is limited within that order to one action only, which was to declare whether the bill in question was in the same form as its predecessor bill.

Honourable senators, no one here can argue that Bill C-10B is in the same form as Bill C-15B was at the time of prorogation. In addition, as I said before, Bill C-15B at the time of the prorogation last fall was no part of the business of the House of Commons. It was part of the business and proceedings of the Senate.

Honourable senators, if ever there was a valid point of order raised in recent times in this chamber, this is one of them.

The Hon. the Speaker: I thank all honourable senators for their interventions on this interesting point. It is obviously something to which honourable senators have given much thought and have had some difficulty with in terms of the series of events that bring us to this point at third reading stage of Bill C-10B, as amended.

Normally, I would want to give some thought to such a matter. However, as we all know, this has already been the subject of two rulings in this place and at least one ruling in the other place. I find myself fairly familiar with the matter, and my view will be the basis of the ruling that I give.

I remind honourable senators of the importance of this matter in terms of the stage of proceedings at which we are. We are dealing with a piece of legislation amending the Criminal Code. We have a very high duty and responsibility. If we were to interfere in any way with the processes by which laws become law, it would have enormous consequences.

I will address the matter of the bill not having received first or second reading, as brought out in the comments of Senator Carstairs and Senator Beaudoin, by pointing out that the bill had indeed received consideration at those stages in this place as Bill C-10. If we regard, as I do, the change of Bill C-10 into Bill C-10A or Bill C-10B as being in the nature of or analogous to an amendment, that is within the power of the Senate to do. We did that, and I do not believe that that matter is any impediment to dealing further with Bill C-10B at this time.

I will speak to all of the other matters, with the exception of the one raised by Senators Andreychuk and Kinsella, as also discussed by Senator Cools, which is the wording of the message. The other matters relate essentially to that which is the responsibility, province and privilege of the other place. I believe so strongly that it is not for us to decide for them whether they have followed correct procedures that I will not even comment on that point. I would note that some interesting questions have been raised with respect to the resuscitation of Bill C-15B and Bill C-10A and Bill C-10B and how they were dealt with in the other place.

However, that is their business and their rules. Those rules are different from our rules.

Honourable senators, I reviewed the messages to remind myself how the matter has proceeded through this place. I have confirmed that the matters are in order. That has been referred to in prior rulings.

The question of the wording of the message was raised by Senator Cools at an earlier time. It was addressed in a ruling that I gave on May 8. 2003. I refer all honourable senators to that ruling.

At this point, I find that there is no breach of our rules or conventions in the way in which we are proceeding. Accordingly, it is in order for to us resume debate on Bill C-10B at this time.

Some Hon. Senators: Question!

Senator Andreychuk: Honourable senators, I wish to speak on third reading. I wish to press the point that it is an historic moment when we have put ourselves in a position that, if we vote on third reading, we will be accepting a clear reprimand from the House of Commons. This will be noted by academics, historians and in our practice to come. However, I bow to the determination of The Honourable the Speaker and the will of the majority to continue with this bill.

I understand that the government has accepted the report of the committee and is prepared to go to third reading with all the amendments. I can only infer that the government is not opposed to these amendments as critic here did not speak against the amendments on the floor at third reading. However, I wish to put on record a few points.

First, I want to thank Senator Furey. This has not been an easy exercise in the committee nor on the floor here.

Some Hon. Senators: Hear, hear!

Senator Andreychuk: I must say that his concern for the issues and independence of thought were very much appreciated. All the members have commented that they have had their say on this issue and that all sides of the issue of Bill C-10 have been aired. It is agreed that all witnesses were given an adequate chance to put their position forward.

Honourable senators, I accept some of the amendments. Clearly, I was in favour of the amendments. Therefore, I will not speak to all of them.

The definition of an animal was of great concern to all of us. The amendment clarifies the definition of "animal," as Senator Furey said in his speech at report stage.

The bill is before us because there is a change of attitude by the public towards the care of animals. Unnecessary pain to animals is certainly not to be tolerated or condoned in any way by anyone in Canada.

