CANADA

Debates of the Senate

2nd SESSION • 37th PARLIAMENT • VOLUME 140 • NUMBER 77

OFFICIAL REPORT
(HANSARD)

Wednesday, September 24, 2003

THE HONOURABLE DAN HAYS
SPEAKER

CONTENTS

(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, September 24, 2003

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before proceeding to Senators' Statements, I would draw to your attention the presence in our gallery of a group headed by Mr. Shamsh Kassim-Lakha, President of the Aga Khan University of Pakistan. He is a guest of the Honourable Senator Jaffer.

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

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

ST. FRANCIS XAVIER UNIVERSITY

FIFTIETH ANNIVERSARY OF CANADIAN FOOTBALL

Hon. B. Alasdair Graham: Honourable senators, last weekend, I had the honour of co-hosting the fiftieth anniversary of Canadian football at St. Francis Xavier University. Well over 100 former players covering the last half-century came back to relive memories, renew bonds and friendships and to replay, for yet another time, those incredible years of triumph as well as the games and seasons that were not as successful as most.

They were all heroes on the weekend. We were especially pleased to have with us as special star guests Russ Jackson, undoubtedly the greatest Canadian football player of all time, and former coach Don Loney, the man who is regarded in many circles as the father of Canadian football in Atlantic Canada. These people, honourable senators, have not only had huge individual and team successes but have also, by example, helped so many sons and grandsons with some of the great lessons of life that come from playing as a team.

The weekend activities proved to be yet another highlight in the year-long celebrations observing the 150th anniversary of the founding of St. Francis Xavier, which has already been marked by the issuance of a beautiful, new, commemorative stamp by Canada Post. I had the honour of assisting in the unveiling of the stamp in April.

For a century and a half, St. Francis Xavier has been home to extraordinary leaders who believed in the power of individuals — no matter what their state in life — to become masters in their own house.

It was in this place that Monsignor Coady began to spread his message about liberation and empowerment, giving new hope to uneducated young men and women throughout Atlantic Canada. It is in this place that the Coady International Institute established a training centre for adult education for people from around the world. It is to this place that over 4,000 community leaders from 120 countries have come to learn about education, which brings hope to little people across the planet.

Honourable senators, I have one footnote from the weekend: Congratulations to the new University of Montreal football team, which came to town and spoiled the celebrations just a little bit by upsetting the X-Men 14-9 in the equally new Quebec-Atlantic interlocking intercollegiate football schedule.

GOVERNOR GENERAL

STATE VISITS

Hon. Donald H. Oliver: Honourable senators, I rise to draw to your attention a letter to the editor from a distinguished Canadian, Milton Wong, Chairman of HSBC Asset Management Canada, which appeared in the weekend *National Post* by Mr. Wong is also chancellor of Simon Fraser University in Vancouver. He was one of the delegates who accompanied the Governor General in the South American tour in 2001. With all the commentaries in the media about the current state visits, it was refreshing to read a first-hand account by someone who has been there.

Mr. Wong noted that the delegates worked extremely hard for two weeks representing Canada, participating in round table discussions and debates, and challenging one another intellectually. He said the trip was about building trust with other nations and establishing the foundation for greater understanding among people of the world, and no one does this any better than our current representative, Governor General Clarkson.

Mr. Wong said they "visited universities, participated in panel discussions and met other leaders representing those countries." Mr. Wong further noted that he "counted at least 35 speeches made by Ms. Clarkson, who worked harder than anyone else and was impressively knowledgeable about the histories and cultures of the countries we were visiting." By any standards, that is impressive.

Honourable senators, I personally admire the work our Governor General does in Canada by visiting and bringing to the fore various ethnic groups that would otherwise be ignored.

Mr. Wong's letter said this trip is about "supporting intellectual discussion, global cooperation and the exchange of ideas," and "for discovering ways to make the world a better place for everyone." Mr. Wong said that he and other delegates:

> ... returned to Canada with a much deeper understanding of the problems and issues, the achievements and goals, the cultural identities, of the countries we visited as well as the common challenges and opportunities we share with them.

Honourable senators, that is what these state visits are all about. This year is no exception. The delegates on this trip are not just business people; they are a selection of leaders from disciplines as wide-ranging as fine arts, science and politics.

The Governor General has consistently emphasized the centrality of the North in Canada's identity, not only with Canadians here at home but while abroad on previous state visits and in discussions with foreign leaders visiting Canada. The visits to countries of the circumpolar north will further reinforce the image and understanding of Canada abroad and give strong support to the northern dimension of Canada's foreign policy.

• (1340)

Governor General Clarkson will take part in the second Quest for the Modern North seminars in the circumpolar tour. During the seminars in Iceland, panellists will exchange ideas on culture and long-term community viability. These seminars will later be available online to students undertaking circumpolar studies at a virtual university.

In conclusion, honourable senators, those who accompany Her Excellency Adrienne Clarkson will no doubt come back to Canada with a much deeper appreciation and understanding of the unique culture enjoyed by people in circumpolar nations.

Honourable senators, I am deeply honoured to be one of those Canadians able to participate in this historic dialogue.

THE LATE DONALD DEACON, O.C.

TRIBUTE

Hon. Catherine S. Callbeck: Honourable senators, I rise to pay tribute to an outstanding Canadian, a highly respected individual and an exceptional human being. Today, I pay tribute to the life of the late Donald Deacon, who passed away on September 16. His life was filled with accomplishment, purpose, dignity and integrity.

While people have achieved much in certain fields of endeavour, Mr. Deacon achieved much in many fields. He provided exemplary service to Canada during the Second World War and was awarded the Military Cross.

He had a successful business career as chair of a Toronto brokerage firm. He went on to an illustrious political career, first in municipal politics and, later, as a Liberal member of the Ontario Legislature.

Mr. Deacon excelled in fields as varied as the military, business and politics on the great strength of his character and compassion. He earned the respect and confidence of his fellow citizens and colleagues throughout his long and active career.

He also made a significant contribution to this country in so many ways, as well as through his dedicated service as a volunteer. He served as National Commissioner of Boy Scouts of Canada. He served with the Red Cross on its national board of governors and was recognized for that service by being named Red Cross Humanitarian of the Year.

Among his many other community involvements, he served on the board of governors of Mount Allison University. He was a founding co-chair of the national Katimavik youth movement. He was a director of the national Trans Canada Trail Foundation and was the founding president of the Confederation Trail in Prince Edward Island.

For these and his many other contributions, Mr. Deacon was recently promoted to the rank of officer in the Order of Canada.

Prince Edward Island was fortunate, in that Mr. Deacon chose to retire there, although retirement hardly describes his continued and active participation in so many activities. He made an enormous impact on his adopted province, where his work was an inspiration to many.

Donald Deacon has given us a legacy of public service that will be long remembered. I extend my sincere sympathies to his wife, Florence, and to his family, by whom he will be greatly missed.

THE RIGHTS OF THE METIS AS DISTINCT ABORIGINAL PEOPLE

SUPREME COURT JUDGMENT

Hon. Gérald-A. Beaudoin: Honourable senators, the Supreme Court of Canada, last Friday, September 19, rendered unanimously an interesting and important decision on the rights of the Metis people.

It is a landmark case.

[*Translation*]

The court has recognized the Metis' ancestral hunting rights for subsistence purposes.

The court concluded that section 35 of the Constitution Act, 1982, which recognizes native Amerindians' ancestral hunting, trapping, fishing and harvesting rights also allows the Metis to hunt without a licence and out of season for subsistence purposes. These, as we know, are collective rights, of which there are very few in our Constitution.

To date, the only recognition of collective rights has been for the Aboriginal peoples, and the denominational rights relating to education. Mr. Justice Bastarache, however, made reference to language rights in the *Arsenault-Cameron* case as being collective rights. That is all.

The court has established rather precise criteria for the recognition of these ancestral rights.

Minister Goodale has announced the government's intention to meet with the Metis in order to negotiate with them in good faith on the date these fundamental rights will take effect.

I am extremely pleased with the decision by the Supreme Court of Canada.

[*English*]

AGA KHAN UNIVERSITY

TWENTIETH ANNIVERSARY OF FOUNDING

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to pay tribute to an institution that has revolutionized post-secondary education and health services training in the developing world. The Aga Khan University was founded by His Highness the Aga Khan and chartered in 1983.

I am pleased that the president of Aga Khan University, Mr. Shamsh Kassim-Lakha, is with us today in the visitors' gallery.

At the time of its founding, His Highness the Aga Khan said the new university would draw inspiration from the great traditions of Islamic civilizations and learning, including one of the oldest universities, the Al Azhar in Cairo, founded over 1,000 years ago by His Highness' Fatimid ancestors.

It was proposed that the Aga Khan University should be a small, secular institution, international in scope, and that its distinctiveness would come from the quality of its programs, its graduates and research, and its impact on developing societies. Today, 20 years since its founding, the Aga Khan University has moved well beyond Pakistan and has established campuses on three continents, with 11 teaching sites spread over Asia, Africa and the United Kingdom.

Canadian universities and professionals have played a critical role in this success. McMaster University, McGill University and the University of Toronto have all contributed tremendously to the development of Aga Khan University.

The early establishment of the School of Nursing had special significance — to train women professionals. In developing countries, women constitute more than 80 per cent of the nurses and teachers. Women's development, through their empowerment, is a central goal of the Aga Khan Development Network, and in this respect, Aga Khan University is proud that 65 per cent of its students are women, as are more than 40 per cent of its faculty.

Nowhere is this feature more evident than at the School of Nursing, which opened in 1980 with the basic objective of enhancing the status of nursing and of women professionals. In Pakistan, nursing has not enjoyed high status, and the country has suffered chronic shortages, far in excess of those experienced even in most developing countries. In Canada, for example, there are about four nurses for every physician. In Pakistan, the ratio is reversed — about four physicians for every nurse.

Aga Khan University has succeeded in developing leaders in nursing, medicine, education and research who are equipped with modern techniques and tools but who also possess a strong sense of purpose and vision. It was in recognition of this leadership that the government of Pakistan turned to AKU to lead a national task force to assess what needs to be done to improve higher education in the country.

The motivation for His Highness to create AKU is clear in the following words:

> There are those who enter the world in such poverty that they are deprived of both the means and the motivation to improve their lot. Unless they can be touched with the spark, which ignites the spirit of individual enterprise and determination, they will only sink into apathy, degradation and despair. It is for us, who are more fortunate, to provide that spark.

Honourable senators, these words are as relevant today as they were 20 years ago.

[*Translation*]

ROUTINE PROCEEDINGS

L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

MEETING OF TWENTY-NINTH ANNUAL SESSION, JULY 6-10, 2003—REPORT TABLED

Hon. Rose-Marie Losier-Cool: Honourable senators, pursuant to rule 23(6), I have the honour to present to this house in both official languages the report of the Canadian section of the Assemblée parlementaire de la Francophonie, and the financial reports relating thereto, of the meeting of the Twenty-Ninth Annual Session of the APF, held in Niamey, Niger, from July 4 to July 10, 2003.

• (1350)

[*English*]

FOREIGN AFFAIRS

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

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

> That the Standing Senate Committee on Foreign Affairs, in accordance with rule 95(3)(a) of the *Rules of the Senate*, be empowered to sit on October 14 and 15, 2003, even though the Senate may then be adjourned for a period exceeding one week.

QUESTION PERIOD

CANADIAN INTERNATIONAL DEVELOPMENT AGENCY

COMPLIANCE WITH SOLE SOURCE CONTRACTUAL REGULATIONS

Hon. A. Raynell Andreychuk: Honourable senators, it has been reported that the managers of CIDA awarded millions of dollars in untendered contracts between 1999 and 2001, despite knowing that this violated federal regulations. Suppliers were awarded these contracts without considering the need for compliance and transparency; this from CIDA who requests others, both their own contract providers and other countries, to have a results-based management approach to project funding.

As an explanation, senior CIDA officials indicated that they knew about the rules but that they felt that they could administer things without following federal guidelines. It would seem to me that this is taking unfettered discretion to its illogical conclusion. CIDA has now indicated, through its management, that it has taken the necessary steps to rectify this situation.

In light of the fact that Canada goes around the world requesting other countries to abide by rules and that the rule of law is the essence of much of our aid giving, how can we explain to our counterparts around the world why we break our rules and why they should not break theirs?

As well, could the Leader of the Government in the Senate share with this chamber what steps CIDA has taken to ensure future compliance with federal regulations regarding sole source contracts?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for her questions this afternoon. I regret that I have no information to provide to her because I did not know of the issue that she has identified this afternoon. I assure her that we will get on this matter immediately and provide answers to the two questions she has asked as quickly as we can.

CITIZENSHIP AND IMMIGRATION

NEW RULE TO ASSESS IMMIGRANT CLAIMS UNDER CRITERIA AT TIME OF APPLICATION

Hon. Donald H. Oliver: Honourable senators, my question is to the Leader of the Government in the Senate. Last week, the federal government was forced to change its new immigration rules and finally allow potential immigrants to be assessed under the criteria in place when they originally applied. In announcing the change, Citizenship and Immigration Minister Denis Coderre said in a statement: "The government's clear intention has always been to treat immigrants fairly."

The truth is that Minister Coderre changed his mind only when it became clear that the government would lose a series of class action lawsuits that had been filed by victims of the department's earlier decision and who sought damages to have their applications reviewed.

Why did it take so long for the Department of Citizenship and Immigration to arrive at this decision, and why did it have to be shamed into acting following potential lawsuits by the various immigrants?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator has indicated that the department made the decision on the basis of class action lawsuits. I would prefer to think that they responded to the interventions of many Canadians, including the honourable senator opposite who raised in this chamber on a number of occasions that he believed the system was unfair and inequitable. Certainly, those comments were made to the minister, and I would hope it was the representation of that fact rather than the threat of lawsuits that resulted in this action.

Senator Oliver: Honourable senators, although the minister has finally changed the rules, the potential immigrants still have to be assessed. Many of these people have been waiting a very long time already. One in particular, a mechanical engineer from Hong Kong, told the Federal Court looking into the matter last year that he has been waiting 44 months to receive an answer from a visa officer about his claim. In light of last week's decision, could the Leader of the Government in the Senate tell us if the Department of Citizenship and Immigration will hire additional staff to help deal with this backlog?

Senator Carstairs: As the honourable senator knows, because he has asked this question before, the Department of Citizenship and Immigration has hired additional staff. They were given the resources to do that in the last budget.

We all concur that this is a wonderful country. Many individuals would like to join us here. Unfortunately, the process often takes much longer than I, the honourable senator and others, including the Minister of Immigration, would like it to take. Quite frankly, it is based on the number of people who wish to come to this great country.

JUSTICE

SUPREME COURT JUDGMENT ON THE METIS— EFFECT OF DECISION

Hon. Gerry St. Germain: Honourable senators, my question is also to the Leader of the Government in the Senate and relates to the landmark decision regarding the Metis. I was hoping to make a statement about it today, as I was unavoidably detained yesterday on other business.

Could the Leader of the Government in the Senate describe to this place exactly what actions the government will take in regard to this landmark decision and the Metis people?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator asks about a decision that, as he knows, was just rendered by the Supreme Court late last week. The government and, more particularly, the Department of Justice, has undertaken to do a thorough reading and study of this particular judgment. It would be premature of me or any other minister to make a statement as to what the next stages will be.

Senator St. Germain: I thank the minister for her answer.

Possibly the Leader of the Government in the Senate could apprise us if there are any new events during the course of the analysis of this landmark decision.

HERITAGE

UNITED KINGDOM—NAMGIS REQUEST FOR RETURN OF CEREMONIAL MASK

Hon. Gerry. St. Germain: Honourable senators, my supplementary question relates to another Aboriginal issue. The Namgis, a small native band in British Columbia, has asked the British museum in London to return to them a wooden ceremonial mask that is currently being kept in storage there. Over the past 35 years, the Namgis have worked hard to retrieve many of their ceremonial artifacts that are scattered around Canada and the world. The British museum has refused to return the mask, saying it has a legal duty to hold it in trust and make it available to scholars. This particular museum has also refused to restore the Elgin Marbles to Greece before the 2004 Olympics. The Canadian Parliament has adopted motions calling on the museum to return the marbles.

Will the Government of Canada make a special representation on behalf of the Namgis nation of British Columbia and request that their mask be returned to its rightful place?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator knows, there are many artifacts of many people in many countries that are, in my view, unfortunately located in countries other than the one in which they should reside. The question the honourable senator asks is specific. I will certainly, on his behalf, make representations to the Minister of Heritage, who would be responsible for this matter, and let her know how strongly the honourable senator feels about the restoration of this piece of Namgis history.

HEALTH

REVIEW OF PRESCRIPTION DRUG ADVERTISING POLICY

Hon. Brenda M. Robertson: Honourable senators, as part of a review of the Food and Drugs Act and other health statutes, Health Canada is currently considering lifting the ban against advertising prescription drugs in broadcast and print media.

Currently, this practice is only legal in Canada if the ads do not say what conditions the drug treats. If the policy is changed, Canada will join the United States and New Zealand as the only industrialized countries that allow prescription drug advertising.

When does Health Canada expect to announce the outcome of its review of this policy?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator knows, no decision has been made in this matter.

• (1400)

As regards the study being conducted by Health Canada, one can only assume that it will be released when it is completed.

Senator Robertson: Honourable senators, the Canadian Medical Association, the Canadian Pharmacists Association and the Consumers' Association of Canada have all stated their opposition to direct-to-consumer prescription drug advertising. The President of the Quebec Medical Association has said that it would raise the cost of health care and undermine the efforts of physicians and pharmacists, who are trying to promote cost-effective drug therapies such as generic drugs and more appropriate antibiotic therapies.

Could the Leader of the Government in the Senate tell us why it is considering lifting the advertising ban when it is faced with such strong opposition?

Senator Carstairs: I can assure the honourable senator that the government will take into consideration all of the strong representations that have been made by organizations in which the government puts a great deal of confidence and trust, but I feel it is appropriate for the Government of Canada to study any number of issues. Representations have been made that the present policy is perhaps unfair, and therefore it is appropriate that such a study be conducted. However, I do not think we should prejudge the results of that study.

SOLICITOR GENERAL

FIREARMS REGISTRY PROGRAM—TRANSFER OF FUNDS IN SUPPLEMENTARY ESTIMATES (A)

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, yesterday, in answer to Senator Comeau, the Leader of the Government said there were no new monies in the Supplementary Estimates for the Canadian Firearms Centre. Yet, in looking at the Blue Book for Supplementary Estimates (A) one finds an additional amount of $10 million repeated three times.

I refer the minister to page 22. Under "Proposed Schedule 1 to the Appropriation bill" and "Canadian Firearms Centre," we find the authorization to transfer a certain amount of money from the Department of Justice to the Solicitor General. As we know, the responsibility has been transferred from one department to the other. It goes on to say, "and to provide a further amount of $10 million."

On page 13, under "Summary of Changes to Appropriations" and the column entitled "New Appropriation, Canadian Firearms Centre," we see the figure of $10 million.

Finally, on page 88 of the Supplementary Estimates, under "Solicitor General, Canadian Firearms Centre," vote 7a, and the column "New Appropriation," I will read the appropriate words: "to provide a further amount of $10 million."

Does my research confirm that, in effect, the Supplementary Estimates do ask for an additional $10 million, contrary to what the minister suggested yesterday?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, my information is exactly the same as was given to Senator Comeau. Although this is the way in which it is listed in the Estimates, there is, in reality, no new money. This is a transfer of $10 million from the Department of Justice to the Department of the Solicitor General because the Department of the Solicitor General is now in charge of the firearms registry.

Senator Lynch-Staunton: Honourable senators, I would ask the minister to speak to her researchers and urge them to read page 13 of the Supplementary Estimates, where there is, under the rubric "Transfer," an amount that is the amount being transferred from the Department of Justice to the Solicitor General to meet exactly the responsibilities that have been moved along. However, in addition, under "New Appropriation," there are $10 million. I would suggest strongly that the minister perhaps has not been as well-informed on this particular item as she usually is.

Senator Carstairs: Honourable senators, in light of the representations of both Senator Lynch-Staunton and Senator Comeau, I will again go back and have this information verified. However, I did ask the question again today because of the question posed by Senator Comeau yesterday, and I was given assurances that there is no new money. I do not wish in any way to put false information on the record, so should the information be incorrect, I will come back to the chamber tomorrow with a further update.

Hon. Gerald J. Comeau: Honourable senators, we raised this question in the Finance Committee the last time we met with officials. We indicated to them that, given the work we have to do, we try to do a good job on behalf of taxpayers while being mindful of their tax dollars. We said that we would like to be able to read the Estimates as provided to us in a fashion that is not misleading. That issue was raised forcefully with the officials, and they assured us that such would be the case in the future and that they would try not to mislead us.

However, if one reads both the French and English versions of the Supplementary Estimates, they refer to a new appropriation of $10 million. Now, either it is a new appropriation — "nouveau crédit" in French, — or it is not. If the case is that this money is not a new appropriation, the minister should get the message out to her officials at Treasury Board, or whoever writes this stuff, to put a stop to misleading information of this sort.

Senator Carstairs: Honourable senators, I will obtain clarification because I have committed to the Leader of the Opposition that I will do so. My understanding is that the money is indeed a new appropriation for the Solicitor General, but it is taken from the old appropriation of the Minister of Justice. However, if there is any information to the contrary, I will make sure that I provide it tomorrow.

UNITED NATIONS

NUCLEAR NONPROLIFERATION

Hon. Douglas Roche: Honourable senators, my question is to the Leader of the Government in the Senate. Yesterday, at the United Nations, President Chirac of France said:

> Let us convene a summit meeting of the Security Council to outline a true plan of action of the United Nations against proliferation.

This is not a sudden inspiration. France and Germany have been arguing in this manner for several months. President Chirac put his argument very succinctly when he said:

> We must stand united to guarantee the universality of treaties and the effectiveness of nonproliferation regimes.

Does Canada support these statements — I suppose it does — and what steps will Canada take to press forward with the idea of a summit of the Security Council to deal with the increasing dangers of nuclear and other weapons of mass destruction?

I ask these questions because Canada has not yet spoken publicly on this matter, and I believe it is very important that Canada's voice be heard.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator himself indicated, the President of France in fact put the question in the form of a speech only yesterday. Therefore, I think it is not unreasonable that we would not know as of two o'clock this afternoon exactly what the position of the Canadian government will be on this matter; although, as the honourable senator has wisely said, since we have supported this proposal in the past, that would be the direction the government may well take in the future.

I will take the honourable senator's query to the government, and in due course I am sure the Government of Canada will announce its position.

Senator Roche: I thank the minister for taking that idea forward.

INVOLVEMENT OF PRIME MINISTER IN INSTITUTIONAL REFORM

Hon. Douglas Roche: Yesterday, also at the United Nations, Secretary-General Kofi Annan called for reform of the Security Council, which would include its enlargement, and he announced his intention to form a committee of eminent persons to consider the subject and report to him with their recommendations in one year.

Also yesterday, Prime Minister Chrétien spoke at the United Nations and called for "bold renewal" and "meaningful reform" of the UN. It would seem that Kofi Annan's ideas and Prime Minister Chrétien's ideas are a good fit.

Is any consideration being given to having Mr. Chrétien, shortly to be a former prime minister, become a member of the eminent persons group, which would be a good idea, allowing him to bring forward his long commitment to the core Canadian values of support for the United Nations?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator is absolutely correct. The statements of Kofi Annan and our Prime Minister yesterday were indeed a very good fit. However, the Right Honourable Jean Chrétien intends to remain Prime Minister until February 2004. Mr. Annan has indicated that he wants to do this study very quickly. He said he wanted a report in one year. If a report is to be ready in one year, things had better get going relatively quickly. In that, I am not sure our present Prime Minister will be available.

• (1410)

SOLICITOR GENERAL

ROYAL CANADIAN MOUNTED POLICE— PRIME MINISTERIAL SECURITY

Hon. Marjory LeBreton: Honourable senators, that last answer about the present Prime Minister being in place until February 2004 precipitates this question: Could the Leader of the Government in the Senate tell us if it is the intention of the RCMP to provide prime ministerial-level security for the member for LaSalle-Émard, given his success in his party's delegate selection process? If so, what will the cost be to Canadian taxpayers of having two persons receiving such a high-security level?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator knows, security is made available to the Prime Minister of this country. It is also made available to ministers of the Crown, should they need it. It is sometimes made available to members of Parliament, including senators, should they be in a circumstance in which they need it.

However, prime ministerial security is provided to the Right Honourable Jean Chrétien and will continue to be provided to him until he is no longer Prime Minister, and to no one else.

Senator LeBreton: Honourable senators, normally when a leader of a party is elected, the level of security for that person is raised, for obvious reasons. Has the level of security been raised for Mr. Martin? If so, what is the cost to Canadian taxpayers?

Senator Carstairs: Honourable senators, Senator LeBreton has answered her own question. Although Mr. Martin won the support of a large number of delegates last Saturday, he has not yet been elected leader of the Liberal Party of Canada.

Hon. Marcel Prud'homme: Honourable senators, I disagree with Senator LeBreton. Former prime ministers at times are provided with security. If former Prime Minister Mulroney had been provided security, there would have been no need for the assistance of a senator at the unveiling of the statue of Mr. Mulroney, who was accompanied by the present Prime Minister and the two Speakers of Parliament.

Protection should be extended to certain people, including ex-prime ministers when it is required. However, I disagree with my friend Senator LeBreton.

Senator Carstairs: Honourable senators, I can understand why Senator Prud'homme disagrees with Senator LeBreton. As I indicated, under some circumstances, members of Parliament and senators are also provided with additional security. That happens in circumstances such as when threats are made to their lives. I have heard no indication that any such threats have been made against the Member of Parliament for LaSalle-Émard. If such threats were made, the appropriate security would be put in place.

Hon. David Tkachuk: Honourable senators, will Mr. Martin, or perhaps Ms. Copps, be given prime ministerial security from November 15 until February when the Prime Minister leaves his post?

Senator Carstairs: Honourable senators, that is a hypothetical question. We do not know what will happen on November 15. When November 15 comes, and when it is decided that a particular person in this country needs appropriate levels of security, I presume that decision will be made.

Hon. Laurier L. LaPierre: Honourable senators, I thought it was customary not to discuss the security arrangements effected by the Royal Canadian Mounted Police. Does the Leader of the Government in the Senate not think it improper to be asked detailed questions about the protection that may be afforded to Mr. Martin or Ms. Copps, or even Senator Lebreton, who probably needs it more than anyone else on the planet?

Senator Carstairs: Honourable senators, to repeat, there are occasions when, because of circumstances beyond their control, imposed upon them by others, security is provided to members of Parliament and senators. There are ministers of the Crown who, on occasion, have security. On many occasions, they do not have security. I do not have security and I feel no particular need for it. However, there have been instances where other ministers, because of threats, have been provided security, and I think that is entirely appropriate. I think Canadians would want that, even though it is their tax dollars that are being spent. I think members of this and the other chamber would want that, if threats were being made against them.