As I said in the committee, this is a clear signal of change and evolving attitude in our society at large toward animals. We are learning. We are gaining from our knowledge and technologies. With each step, we have had a revision of what we believe to be acceptable practice with respect to animals. Bill C-10B clearly gives the signal that unnecessary pain and suffering to animals will not be tolerated. It is no longer a game or sport to see an animal wince with pain or suffer pain.

I approve of all the comments made with respect to this amendment. It should be noted that this amendment was put forward also because the department, in representing the minister's position, indicated that this broader definition would not necessitate the government to return to Parliament to seek approval of it. In other words, the government could, by Order in Council or otherwise, broaden the definition of the animals or species that would be covered here. It indicated that it would take too much time to come back to Parliament.

• (1540)

Honourable senators, this kind of debate is necessary to educate the public of the purposes of the bill, as well as for all opinions to be heard. The definition should be narrowed and described as the amendment is put forward.

As we were studying the case, we were clearly hearing from Germany that ants would no longer be killed but trapped and released in the forest. That is a changing attitude. It was also acknowledged for the first time that fish can feel pain. Therefore, this is an evolving area, so surely that fact demands that, along with the public, those who are in animal husbandry, or who have traditional Aboriginal rights, should have the benefit of a parliamentary debate. It should not be left to someone in the bureaucracy to determine how far our attitudes have evolved. This amendment is definitely important.

The colour of right defence has also been adequately defended in its amendment form. Representatives of the department told us that the colour of right defence was not necessary, that it was already covered in the common law, and that the defence, as clearly stated, is somewhat redundant. In one case, it was noted that it would clutter the criminal law, and that perhaps it was an error of omission to leave it, whereas other colour of right defences had been removed to a global common law defence.

The criminal law has many purposes, and one of those purposes is to educate people and to clarify for those particularly affected what the Criminal Code provisions mean.

If you have a specific colour of right defence and you encompass it in a generic base, people feel threatened. Those in the Aboriginal community, in the farming community, in animal husbandry, those with traditional practices, such as in the Muslim faith and the Jewish faith, should not feel that something has been taken away, even if, legally, it has not. Practically, there should not be an undermining of confidence in the criminal law. Continuing the colour of right defence may be messy, but, in my opinion, it is necessary.

If there is another global cleanup of the Criminal Code, perhaps it could be looked at then. However, in my opinion, to particularly target those people who felt vulnerable seemed an unnecessary use of judicial practice. Practicality should rule.

With respect to the Aboriginal amendment, I would make it clear that I believe that every member of the committee shared the view that it was time that the government paid attention and gave some teeth to the Aboriginal rights to which we pay lip service. When we deal with Aboriginal rights, we do not consult them fully or take their view into account in our draft legislation. We always consider their views after we have embarked on the process of drafting legislation. Despite all the government's fine words that they will act on the Aboriginal agenda and not interfere with their rights and privileges, we still deal with legislation here that proves that we have not learned our lesson.

In this instance, it was clear that little attention had been paid to the Aboriginal people's traditional hunting and trapping rights. There was good cause to include a clause, not so much as a protection for the Aboriginal people — because I think the clear protections are in the Constitution, in the Charter of Rights and Freedoms — but as a clear message to the government that this cannot go on, and that this Senate will, in fact, continue to play its role of protecting Aboriginal rights and exercising our fiduciary responsibility.

Committee members, without exception, were in favour of some amendments supporting Aboriginal rights. However, the amendment that came before us causes me some difficulty, although it does not seem to cause difficulty to anyone on the government side, because I heard no mention of it at third reading debate.

I raised this issue in committee, and I raise it here again: The amendment as put forward could, in fact, lead to an interpretation of a reverse onus. That, in itself, is a matter of interpretation. We do have sections that start out: "No person shall be convicted...." That does not, of itself, turn into a reverse onus. However, if you look at the subject matter — the detail and complexity of Aboriginal rights — surely it will not be those who enforce the law, but the defendant, who will have to prove his or her case. That causes me some difficulty.