FOREIGN AFFAIRS

SAUDI ARABIA—MALTREATMENT OF INCARCERATED CANADIAN CITIZEN

Hon. Noël A. Kinsella (Deputy Leader of the Government): Honourable senators, I should like to ask the Leader of the Government whether she was able to ascertain the answer to my question concerning the torture suffered by a Canadian citizen, namely William Sampson, at the hands of officials in the Kingdom of Saudi Arabia. My question was whether Canada would file a communication against the Kingdom of Saudi Arabia for violations of the International Covenant on Civil and Political Rights.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not know specifically whether we have used that vehicle. I can tell the honourable senator that the Canadian government is extremely disappointed at the refusal of the Saudi Arabian government to initiate an inquiry into the treatment of William Sampson, and we have expressed that disappointment.

Saudi Arabia has invited Mr. Sampson to file a complaint within its judicial system. Until now, Mr. Sampson has refused to file that complaint, but he has apparently been informed that Canada stands ready to assist him should he decide to do so.

Senator Kinsella: Honourable senators, I noted the comment yesterday of the Minister of Foreign Affairs, who was with the Prime Minister at the United Nations in New York. He is reported to have said that he felt that Mr. Sampson would have to exhaust all domestic remedies before the international machinery could come into force. That is a position I reject. There are no grounds for that, since we in the world community have moved from the Westphalian system of law and order to a global communitarian position.

Under international law, there exists the United Nations Convention against Torture, to which both the Kingdom of Saudi Arabia and Canada are signatories. I believe article 12 of the Convention against Torture would be applicable in the case of torture perpetrated by officials of the Kingdom of Saudi Arabia against Mr. Sampson, a Canadian citizen.

Therefore, if Canada is not going to file a complaint on the basis of the International Covenant on Civil and Political Rights, will it do so under the United Nations Convention against Torture?

Senator Carstairs: Honourable senators, I shall make that representation to the Minister of Foreign Affairs on behalf of Senator Kinsella.

• (1420)

[*Translation*]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table an answer to a question raised by Senator Comeau on May 13, 2003, concerning the Canadian Firearms Centre and the firing of staff members.

SOLICITOR GENERAL

FIREARMS CENTRE—FIRING OF STAFF MEMBERS

(Response to question raised by Hon. Gerald J. Comeau on May 13, 2003)

Over the past several months the government has announced several key initiatives to improve the Program and provide better service to Canadians across the country.

On February 21, the Minister of Justice, joined by the Solicitor General, tabled an Action Plan to deliver a firearms control program that provides significant public safety benefits, while setting the Program on a path to lower costs.

The Action Plan outlines ways of improving the Program's services, transparency, and accountability. It signals the Government of Canada's commitment to the firearms control program and responds to the recommendations made by the Auditor General in her December report.

The Government has already begun to implement these actions. On April 14, 2003, the Canadian Firearms Centre was transferred from the Department of Justice to the portfolio of the Solicitor General. This is a natural fit for the Solicitor General portfolio, whose main focus is enhancing public safety.

The Action Plan also stated the Government's intention to consolidate the headquarters function for the Firearms Program in Ottawa. This has already occurred.

On May 30, a Commissioner of Firearms was appointed. Reporting to the Solicitor General, the Commissioner has full authority and accountability for all federally administered elements of the Canadian Firearms Program. In addition, the position of Registrar of Firearms, who has traditionally been a member of the RCMP, was moved to the Canadian Firearms Centre. The Registrar reports to the Commissioner of Firearms.

Also, in following with the Action Plan, the Chief Financial Officer position has been filled. He is responsible for risk analysis, data integrity and reporting, as well as ensuring that resources are used in accordance with the Program's financial plan. He must also report on results.

The Chief Operating Officer position has also been filled. She is responsible for the overall operations of the Program, including licencing and firearms registration.

On May 14, 2003, Bill C-10A received Royal Assent. These amendments to the Criminal Code and the Firearms Act are primarily administrative in nature and their goal is to streamline the Canadian Firearms Program. Several of these amendments require new regulations or amendments to existing regulations before they can take effect. Accordingly, on June 13, 2003, fifteen proposed regulations were tabled in Parliament by the Solicitor General. All but one of those amend existing regulations. The tabling of the proposed regulations is another important step in the continuous improvement of the Firearms Program.

Consultations on the regulations with Parliament and with the public through the Gazette process are underway. Also, Canadian citizens are invited to provide feedback and/or make suggestions respecting Canada's Firearms Program and the proposed regulations through the Canadian Firearms Centre Web site.

On June 18, 2003, the Federal Solicitor General announced the establishment of a Program Advisory Committee, which was a key element contained in the Action Plan. This Committee is comprised of experienced individuals external to government with management and systems expertise. The volunteer members of the Committee provide advice on how to improve quality of service to the public and the management of the Program. The Program Advisory Committee held its first meeting in June.

The Canadian Firearms Program will provide an annual report to Parliament containing relevant information on the Program and which will complement existing government reports already before Parliament. This is consistent with a recommendation of the Auditor General, and furthers efforts made since January 2002 to report more information, including projected costing, in its Report on Plans and Priorities.

Canadians want strong and sensible firearms laws. They also want a commitment from us that we will administer this program in the most efficient manner possible. The Government has made this commitment and as you can clearly see, is already moving forward with measures to streamline the program and make it more efficient.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw to your attention the presence in the gallery of participants in the fall 2003 meeting of the Colloque de coopération parlementaire, from Algeria, Cameroon, Gabon, Madagascar and Tunisia. On behalf of all the senators, I welcome you.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I suggest that, on the Order Paper, we begin, under Government Business, under Bills, with Item No. 2, then move on to Item No. 3, and Item No. 1 under the same heading.

[*English*]

SPECIFIC CLAIMS RESOLUTION BILL

THIRD READING—MOTION IN AMENDMENT—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, as amended,

And on the motion in amendment of the Honourable Senator Watt, seconded by the Honourable Senator Gill, that the Bill, as amended, be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Hon. David Tkachuk: Stand.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Question!

[*English*]

The Hon. the Speaker: There is a call for the question. If the honourable senator wishes the matter to extend one day, he will have to make a formal motion to adjourn.

Senator Tkachuk: I move the adjournment of the debate until the next sitting day of the Senate.

The Hon. the Speaker: It was moved by the Honourable Senator Tkachuk, seconded by the Honourable Senator Stratton, that further debate be adjourned to the next sitting of the Senate.

This is not a debatable motion.

[*Translation*]

Senator Robichaud: Honourable senators, I would like some clarification. When the senator speaks of further debate being adjourned to the next sitting of the Senate, am I to understand that this means tomorrow?

[*English*]

Senator Tkachuk: It is not debatable.

The Hon. the Speaker: We have a question before us on the motion of Senator Tkachuk, seconded by Senator Stratton, to adjourn debate. Is it your pleasure, honourable senators, to adopt the motion?

Senator Cools, do you have a question?

Hon. Anne C. Cools: I was pointing out to Senator Day a small mistake in yesterday's *Debates of the Senate* concerning him, and so I did not hear. What is the question?

The Hon. the Speaker: The motion to adjourn.

Senator Cools: To adjourn what?

The Hon. the Speaker: I understand that sometimes we are distracted. If all honourable senators are listening, I will inform you of the motion by Senator Tkachuk, seconded by Senator Stratton, to adjourn further debate on Bill C-6.

Senator Robichaud: Until tomorrow.

The Hon. the Speaker: I shall now put the question. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: I shall put the question in the formal way.

Senator Cools: It was just voted on.

The Hon. the Speaker: It is not a question of privilege but a question of order, perhaps.

The problem is that we are in the middle of a proceeding. Does it pertain to the proceeding? Then I will hear you. Senator Gill.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, Bill C-6 is currently before us, once again. We know that many questions have been raised. We know that these questions are a cause for concern to many people, starting with the First Nations. I think we may be able to make a suggestion or perhaps bring forward a motion in amendment. If we had one more day to consider the bill, we could perhaps, tomorrow, move something that might be acceptable to more people.

I cannot give you any specifics because we are in the midst of drafting something. I know that the senators are quite concerned, and we respect that fact.

[*English*]

The Hon. the Speaker: Senator Gill, I have listened carefully and I do not believe that is a point of order. There may be, however, a desire on the part of the house to deal with this under house business, but that would have to be done with unanimous leave. If you would like to ask for that leave, I will see whether there is agreement.

[*Translation*]

Senator Gill: Honourable senators, I am only asking that debate on this item be adjourned until tomorrow so that it can be discussed.

[*English*]

The Hon. the Speaker: Is leave granted, honourable senators, to discuss house business?

[*Translation*]

Senator Robichaud: Honourable senators, Senator Gill does not seem to grasp the purpose of this motion, which is to adjourn today's debate on the amendment to Bill C-6 until tomorrow, providing the extension he referred to. We did not object. I think His Honour was about to put the question.

Senator Kinsella: Honourable senators, that is not what he did.

Senator Robichaud: Well, I thought it had been done.

[*English*]

The Hon. the Speaker: We interrupted a matter to see whether there was a point of order. There is no point of order. We were discussing house business, but I really did not put it to honourable senators in a formal way.

Is there leave, honourable senators, at this point in our proceeding, which is between a motion and dealing with a motion, to continue to discuss house business?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): There is, honourable senators, a serious point of order. There is a serious question of how we vote in this place — and nothing is more sacred than how we vote in this place.

There is nothing in our rules that allows the honourable senator who is in the Speaker's chair to ask a question twice.

Senator Cools: Right.

Senator Kinsella: The question is put and voice vote is held. If two senators rise because they want greater clarity and thus a roll call vote, our rules provide for it. Where in the rules is there a procedure for greater clarity of "I am going to put the question again," when the question was put and a voice vote was taken and nobody stood? I would be pleased if that could be pointed out to me.

The Hon. the Speaker: I will deal with Senator Kinsella's point of order because it really is a point of information.

Senator Cools: No, it is not.

The Hon. the Speaker: If it is not, I will hear it on the point of order. It has often been the case in this house when a motion has been put by the Chair that voices are heard when the question is put. For example, when the question is put — the question being, "Do you wish to adopt the motion?" — simultaneously some senators will say yea and others will say nay. That is my interpretation of what happened. I did not say that the motion was adopted. I said that I will put the motion, as I often do, in a formal way. The record will have to stand for itself. If the honourable senators wish, I will ask that the record be read. Is it your wish that the record be read?

Senator Kinsella: I think we need a point of order ruling. I know there is reference in the *Rules of the Senate* to the honourable senator who is in the chair putting a question twice.

After the question is put the first time, the senator who is in the chair expresses his or her opinion as to whether the yeas have it or the nays have it, and that step was not taken. That is a step that should be taken, not to put the question again. If any honourable senator is in doubt or needs clarification, the rules provide for two senators to rise and say, "I want the vote taken in a different manner."

The Hon. the Speaker: I will hear the point of order. I think it is a point of information, but let us hear from senators.

• (1430)

[*Translation*]

Senator Robichaud: I support His Honour's approach to this matter. This is a current practice in this place, when we are not clear about what the honourable senators want. When you put the question on the adjournment motion, we heard some say "yea." I said "nay," and even insisted, because I would like to see the debate continue. His Honour, to make sure he had heard right, without putting the question a second time, simply repeated. It is not a matter of voting twice on the same question, but rather of making sure that the vote on the question that was put is clear.

[*English*]

The Hon. the Speaker: On the point of order, I will recognize Senator Cools, and then Senator Prud'homme and Senator Lapointe.

Senator Cools: Honourable senators, there is a very valid point of order in what Senator Kinsella has raised. I sincerely believe that His Honour made a genuine mistake. There was no "malintention" on his part. I think he made a sincere mistake, the consequence of which was to create a slight bit of disorder here, but something that can be fixed quickly with patience and magnanimity.

Senator Kinsella is absolutely right — the question was put and voices were expressed. Some said yea and some said nay.

What we have really is a vote in process, a vote proceeding in motion, and it is simply not to be interrupted by unanimous leave. There is no such phenomenon as unanimous leave to let someone else speak. I think Senator Gill misunderstood what was happening, which was an honest mistake.

If, perhaps, senators did not hear the question put, as His Honour put it, then they could have called for a repetition. At that point, it would have been perfectly in order for him to repeat the question. However, the fact of the matter is that there was no difficulty with hearing.

His Honour clearly put the question. The yeas pronounced by voice. The nays pronounced by voice. All that was left to be done was to complete the process, which is that His Honour would simply have said, "I think the yeas have it" or "I think the nays have it." At that point, the process would continue. If two senators would rise, we would move into a recorded vote or not; or perhaps the whips would rise to say that we would defer the vote.

Honourable senators, once a vote is in motion and it is proceeding, it is in motion and it should be completed. All that happened is that His Honour unwittingly interrupted the process and created a little bit of confusion.

The fact of the matter is that the chamber had already pronounced, and the chamber cannot be asked to vote twice on the same item. It is out of order to do so. I wish that some of these matters could be clarified so that senators could understand more clearly the process that is before them.

I would also like to address the business of unanimous leave and unanimous consent. A lot of people are falling into this mistake of believing that unanimous consent is a way of expressing a vote. It is not. It is a way of suspending our rules temporarily. If the chamber wishes to express its will, it must be expressed in clear ways. However, the fact of the matter is that Senator Kinsella was absolutely right.

[*Translation*]

Hon. Jean Lapointe: Honourable senators, I have a question for Senator Cools. If she knows the rules so well and is keen to enforce them — first, she should be holding her earpiece instead of talking with her neighbour while matters are being discussed here — then she should stand for office when His Honour leaves the Senate. My second question is a very simple one; it is a suggestion.

[*English*]

Senator Cools: I can start for you, if you want, because you are highly personal and vastly out of order —

The Hon. the Speaker: Senator Lapointe has the floor.

[*Translation*]

Senator Lapointe: Instead of chatting while I am talking, listen to what I have to say. If you have a question, you can ask it once I have finished; I will gladly answer. In the meantime, I have not finished.

[*English*]

Senator Cools: Point of order!

[*Translation*]

Senator Lapointe: Rise on your point of order once I have finished.

[*English*]

Senator Cools: Your Honour, no senator is supposed to stand —

The Hon. the Speaker: Senators, the rules are clear. Only one senator has the floor at a time. Senator Lapointe.

[*Translation*]

Senator Lapointe: Honourable senators, as a point of order, the honourable senator should have to step out for five minutes while the other senator is speaking. That being said, Senator Tkachuk moved adjournment. You asked whether the adjournment motion was agreed to, and the response was unanimous. My colleague, Senator Gill, did not grasp the meaning very well. The issue is not Senator Gill's error or bad timing.

The Deputy Leader of the Government asked Senator Tkachuk until when debate on this item on the Orders of the Day would be adjourned, and he said tomorrow. I do not see why we have to spend half an hour talking about it, when the matter has been resolved. That is my point of view, and I am delighted with it.

[*English*]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I have been in this chamber much less than some of you, but certainly long enough to have some comprehension of the rules and also some understanding of the common practice of this institution.

What occurred a few minutes ago was really quite simple. Senator Tkachuk put a motion. His Honour asked for yeas and nays. Interestingly enough, Senator Cools stood up a few minutes later and did not seem to know what we were talking about at that particular moment in time, and that is on the record.

I think it is fair to say that Senator Gill was somewhat confused as to just exactly what the message was that we were trying to do.

His Honour clearly did not have a clear view of whether there were yeas and nays in equal number, so he did what any rational, reasonable, responsible Speaker would do — he put the formal question. He asked us to say, in clear and unequivocal terms, whether we were yea or whether we were nay. When he tried to do that, we had a point of order. There is no point of order.

Your Honour, in my view and I think the view of the vast majority of the members of this chamber, you tried to do exactly the logical and reasonable thing.

Senator Tkachuk: I would like to say, Your Honour, that this has been a very interesting non-debatable motion.

The Hon. the Speaker: Thank you, honourable senators. I will do my best to sort through this matter. I appreciate your comments on the point of order.

I will only deal with the point of order that Senator Kinsella has raised and not the issue of unanimous consent. If honourable senators wish to raise that, I think I should deal with it as a separate matter.

On the issue raised by Senator Kinsella — and I appreciate Senator Carstairs' and all senators' comments on this point — he is quite right that when a motion is put, it is only voted on one time. I believe Senator Carstairs has more or less correctly described what has happened here and what my position is as your presiding officer at this time; that is, a motion was made. I think the sequence was that the question that is normally asked — Is it your pleasure to adopt the motion? — was put. I heard voices, and I did not have a clear understanding of which voices were in majority.

Senator Lynch-Staunton: You did not ask.

The Hon. the Speaker: I am sensitive to Senator Gill's strong feelings about this bill, so I heard him. I thought he might have a point of order; it would be unusual — I did not think he did, and he did not. What he wanted to do was intervene to ensure his point was made about this adjournment matter. We did not get unanimous consent, but we heard him anyway. I think that event is totally extraneous to Senator Kinsella's question.

• (1440)

The answer to Senator Kinsella's question is either one or the other. Either I expressed an opinion —

Perhaps, I should ask him whether the motion was adopted?

Senator Lynch-Staunton: You did not express an opinion.

The Hon. the Speaker: To the best of my recollection, I did not express an opinion.

Senator Lynch-Staunton: You did not.

The Hon. the Speaker: As many voices were heard, I followed a practice that I have followed on virtually every occasion when I have encountered that situation. I used the words: "I will put the vote in a formal way."

When it is unclear to me, there is a formal way of putting the vote. That way is to ask for yeas and nays. I was about to do that when this matter came up about putting the question a second time.

I believe the solution to this question of whether I said the motion was passed or not passed will be in the record. I do not believe I have any option but to ask that the record of that part of the proceeding be reread to the chamber for purposes of determining whether I said the motion is passed or the motion is defeated. I will stand by that. That will be the end of it.

To my best recollection, unlike Senator Kinsella who heard it differently, I did not say that it was passed or defeated but, rather, that I will put the motion in a formal way.

Could I ask that the appropriate part of the proceeding be reread to the chamber.

Senator Lynch-Staunton: The what.

The Hon. the Speaker: Excuse me, it has not been read a first time. Could the appropriate part of the proceeding be read to the chamber?

What did I say at that point? Did I say, as Senator Kinsella heard, that the motion is passed, or did I say that the motion is defeated?

Senator Nolin: No. It was not said.

Hon. John Lynch-Staunton: Honourable senators, a voice vote was taken. Unlike the standard procedure, His Honour did not indicate whether the yeas or nays had it — at which time, two senators could have risen and asked for a recorded vote. His Honour said nothing, except that we would have another vote.

The Hon. the Speaker: No, that is not our practice. Our practice is that we give a fair opportunity for senators to be heard in a voice vote. We do not leave it to one instant, a fraction of a second, in which to decide. We take a bit of time. I have followed the practice of providing a fair opportunity for nays and yeas to be heard every time.

No opinion has been expressed by the Chair on which way the vote went. If two senators had stood, it would have resolved the issue. No senator stood, and no opinion has been expressed by the Chair as to whether the motion was adopted.

Senator Lynch-Staunton: The role of the Speaker is to determine which are the more prominent in a voice vote, the yeas or the nays.

His Honour did not do that. That is a vote. That is a formal vote on a motion formally put. Since the Chair did not say anything, I can only assume that the yeas have it. Nobody rose to challenge it. Now, we are to have another vote.

The Hon. the Speaker: Honourable senators, there cannot be two votes on the same matter. If the Chair is silent, it does not mean that the vote was yea or nay. In fact, our practice is that where there is an equality of voices the nays would have it, the motion would not be adopted. In any event, that is irrelevant. There has been no decision from the Chair on which way the vote went.

A vote would not occur until a fair opportunity for senators to be heard had taken place. I was about to provide that.

Senator Prud'homme is eager to speak to this. I will hear him.

Hon. Marcel Prud'homme: Honourable senators, I shall speak in English slowly.

I am at the very end of the chamber, and I heard His Honour very clearly. He is absolutely right. His Honour said yeas and nays. There were some yeas; there were some nays. His Honour did not have time to say, "In my opinion," one way or the other. Two senators could have then risen.

His Honour did not have time to reach that point when Senator Gill rose. We then went down another track.

I think that His Honour is absolutely right. We did not have time to finish our procedure. There is no confusion. To me, His Honour was clear. We did not reach the part that has been done by this Chair since the beginning, namely, where he says, "In my opinion, the yeas have it," or "In my opinion, the nays have it." At that time, it would have been up to the senators to rise or not. If two had risen, we would then have had to have a formal vote.

We did not reach that point because we were completely sidetracked by our good friend, Senator Gill, who knows now that he was completely out of order on this issue. We are not supposed to express any opinion during a vote. In all fairness to everybody, and in my opinion, His Honour could now say, "In my opinion —"

The Hon. the Speaker: Honourable senators, I must call an end to the interventions.

I will give a ruling on this. You can challenge the ruling if you wish.

Rule 65(1) states:

> When a question is put to a vote, the Speaker shall ask for the "yeas" and "nays" and shall there upon decide whether the question has carried.

In practice, on motions, particularly motions to adjourn, the Speaker does not stand and say, "Those in favour say yea, those not in favour say nay." The speaker says, "Is it your pleasure to adopt the motion?" Normally, there is silence or there is a clear indication by voices of a vote in favour or against.

That did not occur on this occasion. There was no clear indication from the voices whether the vote was in favour or against when the question was asked, "Do you wish to adopt the motion?"

When I am not certain and when I have not given an opinion, which I have not, I will put the vote in a formal way. I then ask for the yeas and nays, and I make a decision. If the chamber wishes a division, two senators standing will require a division.

This question has been put but has not been determined because I have given no indication of whether the motion was passed or defeated.

Senator Lynch-Staunton has taken the position that if it is unclear or if nothing is said, it means that the motion is passed. I am not aware of any such rule. In fact, we do have a rule that says that on an equality of voices a motion fails.

If there were to be an automatic decision, where silence is to be interpreted as yes or no, it would seem to me that our practice is more consistent with no than yes. In any event, that is not what happened, and that is not at issue here.

If honourable senators wish, one senator's voice will be sufficient for the record to be read to confirm that I did not express an opinion on whether the vote passed or whether the vote failed. If not, I will put the question in a formal way.

On the motion of Senator Tkachuk, seconded by Senator Stratton, to adjourn debate on Bill C-6 as amended to the next sitting of the Senate, will all those in favour of the motion please say yea?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will all those opposed to the motion please say nay?

Some Hon. Senators: Nay.

The Hon. the Speaker: The motion is passed.

On motion of Senator Tkachuck, debate adjourned.

ANTARCTIC ENVIRONMENTAL PROTECTION BILL

THIRD READING—DEBATE ADJOURNED

Hon. Ione Christensen moved the third reading of Bill C-42, respecting the protection of the Antarctic Environment.

She said: Honourable senators, 12 years ago, Canada and our partner nations agreed to a series of measures to protect the global common, that is, the Antarctic.

These measures are in the Protocol on Environmental Protection to the Antarctic Treaty, which was signed in 1991 in the city of Madrid, and is commonly known as the Madrid Protocol.

• (1450)

Honourable senators, I rise today to speak in support of Bill C-42, the Antarctic Environmental Protection Act. This bill will enable Canada to ratify and implement the Madrid Protocol.

The Antarctic is a wild and windswept continent that is more than one and one-half times the size of Canada. Together with its surrounding oceans, the Antarctic continent truly is the world's largest great wilderness.

Honourable senators, the environmental importance of the Antarctic cannot be underestimated. Like the Arctic, the Antarctic region is a sensitive indicator of climate change. The land mass and surrounding waters of the Antarctic provide essential nutrients to the rest of the world's oceans, supporting life systems thousands of kilometres away from the South Pole.

It is amazing that a region with the coldest temperatures on earth is home to so many mammals, birds and fish. Remarkably, the Antarctic sustains marine mammals such as seals and whales at far greater levels than are found in the Arctic regions.

The Antarctic provides an unparalleled natural laboratory for scientists studying the earth's natural systems. Human activity in the Antarctic is on the rise with more than 10,000 tourists landing in the Antarctic on an annual basis. There are dozens of research stations on the continent.

[The Hon. the Speaker]

Canadian activities in the Antarctic fall into three general categories: tourism, science and logistical support. There are two Canadian companies that lead ecotours to the Antarctic. Collectively, they take a few hundred people to the region each year. As well, roughly 40 Canadian scientists are involved in Antarctic research.

With increasing human activity in the Antarctic comes the threat to the relatively pristine Antarctic environment in the form of marine pollution, harm to wildlife, and, of course, the things we humans leave behind — garbage.

The Madrid Protocol is designed to protect the Antarctic environment from these threats. Canada signed the protocol but has yet to join the 30 countries that have already ratified it.

Honourable senators, the Madrid Protocol is one of the international agreements that constitute the Antarctic Treaty System. Canada is a party to the Antarctic Treaty, which was put in place more than 50 years ago.

The Antarctic Treaty also includes two conventions: the Convention for the Conservation of Antarctic Seals and the Convention on the Conservation of Antarctic Marine Living Resources. Canada is a party to both these conventions.

The conservation of fish, which includes the commercial fishing of fish and other marine living resources, is covered under these conventions and not in the protocol, which focuses on other aspects of the Antarctic ecosystem.

Honourable senators, it has always been Canada's intent to ratify the Madrid Protocol. Canadians who are active in the Antarctic have been calling for ratification since Canada signed the protocol. The Madrid Protocol requires Canada to regulate Canadian activity in the Antarctic.

Ratifying the Madrid Protocol requires new legislation in order for the Government of Canada to grant permits for activities in the Antarctic. Bill C-42 is consistent with the approach taken by other nations in the implementation of the protocol and is consistent with existing federal environmental legislation.

Under Bill C-42, permits to be in the Antarctic are required for all Canadians, Canadian vessels and anyone who is on a Canadian expedition. Applications for these permits must be accompanied by an environmental assessment, emergency plans and waste management plans.

Permits are also required for Canadians who wish to conduct certain activities that would otherwise be prohibited under the bill, such as being in specially protected areas or undertaking research that results in contact with Antarctic wildlife.

Reciprocity is a key feature of Canada's approach to implementing the Madrid Protocol. This means that if authorization is obtained for certain activities under the legislation of another party to the protocol, the activity would be considered to be authorized under Bill C-42 and a permit would not then be required.

The bill bans certain activities without exception, such as the introduction of substances harmful to the marine environment, damage to historic sites and the open burning of waste. Bill C-42, however, provides exceptions to these prohibitions in the case of an emergency.

Compliance, promotion and enforcement of Bill C-42 in Canada would be the responsibility of enforcement officers and inspectors, who would be designated under the legislation to carry out the inspection of Canadian activities. Should inspectors find that Canadian activities are being conducted in a manner that is inconsistent with the bill, those involved in the activities could be prosecuted in Canada.

Enforcement officers would have similar powers in Canada as those provided under the Canadian Environmental Protection Act and the Species at Risk Act. This means that they could have the powers of a peace officer, including inspection, search, seizure, detention and forfeiture. Offences, penalties and sentencing provisions would be similar to the approach taken under other federal environmental legislation. Since the Antarctic is a global commons, policed cooperatively by parties to the Antarctic Treaty, the powers of enforcement officers would be limited to Canada.