It also causes me some difficulty that this is not a well-known area. Aboriginal rights are ensconced in legislation, such as the Nunavut Land Settlement Agreement and the legislation relates to the Nisga'a, but there are so many others still in negotiation. Therefore, some policeman in some area will have to confront some Aboriginal person and make a determination of whether that person is hunting, trapping and fishing in a traditional way and respecting treaty rights. If the government has been unable to conclude all these treaties, how will an enforcement officer, with that responsibility, unless there are very clear guidelines, training sessions and so on, know how to proceed?

In my own province, where hunting licences are necessary and Aboriginals have been exempt, police have undergone a training process with instruction on how to go about prosecutions that may infringe on Metis rights. I do not see the same kind of initiative being taken here, and that causes me some difficulty.

I sound those warnings.

The proposed amendment that causes me the greatest difficulty is the one dealing with page 3, clause 2, which states that:

> "(3) 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 —

— and this is the part that gives me some trouble —

> — 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 then the amendment goes on to state, and I have no problem with this —

> — and any pain, suffering or injury caused is no more than is reasonably necessary in the carrying out of those traditional practices.

This wording, in any area in which Aboriginal peoples have harvesting rights, could be interpreted to mean that: first, you prove you are Aboriginal within the meaning of the Constitution; and, second, you prove that you have some harvesting rights, by virtue of existing or Aboriginal treaty rights — and I have explained some of that. The full brunt of the amendment is that no person shall be convicted if they hunt, trap or fish in any area in which Aboriginal peoples have harvesting rights. Therefore, someone from Saskatchewan, who is Aboriginal, who is part of a treaty process, will be able to hunt, trap and fish traditionally in his or her area and cause no difficulties.

However, this amendment infers that an Aboriginal person, armed with those treaty rights, can hunt, fish or trap in any area in which Aboriginal peoples have harvesting rights.

Some people argue that that is not the interpretation that will be drawn, but the clear reading of those words is "in any area." Someone from Saskatchewan who never was in another part of the country could, in fact, not be convicted under this section for hunting, trapping or fishing, where existing treaty rights belong to others.

That would not bother me if it just extended Aboriginal rights. That may be our wish, and it may be good policy to do so. However, in the future, where environmental resources are so scarce — and fishing, hunting and trapping we already know are endangered, and this is harvesting rights, sustenance rights — we could have some altercations between two competing Aboriginal interests, which is surely not the business of this Parliament. This Parliament should be in a position to afford Aboriginals their rights, not pit them one against the other to prove their rights.

• (1550)

When we were debating the Nisga'a agreement, honourable senators will recall I argued that it was not the role of the federal government to determine whether the Nisga'a have preferable rights over the Gwich'in and Gitxsan. I see in this case a situation where the interpretation, and quite validly, of the courts concerning a simple reading of this amendment would be to extend fishing, hunting and trapping practices to areas that had not been traditionally within that group of peoples, identified through a reserve, membership, et cetera.

If this amendment passes, which it seems it will, I sincerely hope that the government will in some way understand the difficulty it will create. If we think the *Marshall* decision caused difficulties, this one is much more loaded. In the long run, it could be seen to be exercising our fiduciary right in a very paternalistic, do-good way, while in the end creating more difficulty as opposed to correcting existing claims.

This situation could have been avoided if the Canadian government, through its policy, had first and foremost consulted the Aboriginal people. Surely, with something as obvious as hunting, trapping and fishing, there should have been a long consultation process before Bill C-10, let alone Bill C-10B, was ever put in place. There was enough time to have moved such amendments.

While the intent is correct, the sheer wording may create more trouble than benefit for Aboriginal people. I hope that the government will look at this and protect Aboriginal rights in a way that is meaningful, not just signalling that we care. I hope there will be a real and practical solution to their problems.