Honourable senators, it is time for Canada to do its part in the global effort to protect the vulnerable Antarctic ecosystem and ratify the protocol on environmental protection to the Antarctic Treaty.

I encourage all honourable senators to support Bill C-42 and to put in place the legal framework we need to ratify the bill.

On motion of Senator Lynch-Staunton, debate adjourned.

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—MOTION IN AMENDMENT—POINT OF ORDER—SPEAKER'S RULING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts,
>
> And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Oliver, that the Bill be not now read a third time but that it be amended in clause 12,
>
> (*a*) on page 145, by replacing line 20, with the following:
>
> "(5) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,"; and
>
> (*b*) on page 151, by replacing lines 20 to 31, with the following:
>
> "**110.** (1) The Chairperson shall, as soon as possible after the end of each fiscal year, submit an annual report to Parliament on the activities of the Tribunal during that fiscal year.
>
> (2) The Chairperson may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers and functions of the Tribunal where, in the opinion of the Chairperson, the matter is of such urgency or importance that a report on it should not be deferred until the time provided for transmission of the next annual report of the Tribunal."; and
>
> (*c*) on page 168, by replacing line 11, with the following:
>
> "(4) The Governor in Council shall designate, after approval by resolution of the Senate and House of Commons,".

The Hon. the Speaker: Honourable senators, I have a ruling to give on this matter. We are 10 minutes away from having copies distributed. Could I indulge honourable senators for that time to reproduce the ruling so that it can be distributed?

Hon. Senators: Agreed.

The Hon. the Speaker: I hear that it is agreed. Are there any dissenting voices?

Hon. Anne C. Cools: Are you asking, Your Honour, to suspend for 10 minutes? What are you really asking for? What you have said is that you need 10 minutes to reproduce the ruling. I take it you are asking us to suspend for 10 minutes.

The Hon. the Speaker: Yes, that would be a good solution, or we could go on to another item and return to this later in the sitting, anything that would give me 10 minutes to have the ruling reproduced.

We could proceed with the ruling now, and I could give part of it. Are we agreed?

Senator Cools: No.

The Hon. the Speaker: We are not agreed. Senator Cools would like to have the ruling before we proceed.

Senator Cools: I think we should proceed in the proper way, Your Honour, and if the proper way is that you read the ruling, we should indulge you and suspend for a few minutes to be able to duplicate it properly. It is very easy to do things properly.

The Hon. the Speaker: I thank you, Senator Cools. The time taken has resulted in the ruling being copied, and it is now available for distribution.

Accordingly, I will give my ruling.

• (1500)

Honourable senators, yesterday Senator Cools raised a point of order during debate on the third reading of Bill C-25.

The honourable senator claimed that Bill C-25 required the Royal Consent, but that the Senate had not been advised that consent had been granted. As I pointed out in undertaking to give a ruling, Beauchesne, sixth edition, page 213, paragraph 727, provides:

> It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question.

I have now had a chance to consider the points made by Senator Cools, as well as the interventions of Senator Carstairs and Senator Kinsella, for which I thank them.

Senator Cools read to us paragraph 727(1) of Beauchesne's in which the point is made that:

> The consent of the Crown is always necessary in matters involving the prerogatives of the Crown.

[*Translation*]

The Senator clarified for us that her point of order was limited to a question of the prerogative, and that it had nothing to do with the personal properties of the Crown, for which the Royal Consent may also be required.

[*English*]

The senator explained that in her view "there is something very wrong in how Bill C-25 has endeavoured to remove the oath of allegiance. One simply cannot just obliterate the oath of allegiance as a requirement of public service for Canadians." She referred to the entitlement of the Sovereign to allegiance and suggested that:

> One may not simply repeal the Sovereign's entitlement to that allegiance or fidelity by a simple bill.

Honourable senators, if Senator Cools' point is that Canadians owe allegiance to their head of state, she is of course right. That said, as far as I can see, Bill C-25 does not abridge the relationship of Canadians to their head of state. Bill C-25 is not about all Canadians; as the bill's sponsor, Senator Day, pointed out to us, it is about the public service and about public servants.

Bill C-25 does propose to repeal the requirement in section 23 of the Public Service Employment Act that every deputy head and employee shall, on appointment from outside the public service, take and subscribe the oath or solemn affirmation of allegiance. On the other hand, the bill does not amend the Oaths of Allegiance Act, section 2 which allows persons to take an oath of allegiance of their own accord. Section 4 of the act even allows the Governor in Council to make regulations requiring any person appointed to or holding an office that is under the legislative authority of Parliament to take an oath of allegiance notwithstanding that the taking of the oath is not required by any other law.

[*Translation*]

Senator Cools pointed out to us, correctly, that the law of the prerogative is most complex. This has required the Chair to consult other texts in addition to the traditional procedural authorities. My review of the authorities revealed that the prerogative does sometimes play a role in the relationship between Her Majesty and public servants.

[*English*]

I would refer honourable senators to such citations as Halsbury's *The Laws of England*, first edition, 1909, citation 487 on page 342 of volume 6; Halsbury's at citation 26 on page 24 of volume 7, as well as Mr. Paul Lorden Q.C, *Crown Law*, section 4. I would also refer senators to the 1983 House of Commons debates at pages 29216 and 29217 with respect to the procedures on Bill C-171, an act to amend the Garnishment, Attachment and Pension and Diversion Act.

These authorities, both British and Canadian, touch on where public servants may be affected by the prerogative, but none leads us anywhere near the conclusion that the Queen has a prerogative right to an oath of allegiance from our public servants.

To conclude, honourable senators, no senator has offered evidence to the Senate that a prerogative relating to oaths of allegiance by public servants currently exists. My research has also failed to uncover authority for such a proposition with respect to the general body of public servants, as opposed perhaps to distinct officeholders. My conclusion is that no such prerogative exists in Canada today. This conclusion in no way derogates from the duty of loyalty that all Canadians, and not just public servants, owe to the Sovereign.

I rule therefore that there is no point of order and that I am not prevented from putting the question on third reading of Bill C-25.

Resuming debate, Senator Mahovlich.

Hon. Francis William Mahovlich: Honourable senators, I want to bring to your attention a phrase that was used by the opposition about Jean Chrétien in the 1993 Liberal Red Book about whistle-blowers. It was going to be in legislation. The reason I think that it has not been in legislation is that they have not come up with the right formula or solution, and neither has anyone else.

Dr. Edward Keyserlingk, one of the witnesses who appeared before the committee, recommended an incentive for whistle-blowers, and he says this is one of the reasons we need to do more study. When he starts to study, he will look at 1917 and find that Bolsheviks in Russia and Lenin and Stalin were all whistle-blowers. That is how their system grew. As to Kruschev, that is how he became president. Do we want that system? Of course not. This is why our Prime Minister is careful in legislation.

The Liberals have followed through with 99 per cent of what they promised in the Red Book.

Senator LeBreton: What? That is ridiculous.

Senator Mahovlich: The committee heard other witnesses. Sheila Fraser, the Auditor General, stated that the Office of the Auditor General was pleased to see that the Treasury Board's expanded role proposed in Bill C-25 would include reporting to Parliament on human resources management since this would address some of her concerns about fragmented roles and responsibilities and reporting. She explained that the proposed changes to the staffing regime would be consistent with previous reports and findings from recruitment audits done by the Auditor General.

Many witnesses, and I could name a whole list of them, thought that Bill C-25 was much improved. I can recommend to everyone that this bill should be passed.

Hon. John Lynch-Staunton (Leader of the Opposition): I would like to ask Senator Mahovlich a question. Is it right to assume that if he has anxieties about proceeding with whistle-blowing, it is because too many times he was subjected to it in many of his memorable dashes down the ice?

Senator Nolin: You do not have to answer that one. Say "yes."

Senator Mahovlich: The one thing we do not want here is too many Red Storeys.

[*Translation*]

Hon. Jean-Robert Gauthier: The amendment moved by Senator Murray is almost Cartesian in its logic. It has one minor fault, however: its initial premise is false. The motion in question proposes that Bill C-25 be amended by adding to the tribunal attributes that it does not possess. I will explain.

• (1510)

On the Hill, we have five senior officials, the official term for which is "Parliamentary Officers." I named them yesterday. These five officers are appointed by Order in Council and are answerable to Parliament, the House of Commons and the Senate. It is very important to keep that in mind; it is direct. They do not go through a minister. As for a quasi-judiciary tribunal or other body, it must of necessity table annual reports, and specific reports on a given issue, but this is always done through a minister. That minister then tables the report on behalf of the agency or tribunal in question.

Senator Murray and I do not see eye to eye on his amendment, because Bill C-25 creates the Public Service Staffing Tribunal from scratch. This tribunal will have the responsibility of examining complaints and grievances relating to internal competitions but not external ones. All appointments to the public service will be the responsibility of the Public Service Commission. Appeals relating to these appointments may be filed with the commission. Once an internal appointment has been made, the tribunal will have the responsibility of settling any dispute or problem. It is important to keep this in mind.

Now, Bill C-25 describes the Public Service Staffing Tribunal, in all its operational details. The chairperson of the tribunal is to be appointed by Order in Council, with the approval of both the House of Commons and the Senate.

The reason this tribunal is different is that it has quasi-judicial status, which is very unusual. It is neither an agent of Parliament nor an officer of Parliament. It is an administrative tribunal with a status different from that of an officer of Parliament. I believe that the mission of the staffing tribunal will be to hear complaints related to abuses of power and to internal appointments. I repeat: the Public Service Staffing Tribunal is a quasi-judicial tribunal. The process for appointing the chairperson of the staffing tribunal, under Bill C-25, is the same as for other chairs of quasi-judicial tribunals. I have a long list of these quasi-judicial federal tribunals, from the Canadian Nuclear Safety Commission to the Veterans Review and Appeal Board Canada. If the honourable senators are interested, I can distribute this list.

Like the other tribunals, the Public Service Staffing Tribunal must report annually to both Houses of Parliament, through the appropriate minister. I cannot present a report and lay it on the clerk's table; the report must be presented by a minister. That is the difference. Parliament can receive reports on the tribunal's decisions.

The Public Service Commission will continue to protect the merit principle — period. This situation is very different from the one that existed until now. Until today, the Public Service Commission heard the grievances of public servants who appealed the way they had been treated by their employer or during a competition. The Public Service Commission will no longer have this responsibility. The tribunal will hear these cases. It is very different.

Back to my main point, the chair of the commission and the chairperson of the tribunal are not officers of Parliament. They do not have the same status. The Auditor General, Ms. Fraser, is a classic example. When Ms. Fraser tables a report in Parliament, we receive it and read it carefully. If a Privacy Commissioner or a Commissioner of Official Languages gives advice to Parliament, we must do the same thing and, often, take note of the advice we receive. These are not ordinary tribunals. They have a special status. If the Chief Electoral Officer, Mr. Kingsley, says something should be changed, we listen to what he is saying. I think his recommendations will be carried out. I regret that these people are ignored and do not come to the Senate and the House of Commons often enough.

I knew a former commissioner, John Grace. During his seven-year mandate, he was never invited to Parliament and never appeared before a parliamentary committee. It is hard to understand. I knew others who came often. Ms. Fraser, the Auditor General, often reports to the Standing Committee on Public Accounts and the Senate Committee on National Finance,

chaired by my colleague, Senator Murray. We regularly meet with the Commissioner of Official Languages and have established a good relationship. We are starting to think that we could listen to the advice of these people to improve a bill presented to Parliament. That is the case with Bill C-25. We will try to improve the bill by following the advice of the Commissioner of Official Languages, Dyane Adam.

As for the motion in amendment, I must say that I cannot vote for it, because I think it distorts the purpose of the public service tribunal. The tribunal is not an agent or an officer of Parliament; it is a servant.

Since 1867, there has been separation between the judicial branch, the legislative branch and the executive branch. This must be respected. A quasi-judicial tribunal such as the public service tribunal must not be considered an officer of Parliament, for the simple reason that it must be separate from us. This tribunal will have to administer legislation that is quite difficult and complex, and I recommend, honourable senators, that you not approve this amendment, because to me, it is inappropriate.

• (1520)

Hon. Lowell Murray: Since the new Public Service Staffing Tribunal will perform duties that are within the purview of the Public Service Commission under the existing legislation and since the commission reports to Parliament, should the same relationship to Parliament not apply to these duties?

Under the existing legislation, the Public Service Commission must report to Parliament on how it carries out its duties, including those in the bill. These duties will now be the responsibility of the new tribunal. That is why I am trying to amend the bill so that Parliament will have the final word, once again, on this new body.

Senator Gauthier: The Public Service Commission is responsible for all appointments. It must report regularly to Parliament. It had the flexibility to do a number of other things but, as a result of its new duties, it is now limited to overseeing appointments.

I understand the process, and I agree that this is a de facto situation that there will be no conflicts of interest. I have always been uncomfortable with a commission that, on the one hand, was responsible for staffing and, on the other, could hear grievances. I have never understood how it could have this dual nature or wear two hats. Now, it has an important duty.

There is always a risk that the new tribunal and the commission, which will both report to the House of Commons and the Senate each year, will experience some stressful situations. There will be problems to resolve. There is a five-year window to try to modernize this process.

This modernization has been in the works for at least 30 years. I have sat on almost all the committees that considered it. Lambert, Davignon, Fickelman, everyone agreed on new legislation that is upsetting some people. This bill is a step in the right direction. I would not want to destroy it or lose it, since it is good legislation.

[*English*]

Hon. Rose-Marie Losier-Cool (The Hon. the Acting Speaker): Senator Stratton, do you have a question?

Hon. Terry Stratton: I should like to move adjournment after Senator Day has finished.

The Hon. the Acting Speaker: Senator Day, do you wish to speak?