Senator Carstairs: Honourable senators, regarding the first point raised by Senator Andreychuk concerning the privileges of this chamber, I do not think that the other place can in any way infringe on our privileges. They can say anything they want. They can send any message they want. All they can do is reflect upon themselves. They cannot reflect on us. Therefore, I do not share the honourable senator's concern that our privileges have been limited in any way because they have sent us a message. Their message pertains to them and only to them. They send us messages all the time. If we do not act on those messages, they have no relevance to us.

There is no question that our privileges remain intact, and we may have enhanced our privileges by the action that we have taken concerning the separation of this bill.

The honourable senator also raised the issue of whether the government is in favour of these amendments. I think she knows that the government is not in favour of these amendments, but it certainly accepts the excellent work done by this committee. On that point, I want to thank in particular Senator Jaffer, the sponsor of this bill, for her hard work on the bill. I wish also to thank Senator Furey, who chaired the committee in the way that Senator Andreychuk has described, that is, with fairness and with skill, to achieve the compromise that we have before us today.

In terms of the actual amendments, the other place concurs with the definition of "animal." They have also recommended and supported the minor French language amendment that has been put forward.

As Senator Andreychuk and other honourable senators are aware, they had a slightly different wording of the colour of right defence than that accepted by the committee. They have also expressed concern with respect to the wording of the Aboriginal amendment. As I understand from committee hearings, the Aboriginal amendment gave rise to some concern within the committee itself. Five members voted in favour of it, while two voted against it. As well, there were five abstentions. In terms of overall support for the amendments, there is some discomfort.

It is important that this bill go back to the other place with the amendments that the committee has fought hard to win and allow the members of that chamber to respond in the way in which they choose to respond. As a result, perhaps we will debate this matter another day. Perhaps they will accept the amendments in their entirety as recommended by the Senate committee. I have no way of knowing at this point just what the future holds.

I now wish to address an issue that I think is critical. For two and a half years now this chamber has indicated its concern regarding the use of non-derogation clauses that pertain to Aboriginal peoples. The fact is that with the wording before us today, we will now have five differently worded non-derogation clauses.

I stood in this chamber on an earlier occasion and indicated that I wanted the Standing Senate Committee on Legal and Constitutional Affairs to do a very careful study of this matter. I said that because I think, quite frankly, that the government needs the advice and recommendations of this chamber on this issue through its Legal and Constitutional Affairs Committee.

This afternoon, I am pleased to say that, hopefully, early next week I will table a reference to the Standing Senate Committee on Legal and Constitutional Affairs to undertake such a study. I think that is the only way to deal with this issue so that we can be fair to our Aboriginal people and be faithful to the Constitution, in particular section 35. Above all, I believe it is the only responsible way to deal with future legislation that may or may not include non-derogation clauses.

Although it will be up to the committee, one of the issues I would like to see the committee canvass is the possibility of putting a non-derogation clause in the Interpretation Act, which perhaps would solve this matter once and for all. Perhaps it would not. However, it is at least worthy of our study.

With those remarks, honourable senators, I conclude my comments.

The Hon. the Speaker: Senator Robichaud has asked for leave to deal with a matter of house business.

Debate suspended.

[*Translation*]

BUSINESS OF THE SENATE

COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That all Senate committees scheduled to sit today have power to sit while the Senate is sitting, and that rule 95(4) be suspended in relation thereto.

[*English*]

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

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, on behalf of the opposition I wish to articulate that, indeed, we are granting leave as requested by the Deputy Leader of the Government. In so doing, I wish to observe that some of us are members of the committees meeting this afternoon. We do not withhold leave lightly. For example, the Standing Senate Committee on Social Affairs, Science and Technology is meeting to deal with its study on mental health in Canada. I am a member of that committee. As a psychologist, I have a particular interest in that study. However, my first duty is here in the chamber.

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

Motion agreed to.

CRIMINAL CODE

BILL TO AMEND—THIRD READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Jaffer, seconded by the Honourable Senator LaPierre, for the third reading of Bill C-10B, to amend the Criminal Code (cruelty to animals), as amended.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I have a question for the Leader of the Government in the Senate with regard to what she has said. First, however, I wish to welcome the resolution that she has indicated she will bring forward to the house. We look forward to debating it.