Hon. Joseph A. Day: Since I will be speaking against the motion as well, and since we have only heard speakers opposed to the motion, perhaps it is time to hear someone in favour of the motion, following which I will speak.

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

[*Translation*]

THE ESTIMATES, 2003-04

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (A)

Hon. Fernand Robichaud (Deputy Leader of the Government), pursuant to notice of September 23, 2003, moved:

> That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (A) for the fiscal year ending March 31, 2004.

Hon. Lowell Murray: I wish to inform the Senate that, if this motion is agreed to, I have called a meeting of the Finance Committee for next Tuesday, at 9:30 a.m. Our witnesses will be senior officials of the Treasury Board.

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

Motion agreed to.

[*English*]

HERITAGE LIGHTHOUSE PROTECTION BILL

THIRD READING

Hon. Noël A. Kinsella (Deputy Leader of the Opposition) moved the third reading of Bill S-7, to protect heritage lighthouses.

He said: Honourable senators, Senator Forrestall is currently travelling with the Standing Senate Committee on National Security and Defence. It is on his behalf, and at his request, that I move third reading of Bill S-7.

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

Hon. Senators: Agreed.

Senator Robichaud: On division.

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

SPAM CONTROL BILL

SECOND READING—DEBATE ADJOURNED

Hon. Donald H. Oliver moved the second reading of Bill S-23, to prevent unsolicited messages on the Internet.—(*Honourable Senator Oliver*).

He said: Honourable senators, I am pleased to rise to speak to Bill S-23, to prevent unsolicited messages on the Internet. I wish to address a rapidly growing problem facing the approximately 7.8 million Canadian households using the Internet.

An Ipsos-Reid survey released June 11 of this year found that, of an average of 123 e-mails received by Canadian Internet users each week, an astonishing 52 per cent were unsolicited messages, otherwise known as spam.

A recent *National Post* article stated that, two years ago, spam accounted for only 7 per cent of all e-mail, that now it accounts for 50 per cent and that by February it could amount to 70 per cent.

Honourable senators, the increase in the volume of unsolicited e-mail is creating a significant problem for businesses, consumers and, potentially, the future of the Internet.

Unsolicited commercial e-mail encompasses a wide range of Internet traffic. As a result, it is difficult to assign a specific definition to the concept. In a discussion paper entitled "E-mail Marketing: Consumer Choices and Business Opportunities," Industry Canada quoted Australia's National Office for the Information Economy's working definition of "spam" as "a communication that could not be reasonably assumed to be wanted or expected by a recipient." However, I am sure honourable senators have received, on their computers, e-mails about Viagra and enhancements of certain body parts. Well, that is spam. Therefore, it is with this understanding of the term that I present this legislation for the consideration of honourable senators.

• (1530)

What are the various types of spam that prompted me to introduce this legislation? The Public Interest Advocacy Centre made one suggestion. PIAC is a non-profit organization that provides legal and research services on behalf of consumer interests. On March 26, 2003, PIAC published a document that presented a breakdown of the different types of spam messages sent to Canadians. It found 33 per cent advertised products, like inexpensive ink cartridges; 24 per cent were financial offers of one kind or another; 18 per cent was advertising for pornographic or sex sites; 5 per cent were blatantly fraudulent or promoted scams; and the remaining 20 per cent were ads for various other things. Canadians received these e-mails without asking for them. As well, there was no consideration for the possibility of minors being among the recipients of these sometimes vulgar messages.

Honourable senators, this is unacceptable. Most commercial mail received by traditional post comes from businesses that consumers already have a working relationship with, or from a charitable organization or from politicians, et cetera. I do not believe Canadians would tolerate pornographic magazine subscriptions or free edible underwear samples turning up in their traditional post each morning. I do not believe they would appreciate seeing their pre-teen daughter's name on the address box of a coupon book for diet pills and breast enhancements. I do not believe for a second Canadians would allow such damaging messages to enter their homes, yet this is precisely what occurs over the Web.

The Internet is both fluid and borderless. The Internet is pervasive. We all know of children, grandchildren, husbands, wives and colleagues who use the Internet every day. It is a popular form of communication and, as such, governments have been slow and indeed reluctant to enter and control this newest technological frontier. Most people recognize that Canadian laws alone will not solve this global problem. Honourable senators, I am the first to agree that only a multi-disciplined approach using effective technology, law enforcement, industry practices, and international cooperation can succeed in ending e-mail abuse. To that end, I have already spoken with companies like Microsoft. They concur that this type of holistic approach is the best way to proceed against the problem of spam.

It is time for the Government of Canada to step up and introduce tough legislation designed to protect citizens and ensure they enjoy the privacy and control over messages they receive through their e-mail. With this goal in mind I was prompted to introduce Bill S-23, which is the subject of my comments to you today.

An increasing number of countries are in the process of introducing or enforcing spam legislation. These countries include South Korea, Australia, England, the United States, Italy, and member countries of the European Union. In the Organization for Economic Co-operation and Development, 30 nations have tabled guidelines for international cooperation in protecting consumers against spam sent from other countries.

Canada, on the other hand, does not have laws, rules or regulations in place specifically designed to cut down on or at least track the source of unwanted commercial messages. Fortunately, this does not mean that Canadians are left completely vulnerable to attack. Part 11, section 430 of the Criminal Code of Canada provides legislation to charge people with mischief if they are caught sending large volumes of spam that interferes with critical computer systems. If convicted of this charge, a person may be sentenced to a maximum of 10 years in prison. However, many of the fraudulent e-mails sent over the Internet emanate from other countries, rendering the investigation and prosecution of these cases very difficult, but there is some recent jurisprudence that may be of some assistance.

In an Australian appeals case that came before the Supreme Court of Victoria in October 2000, a New Jersey based Internet publisher was sued in Australia — not in the United States but in Australia — for publishing defamatory remarks on his online magazine. The Australian court ruled the remarks were made within the Australian jurisdiction because that was where the message was downloaded. The ruling recognized that the publication of an e-mail took place at the location it was accessed, even if the sender did not particularly have that place in mind. When the presiding judge came to this decision, the appeal by the New Jersey company was dismissed. This ruling, I believe, is a precedent that makes Canada a forum of convenience.

Another problem with spam is protecting a person's private information while on line. As honourable senators know, there is a large black market operating on stolen credit cards, driver's licences, bank account numbers and other such information. In order to obtain this, the spammer sends a message to thousands of customers claiming to belong to a trusted corporation. The spammer writes that there is a problem with that company's electronic database and the recipient is asked to reply to the message with his or her PIN number, their address, their credit card numbers and other such information typed into the text. The spammer then uses these numbers to make other on-line purchases in that person's name.

An incident of this type occurred recently in the United States. On July 21, Reuters reported that the Federal Trade Commission charged a 17-year-old boy for using a fake America On Line Web page and spam e-mail to collect peoples' credit card information. In the report, the boy told recipients of his e-mail that they needed to update their AOL billing information. He instructed them to click on a link connected to a fake "AOL Billing Centre" Web page. When the page came up on their screen, recipients were instructed to enter their credit card numbers, their mother's maiden names, their billing addresses and social security numbers, bank routing numbers, credit card limits and AOL screen names and passwords. The boy then used this information to make thousands of dollars worth of on-line purchases, with other people's credit cards.

These thieves steal all of this by way of personal computer and the Internet. To try to combat this theft, the Working Group on Electronic Commerce and Consumers created "The Principles for Consumer Protection for E-commerce: A Canadian Framework." The working group, developed through Industry Canada, is composed of government, consumer and business associations. The principles introduced by the working group are another piece of legislation designed to protect Canadians from electronic attacks. Principle 7 states:

> Vendors should not transmit commercial e-mail without the consent of consumers, or unless a vendor has an existing relationship with a consumer.

Unfortunately, this is only a principle and it is simply a suggestion that companies and spammers are not really required to obey. In order to convince Canadians their government is trying to solve the problem, compliance with the regulations must be enforceable and mandatory. That is why I feel we need legislation like Bill S-23.

On January 1, 2003, the Canadian Personal Information Protection and Electronic Documents Act came into force. The act was written to protect information from being used by spammers and scam artists on the Internet. It also established a right to the protection of personal information collected, used or disclosed in the course of commercial activities. Under the provisions of the act, electronic mail addresses are considered personal information and therefore protected according to the act. However, like the Criminal Code, this privacy legislation applies only to organizations and persons located in Canada. The rules concerning the collection and the use of personal information varies widely from country to country, and because of this enforcement of the act is difficult at best and impossible most of the time. This is another reason for seeking a multi-disciplined approach to curb the spam epidemic.

• (1540)

There are countless examples of recommendations, guidelines, educational pamphlets and Web sites operated by Internet service providers, ISPs, that attempt to educate consumers on how to better protect themselves from spam. I say, enough of these lukewarm attempts. Bill S-23 will enable ISPs , law enforcement agencies and individual citizens to demand spammers to stop sending messages. The bill will also give Internet users the right to bring criminal charges and to take civil actions against spammers who do not stop spamming.

First, I will say a word on ISPs. Internet Service Providers are those companies who provide the link between an individual computer and the Internet. In one sense, the Internet is like a highway. In order to move your computer — or in this instance, your "car" — onto the highway, you use an on-ramp. ISPs are the metaphorical on-ramp. Like our highways, there are literally thousands of ISPs in Canada. Some, such as America Online, EarthLink, Bell Sympatico and Rogers, are large mega-corporations. Others are independently run, very localized operations — perhaps servicing only a few dozen customers.

There are three specific areas of my proposed spam control bill that I wish to bring to honourable senators' attention. Those are: the rules recommended for ISPs, the regulations required to control those who send bulk unsolicited commercial e-mail, and the penalties suggested for those who violate these laws.

As can you imagine, many Canadians willingly agree to receive certain commercial e-mail. Companies such as MSN, eBay, Victoria Secret and newsgroups that send out newsletters, subscriptions and catalogue notices to on-line customers will be able to continue doing so without fear of legal recourse under this proposed legislation. These e-mail messages are not spam; Canadians have requested them when they have registered on company Web sites.

Most companies realize that it is bad business to annoy customers and so there are provisions to allow customers to remove their names from a mailing list at any time. These provisions include, but are not limited to, an "unsubscribe" box located at the end of each e-mail. When the user clicks on the box,

a notice is sent to the company telling it to remove the customer's e-mail address from the company mailing list. Another method to let customers remove their names from a mailing list is to provide a link labelled "unsubscribe" in the advertisement. When a customer activates the link, an automatic e-mail is sent to the company's database and, again, the customer's e-mail address is subsequently removed from the mailing list.

The legislation I am proposing would prohibit only those e-mails sent without prior, explicit consent from the recipient. This is similar to the mandatory opt-in approach being used in the European Union. The best way to explain this confirmed opt-in approach is to use the Coalition Against Unsolicited Commercial Email's, CAUCE, published explanation and definition. CAUCE Canada is an organization created by Canadians to advocate for a legislative solution to the problem of spam on the Internet. CAUCE Canada describes the opt-in process as occurring when — and I quote:

> ...an e-mail address is provided to a company as an addition to a mailing list. The owner of the address is notified of this action, and asked to confirm they actually wish to be subscribers to the list. Only when confirmation is received is the address actually placed on the mailing list.

This way, only people who wish to receive the information will sign up to receive it. By using the opt-in approach, spam is easily identified. If the sender does not have permission, his or her message is unsolicited e-mail and prohibited under Bill S-23. It could be as simple as that.

The legislation requires also that a no-spam list be created. This will provide a database where users can state their desire not to receive any unsolicited commercial e-mail. The list will be protected and updated by a regulatory association. In order to enter an address into the no-spam list, a user would log on to a Web site and fill in a registration form. When the form is completed, it is downloaded to the database. Users would be given a password to allow them future access to their file. This way, if a user wants to be removed from the no-spam list and to receive commercial e-mail once again, he or she may do so.

All e-mail marketers would be required to respect the confidentiality of the database. This means that no commercial e-mail could be sent to a user who has registered on the no-spam list. Spammers would be charged if they were found to have done so. Similarly, a proven violation of the confidentiality of the no-spam list would result in charges being brought against the violator. In other words, if the regulating association were found to be selling or trading addresses on the no-spam list it could be subject to both criminal and civil penalties.

Honourable senators should note that Bill S-23 is designed to be very protective of Canadian children. In order to do so, the no-spam list would include an extra option for parents. Parents would be able to mark their children's address or addresses as belonging to a minor and have them stored in a designated area of the database. Penalties for sending pornographic, fraudulent or otherwise inappropriate material to these addresses are more severe for the violators.

Businesses and ISPs are beginning to address the problem of spam, but it is difficult to find a way of filtering junk mail without accidentally blocking messages that the user wants to receive. There is no filter on the market today that can clearly identify junk mail from wanted mail. The majority of Canadians agree that spam is annoying. An Ipsos-Reid survey indicated that four out of five Canadian Internet users — 83 per cent of those surveyed — have registered to receive e-mails from at least one Web site. This is a 39 per cent increase from December 2001. The most popular sites from which to receive commercial e-mail are news and information, entertainment, travel, and health and fitness Web sites. By allowing Canadians the right to opt in, companies could adapt their e-mail messages to resemble the magazine industry — only those who subscribe receive the information.

In addition to the opt-in approach, ISPs have been developing various methods to filter out spam before it reaches their customers' inboxes. These techniques range from blocking e-mails that contain specific worlds, such as penis, to encouraging customers to report spammers to their ISPs. Under the regulations imposed by this bill, each e-mail sent to a customer must have a valid return address and sender name. Each e-mail must also contain correct header and router information. As honourable senators know, a number of the spam e-mails have neither header nor router information. Any e-mail coming through an ISP system could be screened for these items. Those messages that do not qualify would not be passed on to the customer.