Would the minister concur with the idea that the message that would carry this bill to the other place might have an added paragraph which may say something like: "Further, the Senate informs the House of Commons that the Senate does not concur with that part of the message of the House of Commons dated May 6, 2003, in relation to the assertion concerning any infraction of privileges or rights"? There would then be a record that we have taken out the second paragraph of the message that we received from them because we simply do not concur. I agree with the honourable minister that they can determine their rights. However, the way in which that paragraph is written might not be the best use of words, but the message is now before this house.

• (1600)

Procedurally, honourable senators, perhaps we ought to discuss that after the bill receives third reading, but before His Honour automatically puts the question, so that a message could be sent, as long as we could have a moment for debate. Perhaps the Leader of the Government in the Senate could comment.

Hon. Sharon Carstairs (Leader of the Government): That would be a reasonable process, honourable senators. We could proceed with third reading. I know that Senator Adams wishes to speak, and I see no reason why we could not debate that message. Perhaps, if we concur at third reading, it would be possible. I would need some advice in respect of a delay in sending the message until tomorrow — until we have had an opportunity to add a few comments to that effect.

Hon. Anne C. Cools: Honourable senators, perhaps I could have clarification of the current procedure. Are we back at Bill C-10B?

The Hon. the Speaker: The house is at third reading debate of Bill C-10B. There was an intervening house matter in respect of a committee's request for leave to sit while the Senate is sitting.

Senator Cools: I wish to take the adjournment of the debate.

Hon. Willie Adams: Honourable senators, I would like to elaborate on Senator Andreychuk's comments earlier on the Aboriginal amendment. We understand and recognize that we are all Aboriginal — it does not matter who you are; that is in the Indian Act. For those who have continued with their Aboriginal lifestyles, there is no difficulty with hunting any kind of animals that they want. However, Bill C-10B was introduced in the Senate last December and it does not identify the kind of animals it pertains to.

Right now, there are hundreds of different animals in the North that are different from the animals in the South. We also have different mammals in the sea, in the rivers and in the lakes. We hunt but we do not have anything to do with the kind of animals in Bill C-10B. Nothing in the bill tells us what kind of animals we are concerned about in respect of cruelty to animals.

Many animal lovers and bird watchers come to the North but then move back to the South because the northerners are killing the poor animals. That is what we would face if the bill were to pass without Aboriginal amendments. Right now we have quotas for hunting whales and polar bears and we may have quotas for fishing if it is commercial.

We would have no difficulty with an Aboriginal amendment. There is the colour of right and Aboriginals want protection with an amendment. There is talk about a fine of $5,000 or five years in jail, and yet the bill does not state the kind of animals that we can kill. It only talks about cruelty to animals. Each time I go home and pick up my gun to hunt, am I being cruel to animals? That is what the bill would do to Aboriginal people.

The bill does not state the kind of animal but rather talks about the feelings of animals. A witness from the department talked about putting worms on hooks. Someone might say that was being cruel to animals. We do not eat the worm.

The Governor in Council might correct the bill after it is passed, but it would be easier if an amendment were passed at this time so that the bill could return to the House of Commons. If that House does not understand, there are Aboriginal members of Parliament who could explain it. I think we have to do it. Why was section 35 put into the Constitution? We will wait another 100 years to start using it. Now, Aboriginals have to go before a judge of the Supreme Court to find out whether the government is wrong or right. The time to act is now before people in the northern communities end up in jail due to the cruelty to animals provisions in Bill C-10B.

I am not a judge, only a hunter. I have no real difficulties, but I do want to know what my future will be if Bill C-10B passes. What is the future for my people in the North? What does Bill C-10B mean?

Hon. Charlie Watt: Honourable senators, I had not planned to speak, but Senator Andreychuk has put me in a position that I think I have to say something.

In respect of the lack of consultation by the Government of Canada, I fully agree with Senator Andreychuk that consultation is an issue that has not been appropriately dealt with. I cannot take that away from Senator Andreychuk. I attempted to follow the honourable senator's point as closely as I could about her concerns as a person from Saskatchewan. Saskatchewan has a huge number of Aboriginal people. I share the honourable senator's concern about what they may be getting above and beyond what they already have. I have to wrestle with that.

• (1610)

Senator Andreychuk put forward the argument that this could allow Aboriginal people from anywhere in this country to go into any other area of this country and be free to hunt. I believe that was the bottom line of her concern. She also mentioned the fact that we have not fairly taken care of the Aboriginal people. Therefore, I am not quite sure where Senator Andreychuk stands on the entire issue of Aboriginal rights. She appears to be doing a balancing act in her own mind when she tells us why she has some difficulties and reservations concerning the amendments.

Let me assure all honourable senators, not just Senator Andreychuk, as Senator Adams states, Aboriginal peoples have a specific agreement, aside from the constitutional recognition. That agreement is entrenched in the Constitution. That agreement itself is well spelled out and covers administrative aspects and the matter of who may come into and who may not come into various territories. My comments also apply to the James Bay and Northern Quebec Agreement. There is also some recognition that Aboriginal people from outside of the area may hunt in certain designated areas. Those matters have been dealt with. Administratively, controls are in place.

A joint management agreement between the Government of Quebec and Nunavik is already in place. Such an agreement also exists in relation to the joint management of Nunavut, which used to be part of the N.W.T., and which is under federal jurisdiction. A joint management agreement between the Government of Canada and the Aboriginal people, that is, the Inuit, is in place.

Let me go back to the reason for the amendment. I, for one, do not savour the idea of my people appearing before the courts. That will happen if we pass this amendment. Realizing that, I must ask myself: As a parliamentarian, as a politician, am I putting my people in the position where they will be tried in the courts because of their traditional way of hunting?

Then I have to ask myself another question: Is not having an amendment at all better? No. If we have no way of defending ourselves, and if we do not make the amendment and rely solely on section 35 and the specific agreements in any argument to defend ourselves, we would, unfortunately, be in a worse position.

Honourable senators, that is why, as much as I still have reservations on this issue, I think it is necessary to push ahead, even though the situation is not entirely satisfactory.

[Senator Watt]

On the whole question of the non-derogation clause, if that non-derogation clause is respected word for word as in section 25 of the British North America Act, it makes me wonder whether we need those amendments. The fact is that the Department of Justice, on its own, decided some time ago, shortly after 1995, to fool around with the wording in the legislation. That, to me, is slowly eating away at our rights. Two pieces of legislation are eating away at them. That must be stopped.

Having previously been involved in negotiations, I wonder if continuing to rely on the courts to define those rights is the right thing to do. We must accept the fact that that is our responsibility as parliamentarians. The Senate is the perfect place to determine what we are doing wrong. We need to correct what we are doing. We must all understand that we are parliamentarians and, as such, we have responsibilities to fulfill. Rather than leaving it to the courts to do all the work, let us begin the process here. That is what we need to do.

Senator Carstairs has stated that she will be moving in that direction. However, this is something I have been wrestling with for quite a long time. I have been here for 19 years. For two solid years, I have been trying to drive that message home, but we are going nowhere. For that reason, as much as we might have some reservations, we must move ahead.

I trust that all honourable senators understand that this is a very important amendment, and that we will live with the consequences.

I did my best, as an individual senator and as an individual Inuit, to consult with my people on those questions, and not only with my people, but with the Metis and the Assembly of First Nations. Unfortunately, again, we are not in the front line. We only have the opportunity to deal with the situation at the tail end. Perhaps it would be different if the structure within the system were rearranged slightly to allow Aboriginal people to have space. Today, we have no space. We need that space within the structure of the system.

The Hon. the Speaker: Are there questions for Senator Watt?