Internet industry stakeholders have already taken aggressive steps to cut down on volume of unsolicited commercial e-mail. I am aware that providers of free e-mail services have adopted stricter policies to limit the number of e-mails sent by their subscribers. I applaud these efforts. Unfortunately, they have not been effective in stopping spam from reaching in-boxes. Therefore, a multidisciplined approach to spam is required to effectively stop it.

Similarly, Bill S-23 deals with a relatively hidden practice — that of spammers harvesting or collecting e-mail addresses from the Internet. This is done by placing a specialized program onto a Web site. Most often, the programs are called "bots" or "cookies." Every time a person enters a Web site where one of these programs has been placed, the bot or the cookie records the person's e-mail address and other such information. The spammer can then compile lists of millions and millions of e-mail addresses and sell them to others for a profit. To solve this problem, there is a clause in the bill before honourable senators that prohibits the use of such software, such cookies.

• (1550)

In addition to this clause, there is software available that identifies and deletes these bots and cookies. It can be found at www.ad-aware.com. The program itself is free, but because some Internet users are not experts at downloading and installing such programs, its effectiveness against spam is somewhat lessened.

Since most spam is sent from another country into Canada, the bill before honourable senators has a clause dealing with those who spam Canadians from other countries, such as Nigeria. Clause 14 of the bill states:

> If a person initiates spam from any place in a manner that allows it to be received in Canada, and it is received by another person in Canada, then, for the purposes of section 11,
>
> (*a*) the person who initiated the spam is deemed to have sent it to the other person, whether or not the person had a specific intent that the other person should receive it, and whether it was initiated within or outside Canada; and
>
> (*b*) the act of sending is deemed to have been effected in Canada.

Honourable senators, by this language, the bill is intended to eliminate the fear of spammers creating havens in other countries. This clause was included in the bill as a direct result of the Australian defamation case that I described to honourable senators earlier in my remarks.

The penalties suggested in the bill for those who send spam vary. General violations, found in subclauses 11(*a*) to (*h*) as well as to 12(*a*) to (*e*) are liable on conviction to a fine not exceeding $500. These offences include: sending spam that is not identified as such; sending spam to an e-mail address that has a no-spam list on it; and sending spam that does not contain a means for the recipient to opt out of future messages.

The fines and punishments are harsher for spammers who target children with sexually explicit messages and other forms of spam. It is suggested that these spammers could be charged with a fine of up to $5,000 and/or imprisonment for a term not exceeding one year.

Finally, spammers found to be sending pornographic or fraudulent e-mail will be subject to prosecution under subclause 13(2) of the bill. This subclause includes penalties of $1,000 fines, a jail term of up to six months, or both a fine and a jail term if the crime is particularly repugnant.

When Bill S-23 comes into force, Internet service providers will be required to have a licence granted to them by an independent, self-regulating, not-for-profit association. A condition of this licence would be to continue blocking and filtering all commercial messages. ISPs would be prevented from selling or trading subscriber e-mail addresses to marketers, regardless of whether or not those subscribers were on the no-spam list. Any business or ISP allowing solicitations of their clients' addresses without documented proof of consent would be subject to criminal charges.

There are penalties for ISPs found to be in violation of these regulations. ISPs that violate these regulations would have their licensing and operating privileges revoked. Fines for ISPs that repeatedly allow spamming of their customers are outlined in the bill. It is suggested that these fines not exceed $500.

Honourable senators, it is important to note that there are clauses in Bill S-23 protecting ISPs from being sued for damages. As the old saying goes, "Don't shoot the messenger." Consumers must be aware that some spammers may develop methods of circumventing filters and measures put into place to block bulk e-mail.

Eliminating spam will not be an easy task. However, with the aid of the Canadian public, Internet service providers and the Canadian government, spam can be reduced from a problem that consumes a great deal of time and money to a minor annoyance.

In order to demonstrate how much spam costs the population, I will quote American Democrat Senator Charles Schumer, one of the two senators who represent New York. Senator Schumer recently introduced an anti-spam bill into the U.S. Senate. During the introductory process the senator said:

> Ferris Research estimates that spam costs businesses in the United States of America $10 billion a year from a variety of sources:
>
> I. Lost Productivity: This costs business an estimated $4 billion a year;
>
> II. Consumption of IT resources: Staff time and equipment purchases like more powerful servers, increased bandwidth and disk space costs businesses $3.7 billion per year;
>
> III. Help Desk Incidents: Efforts to eliminate spam or locked in-boxes cost businesses $1.3 billion in help desk activity per year.

The situation is much the same here in Canada. Some estimates indicate that spam costs Canada more than $1 billion each year.

Honourable senators, this is precisely the reason I am proposing Bill S-23. In spite of the best efforts of ISPs, the spam problem has not been solved. In spite of guidelines and polite reminders of Internet etiquette, the spam problem has not been solved. In spite of increased attempts at consumer education and the development of filtering software, the spam problem has not been solved.

By introducing this private members' bill into the Senate, we are sending a strong message to spammers: "Not in our country."

Hon. Jerahmiel S. Grafstein: Honourable senators, I followed with great interest what Senator Oliver had to say.

How would this proposal impact small businesses that now use the Internet to get out their message? Put another way, would this bill put those who are already entrenched in the Internet, such as eBay or Amazon, in a preferred position because they already have their customer lists and consent? Therefore, would the bill provide an unfair disadvantage to new start-ups, particularly in Canada, who use spam as a method of increasing or starting up their business on a cost-effective basis?

Senator Oliver: Honourable senators, this bill would in no way interfere with a small or start-up business. There is no advantage given to an existing business such as eBay.

If you and your family do not want to receive a call at home when are you having your dinner, you can now register to refuse those calls. That does not mean that eBay or a start-up business will not have a better chance. You have the right to opt out. Even eBay cannot contact you if you opt out.

There is no advantage whatsoever to an incumbent or someone who is already there with the list.

[*Translation*]

Hon. Jean Lapointe: Honourable senators, I listened very carefully indeed to Senator Oliver's speech, and not once were computer viruses mentioned. My question is the following: Can a virus make their way into a computer through unsolicited e-mails?

I take this opportunity to caution the honourable senators who are listening in against a very dangerous virus that is currently circulating. It is called Microsoft and presents itself in the form of an attachment containing an update.

[*English*]

It says, "Use this patch immediately." Never open that page. You will be seriously infected.

Do viruses come with spam?

Senator Oliver: The answer is clearly yes. Many computer viruses come with spam. That is why you should not open spam.

The difficulty is that some spam messages that appear on the computer look innocent. They may say, "Dear Don, I need your help," or "Dear senator, please open this. I read your speech. Please help me." It is opened, and suddenly there is a virus. There is no way of knowing.

The answer to your question is yes, spam messages often contain viruses.

The Hon. the Speaker: It is Wednesday. I would like to see this item adjourned, if that is okay, Senator Robichaud?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, today we would like to continue with all the items we have on the Order Paper.

[*Translation*]

I suggest that we seek consent to authorize those committees sitting today to do so even though the Senate is sitting.

• (1600)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we on our side have no objection to committees sitting today. At the same time, I would like to reassure all honourable senators that no final decision will be made about any specific item on the Order Paper that is of particular interest to them.

[*English*]

The Hon. the Speaker: Before I ask for leave, I will hear Senator Prud'homme.

Hon. Marcel Prud'homme: Honourable senators, this goes directly to the subject matter; either we absent ourselves and go to committee or perform our duty in very important debate here. I pay attention to every item out of respect for my colleagues, because it is the only way to learn on subjects where I need more knowledge.

However, I have my duty in the Banking Committee. If I do not go to the Banking Committee, I know what vicious people have done to me in the past. They will say, "He has to be on the Foreign Affairs Committee," for which I have asked for nine years. I was deprived. Now I am a member of the Banking Committee and they will say, "He will not show up." I will be considered to be absent from an important committee at four o'clock. That is where my duty calls; but I cannot let certain items here go without listening and commenting just because the rule has been intelligently made to allow committees to sit. How many times will we be nice to each other and say, "Okay, they are important items and out of respect, senators should be present?"

I will never mention senators who are absent. I am here; and the senator, with all his kindness, is helping me in my reflections, but he makes me a little bit more furious by saying, for instance, that if there are two matters of great interest to me under my name, he is ready. I appreciate his courtesy in saying that on those two items we will adjourn. Thank you very much, Senator Kinsella, but I am interested in listening to other debates. Some of them are very important to Senator Joyal and to Senator Grafstein, who has two items. I can name you all, and I will give you all equal credit, equal merit and equal respect. I do not pick and choose. The rules say that no earlier than 3:30, and therefore committees are at four o'clock. Now you are putting us in the embarrassing position of saying no to colleagues who are waiting to speak. They can speak tomorrow.

Senator Kinsella: No, I cannot.

Senator Prud'homme: If the honourable senator cannot speak tomorrow he should have asked me to accommodate him. He is helping me in my decision to say no. It is like another fine gentleman who today said, "next sitting." I am eager to see who will be here tomorrow for other items, and next week.

We have a rule, honourable senators and with all due regret, I will say no.

The Hon. the Speaker: Honourable senators, agreement would have to be from every senator. Accordingly, we have no agreement.

Resuming debate, Senator Poulin.

On motion of Senator Poulin, debate adjourned.

BUSINESS OF THE SENATE

The Hon. the Speaker: Senator Gauthier has asked for the floor to request leave.

[*Translation*]

Hon. Jean-Robert Gauthier: I would like to make a comment on Bill C-25 and on Senator Murray's amendment. I would like to rectify my comments in order to clarify them.

I said that the President of the Public Service Commission has to be appointed by the Governor in Council with the approval of both chambers. When it came to the tribunal I got a bit confused. In this case, it is only an appointment by Order in Council, and Parliament is not involved.

[*English*]

The Hon. the Speaker: Is it agreed to add Senator Gauthier's comments to the record on his exchange with Senator Murray?

Hon. Senators: Agreed.

Hon. Marcel Prud'homme: Honourable senators, we were supposed to adjourn to go to committee. I did not give consent for the committee to start sitting at four o'clock. The Banking Committee is sitting, and it needs permission to sit, to my best recollection. We usually get up at 3:30. We let it go until 4, because we could still run to the Banking Committee, or other committees. The honourable senator asked, and I said no. Maybe I should have said "non," but my no is equal to my "non." I do not see why it should proceed — agreement or not.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): On Wednesday, we ask whether debate on all items on the Order Paper can be adjourned in order to allow committees to sit. The committee notices indicate a specific hour, but they also indicate "when the Senate rises."

Senator Prud'homme: But not before 3:30 p.m.

Senator Robichaud: We did not obtain consent, so the committees do not have leave to sit. We will continue our work in the chamber and the committees will sit once the Senate has risen.

[*English*]

AMERICA DAY BILL

SECOND READING—DEBATE ADJOURNED

Hon. Jerahmiel S. Grafstein moved the second reading of Bill S-22, respecting America Day.

He said: Honourable senators, I rise to speak on the second reading of Bill S-22, a bill to designate each September 11 hereinafter as "America Day" in Canada. Surely, honourable senators, September 11, 2001 was burned and branded in all of our memories as one day that changed the world. It will go down as yet another "day of infamy." No doubt, the American world has changed. No doubt, the Canadian world has changed. The world has changed. Proof is before us every day. Read any newspaper in the world today, or daily, and each will resonate forcefully about 9/11, the impact of 9/11.

So, is it not fitting to mark September 11 as America Day in Canada? September 11 should be a day of sober commemoration and sober reflection, and even celebration of our common values, and a clear exegesis of our complex differences and the nuances of those differences.

Some have even argued that we should separate ourselves from the United States. They argue that we should deploy our so-called "soft power" to turn away from America and its so-called "hegemonic" reach, and so side with others, move to other allies. We should wean ourselves off the United States, they argue. Yet, we are joined with the United States by more than geography. We are joined by blood ties, personal relationships, and yes, trade, and yes, culture, and yes, we are joined by regional ties, by ties between our working unions and, of course, by business and even charitable ties and beyond.

We discovered recently that there are millions of Americans of Canadian origin living in every corner of the United States — from Alaska to Florida, from Maine to California — and we, in Canada, do not even know how many. I believe, and there is no doubt in my mind, that Canada's largest diaspora lives in the United States and we still do not know how many. Yet, we are joined by a common desire, with the United States, for the future democracy and the rule of law at home and abroad. Our governance principles originate from the same profound Anglo-Saxon sources of checks and balances and separation of powers.

Our governance models share a healthy scepticism of the human condition when it comes to the exercise, indeed the temptations, of power. Together, Canada and the United States have helped construct international mechanisms to foster peace and prosperity — the ILO back in the '30s, NATO in the '40s, OSCD, OSCE and many others. We are joined by our common interest in a peaceful and prosperous continent as a bright beacon to the globe. We should not be deterred when that light flickers or flares from time to time.

• (1610)

On September 11, not only was America attacked, but also Canadians were murdered — 24, and two spouses. Every faith — Christian, Jewish, Muslim and others — shared equality that day. They shared equally murderous treatment. It was an act of ultimate brutality. It was an act against innocence. It jolted and unhinged civil society around the world.

Senator Dandurand was an august leader of the Senate after World War I. His majestic portrait adorns our hallway outside this chamber. After World War I, he became the President of the League of Nations in Geneva for a term of office while a sitting senator. During his tenure, he inaugurated the first codification of international law at the League of Nations. That work was never completed. He proclaimed 70 years ago that our Canada House, separated as we were by the Atlantic Ocean, was safe and secure from the flames of Europe.

What Senator Dandurand said is no longer true. Oceans provide no protection. Today, we are interconnected with the world. No place, no space, is safe or secure around the globe.