Senator Cools: I may have a question. I was planning to speak tomorrow at third reading of this bill, because we were told, at our weekly Senate caucus, that Liberals had until Thursday to speak. I now get the impression that the debate may be drawing to a close today. Perhaps I could have some clarification. I would like to speak tomorrow.

The Hon. the Speaker: Caucus matters are for caucus; we are in the Senate. You may pose a question or comment on Senator Watt's speech.

Senator Carstairs: If the honourable senator would agree to speak tomorrow and she wishes to adjourn the debate, we would be quite happy on this side to allow her to gather her notes together in order to speak tomorrow.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, Senator Watt has elaborated on the issue of Aboriginal Peoples' hunting grounds. Before the arrival of the Europeans, there were rules stating that hunting grounds were to be assigned to kin networks and nations. This holds true today. In James Bay, in the Arctic, the rules have been enshrined in an agreement. However, we have no such agreement. The Innu have always had rules. Grounds are assigned to certain families. Should other families want to hunt on these grounds, they must seek permission from the family managing the grounds to do so.

• (1620)

It is not as though the rules of the game were being set just now. The Aboriginal civilization is a very old civilization. It is not as though the world did not exist before today. These are the aspects about which we would like to make suggestions to the Senate and for which we are seeking cooperation. The world has been around for quite some time. We must continue to build this world and to establish appropriate relations between Aboriginals and non-Aboriginals. That is what we are trying to do. I wish to point out that several honourable senators already got the idea and have been trying to make a contribution.

[*English*]

The Hon. the Speaker: Do you wish to comment, Senator Watt?

Senator Watt: No.

Senator Cools: Honourable senators, I move the adjournment.

Hon. A. Raynell Andreychuk: Honourable senators, I would like to make it clear to Senator Watt that I am not opposing the amendment. My concern has not been how traditional peoples have conducted their rules. My concern in adopting the amendment is that the Government of Canada understand that Aboriginal rights must be respected and that when there is any conflict they go back to traditional practices.

My difficulty has never been with the presence of the amendment. My difficulty has been that, in the due course of events, sometimes the Department of Justice and administrators of justice across this land give interpretations to legislation.

Putting the concerns on the table here is a clear signal to the government that they should act at the start, not at the end, and respect Aboriginal rights and start giving full force and effect to them. No wording should be used in legislation as a way to circumvent them.

I want to commend Senator Watt for very eloquently representing these issues so sensitively for all sides and all parts of the country. Does he understand that my concerns are with the interpretation that the federal government often gives later to such amendments? For example, we have put non-derogation clauses in legislation, and they have been ignored in the past. Will we have an excuse by way of this wording to avoid true intent being given to this clause?

Senator Watt: Honourable senators, at times we end up dealing with government interpretations other than those that were intended. I do not expect that to stop today.

Senator Cools: Profound.

Senator Watt: We must do our utmost to continuously express the reality in this area. The players within the government who formulate laws and policies must bring the application of legislation down to a practical level. If not, we will eventually end up with nothing more than the policy of the government. We have seen that in this place for quite some time.

As I say, I do not expect that to stop. Our responsibility is to keep on reminding the lawmakers that there is a reality that they must understand. The reality is that we are different from the people living in the South. We behave differently. What we rely on for our livelihood, our economy, is different because we do not have the same kind of luxuries and access to goods as the people in the South.

The protection might be very unusual to a non-native person who has never seen the day-to-day life of a person in the North. They have never seen how a person in the North exercises their life in order to survive and keep the family alive.

It really boils down to this: Do we understand the way your system works? I have been here long enough now that I have a partial understanding of how your system works. I do not believe in all the rules and procedures. You have too many of those and too many laws. You find yourselves at times spending more money than you do generating revenues.

Senator Cools: The honourable senator has made a profound point. There are too many rules and laws.

On motion of Senator Cools, debate adjourned.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave, I move that the Senate do now adjourn. I request that all items on the *Order Paper and Notice Paper* stand in their place.

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

Hon. Senators: Agreed.

The Senate adjourned until Thursday, May 29, 2003, at 1:30 p.m.

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