Honourable senators, I propose September 11 as a day of reflection, a day to re-examine the past and what brought us to this frightening turn of events, and to reflect on our future. September 11 was a watershed in modern world history, and we still cannot measure its reach or its meaning.

Those of us who believe that Parliament is the supreme arbiter of public opinion also believe it is up to Parliament to allow the public to interact with debates, especially those of historic import. Let us debate; let us argue; let us agree and, of course, let us disagree. However, let Parliament — let the Senate — speak. Hopefully, senators will speak up for themselves and listen with care, as we do in the Senate, for public opinion.

There are questions and questions. Who is Canada's best friend and ally? Do we have one? I believe a predominant number of Canadians would answer: "The U.S.A." Let us discover what the public, informed by our debates, thinks. I propose that we invite Canadians to log on to our recently launched Senate Web site and note their views during the Senate debate so we can inform ourselves of their views on this bill. We can do this readily and easily by transforming our Web site into an interactive one so that interactivity with the public can be feasible on this and future debates.

As for Canada-U.S. relations, the Canadian public has always led politicians. I witnessed that in our joyous visit called "Canada Loves New York" on November 30, 2001, after 9/11, when over 26,000 Canadians voluntarily gathered from across Canada to take up Mayor Giuliani's invitation to help America by visiting New York City.

I saw that when thousands upon thousands of Americans were marooned and Canadians spontaneously opened their homes and their hospitality to them in Eastern Canada after 9/11.

I saw that this summer in Toronto at the Rolling Stones concert, Toronto Rocks, when hundreds of thousands of Canadians joined tens of thousands of Americans who came to Toronto to help erase the inflated SARS global message that had so scorched Canada as a tourist destination, devastating Canadian workers and their businesses from coast to coast.

By the way, we saw Americans and Canadians by the thousands munching healthy Canadian barbecued beef, all televised by the American media. That message went right to Congress.

Honourable senators, the Canadian public and the American public will surprise you every time. Commemorate September 11 and we, honourable senators, may be surprised by the response of the average Canadian and average American.

We have yet to learn the lessons of September 11. We have yet to ensure that history will not repeat itself. Was September 11, 2001, a continuation of the First World War of the 21st century? What future can we expect from cults who believe in the murder of innocents? What can we do when states appease or collaborate with these cults or groups within those states? What can be done? We should listen; we should learn. This I do know: Principles and people march best when they march together.

Let us mark September 11 as "America Day." While some may seek to rip us apart, nothing can change our geography. Over 150 million bilateral trips occur annually across our common border each and every year. Why is that? Is it because of common animosities, or common interests?

Nothing can change our common values. Nothing can change our common bloodlines. Nothing can change our bonds of friendship. Nothing can change our deepening mutual socio-economic interest in each other as closest neighbours.

Yes, we are each other's largest trading partner. We do 87 per cent of our trade with the United States, and that number is growing. There is much more. Yes, we enjoy many distinctions and differences. Yes, we are proud and independent Canadians. Yet these should not preoccupy and obsess us to the detriment of the common good. Let us remember that Canada was built on the principles of peace, order and good governance. Peace and order cannot be separated from good governance. Good governments cannot be separated when we share more in common than even some dare to describe or suggest.

I am proud of our differences. I cherish our independence. I relish our distinctions. Yet, our claims of sovereignty and independence ring hollow if we rely on others and fail to bear the burdens of the costs of sovereignty. We should not neglect to bear the costs of our own sovereignty and our own security. If we are confident, we should not be afraid to treat or challenge our American friends in a civil matter that is the benchmark of Canadian society. We should not be afraid and not be ashamed to trumpet our common principles. We should not be afraid to praise America as a bulwark of democracy for fear civil criticism of them or ourselves. This is the very rationale of Parliament, to express ourselves fully, fairly and thoughtfully as senators on the raging issues of the day from the particular perspective of senators and this Senate.

Last week, Robert Fulford, Canada's pre-eminent cultural critic in English Canada, echoed Paul Johnson, the brilliant British journalist and outstanding historian, and Jean François Revel, the French writer and philosopher, who all agree that hypocrisy in Canada and Europe condemning all things American has become the conventional wisdom of the anti-American chorus of critics. I call it the "Anti-American Camp." Revel called it "l'obsession anti-Américain." Johnson said: "It is based on the powerful and irrational impulse of envy — an envy of American wealth, power, success and determination." Robert Fulford concludes that in France and Canada anti-Americanism is like the unique French beverage absinthe. He said: "It's exciting, it's satisfying and it's built into cultural history. But it does tend to leave you blind."

This week, Matthew Fraser, the editor of the *National Post*, in his new book *Weapons of Mass Destraction*, argued insightfully that global American trade and culture have been a healthy harbinger of the growth of democracy around the globe.

Honourable senators, can we not burrow beneath the shallow rhetoric to uncover the deeper malaise in our Canadian psyche that seems to seek refuge and comfort in the Freudian concept of "transference," blaming others for our own deficiencies, especially our American neighbours? It is so easy now to gang up on America. It is tougher to catch the ear of America when we use ill-considered diatribes.

Honourable senators, I hope this bill will inaugurate the debate. Let us, in the end, support the bill that marks September 11 hereafter as "America Day" in Canada. Annually, then, we can carefully calibrate and celebrate — if we must, if we can — the complex web of close relationships and differences with the U.S., differences with that global dynamo to the south, the United States of America.

• (1620)

Honourable senators, I know we will be civil and insightful. Canadians need a thoughtful framework in this broad debate. Canadians want to be informed. They want the Senate to elucidate. We want the public to understand the issues clearly. We want the public to follow this debate. We must live up to our reputation as a chamber of careful thought, which we and the Canadian public so proudly deserve.

I should now like to adjourn this debate in the name of Senator Eyton, unless there are questions.

Hon. Laurier L. LaPierre: I have a comment or a question. Is that permissible? The honourable senator's experts are, to my mind, rather insignificant, and consequently I will remove them out of my head. Matthew Fraser has nothing useful to tell anyone on the planet Earth.

As well, I should like to remind the honourable senator, if I may, that "America" is a hemisphere; it is not the United States. In the hemisphere, there are two continents, the north and the south. Consequently, when we talk about America, we are referring to the people who live here, the people who live in the United States, the people who live in Mexico, and the people who live all the way down to wherever it is that it ends.

I make that point because I think that is very important. I am not in favour of this. However, I am in favour of utilizing September 11 for the essential lesson it gives to all of us on the planet.

I would caution the honourable senator against making a mistake similar to the one that so many people make — that is, labelling anyone who criticizes Israel as being anti-Semitic. When people criticize the Bush administration and certain things American, they are now being labelled anti-American, and this is an opinion that is indoctrinated in the newspapers that belong to a certain owner in Canada who shall remain nameless.

My question is this. Why does not the honourable senator, after speaking so eloquently about the lesson of September 11, have us all spend a day thinking about the necessity for us all to battle terrorism, wherever it is, now, yesterday, and tomorrow?

I would ask the honourable senator to consider calling his bill about September 11 "Anti-terrorism Day," so that all Canadians and all of humanity can come together and think seriously of this horrible, horrible thing that is terrorism. It is not only specific to America. Hundreds of thousands of Black people have died since the 1900s in Africa. Chileans have died. Other people have died all over the planet because of terrorism.

If the honourable senator wants that day, which I think he should, it is not "America Day." It is not only America that suffers terrorism; terrorism is everywhere. Consequently, if the honourable senator would sit down and think about my suggestion, Anti-terrorism Day and our responsibility in battling it — think locally and act globally, as we used to say in my youth — then I think the bill would pass unanimously within two seconds.

Senator Grafstein: Again, thank you for that elaborate question. Let me just correct one factual comment. The honourable senator can dismiss Matthew Fraser, as he has, if he chooses to do so. I think it would be more useful for the senator to read his book before he dismisses him. Having said that, I do not think it is fair for the honourable senator to also dismiss Robert Fulford, Paul Johnson of the U.K., or Jean François Revel.

Having said that, the honourable senator made a very valid point that I think affirms my position. He says that this day should be called something else but not "America Day," and he makes my point that America is a continent. It includes the United States. It includes Canada. To my mind, this emphasizes exactly what I am saying. What happened in the continental United States deeply affected Canadians as well as Americans.

As for my views on terrorism, I do not think I have to stand up in this Senate and talk about them. It is deeper than terrorism. It goes to the very structure about how to combat terrorism. If the senator chooses, as he has so eloquently done, to disagree with my argument about this, so be it. I shall have an opportunity to respond at the end of the day. I welcome his comments and his passion.

[*Translation*]

Hon. Jean Lapointe: Honourable senators, I would like to congratulate Senator Grafstein on his courage and his work in the Senate. I consider him one of the most serious and most dedicated senators. Nevertheless, when it comes to the Americans, I would have great difficulty in creating an America Day.

Since early childhood, I have admired the American people greatly, and admired their patriotism as well. We do not often see a Canadian put hand over heart during the national anthem. In the United States, we see it often. I have great admiration for the Black people who rose up out of slavery, thanks to people like Kennedy and others.

But this neighbour, which calls itself our great ally, because of one mad cow, has victimized our farmers and squeezed hundreds of millions of dollars out of them, in the West, in Quebec and elsewhere.

In the matter of softwood lumber, if we do not take the economic measures they want, we get dragged though the mud. I have many objections to declaring September 11 America Day.

That said, I cannot hide my great admiration for the people of the United States, but I have reservations about the politicians who are currently leading them.

[*English*]

Senator Grafstein: I want to get underneath the issues. Again, I thank the senator for his comments. As to the issues of Canada-U.S. trade, I am as aware of those issues as anyone else in this room. I have been working on that dossier since the day I first came to the Senate, 19 years ago, most recently the last 10 years as Chairman of the Canada-U.S. Inter-Parliamentary Group.

We should not bring the Speaker into this, but the Speaker, in his previous life, was also a very active member of this committee. He will understand, as will other members who served on the committee, that those trade problems represent less than 5 per cent of our total trade with the United States. They are real problems, and they affect jobs in Canada.

I discovered, to my amazement, that if you go down to the United States and invite them up here at the congressional level, you get a different picture than you get from the executive. Their executive is cool to our executive. However, there is a different picture and a much more open and understanding exchange. I hope this bill will foster a deeper respect and a deeper exchange between parliamentarians.

The point I should like to make to the honourable senator, which he might find of historical interest, is that I came across the question of Americans of Canadian origin in the United States, and they are in the millions, because of the work done by the Quebec government. The Quebec government has done a lot of research about the impact of migration from Canada to the United States. Many of the borders, many of the cities, many of the states, many of the counties have French-Canadian names. Why? Because of the admirable voyages of discovery made across America by French Canadians. As a matter of fact, the Lewis and Clark expedition that led to the United States expanding from coast to coast was led by a French Canadian guide.

I would hope that, in the course of this debate, we would raise this issue as an important issue to American consciousness and be able to say, "Look, there are deep Canadian roots in the American experience." I discovered, for example, that the new co-chair of the Canadian-U.S. parliamentary group is named Senator Crapo, spelled C-R-A-P-O, and I said, "Excuse me, sir, that is a French Canadian name." He said, "Yes, it is, but I have not fully checked the roots of my name." I reminded the new senator from Idaho of the possible deep roots that he shares with Canadians. This bill will play an important role in having a better audience with congressmen and senators, one at time.

• (1630)

Last weekend, I was in Georgia for the wedding of an American congressman's son. I was treated as a visiting dignitary in the Deep South. They were surprised to see a Canadian come all the way to the Deep South. I talked to them about Canada and the U.S. I pointed out that towns and in Georgia were named after French Canadians, and they did not know that. If anyone tells me that this is not a useful bill in Canada and that this is not a useful bill in the United States, I will tell them to wait and see what American congressmen and senators say about it.

I told them that I would introduce this bill and they welcomed the news. Those senators and congressmen, who are interested in Canada and want to heighten our awareness of Canada in the U.S. so that we can help solve these problems, want to have something to take to Congress. They will watch this debate. I will take this debate and ensure that it becomes part of the congressional record because I think that it is important for Americans to understand that there are Canadians who are proud to be Canadians and yet understand the role and the leadership of the United States. We can be both. As another senator has said, "I am a strong Quebecer and I am a strong federalist." Well, I can be a strong Canadian and I can also believe that America has much more to give than we give them credit for.

We can solve some of our Canada-U.S. problems, which are deep, by fostering this kind of thoughtful and coherent debate, unlike debate in the other place. I welcome this debate and the comments of honourable senators.

Hon. Anne C. Cools: I have been listening to the Honourable Senator Grafstein with interest, and I am beginning to find great stimulation by his comments, although I have not given much thought to the bill. In Europe, every Frenchman, every German and every Italian is also a European. The term "European" is used interchangeably with each sovereign term. In Canada, the Constitution of Canada was formerly the British North America Act because Canada used to be called British North America.

When I was a little girl, the term "American" applied to all of the inhabitants of the continent of America. If someone wanted to specifically refer to people from the United States of America, we called them "Yankees."

Senator Grafstein is raising a profound and important point — the enormous ties and connections that have existed between Americans and Canadians. I would like the Honourable Senator Grafstein to explain more about this point. In addition to attempting to bring forward a profound dialogue and debate on the relationship between the two countries, is he not also attempting to resuscitate the use of the term "Americans" to apply to all peoples who live on this fine and enormous continent of ours, America?

Senator Grafstein: The answer is yes.

Hon. Marcel Prud'homme: Honourable senators, I will certainly participate in this debate. I am almost tempted — and I repeat, almost tempted — to make my speech right now. A true debater should not need staff and researchers to prepare his words. Rather, he should speak to the issue off-the-cuff and answer point-by-point what Senator Grafstein has said.

The honourable senator said that he would ensure that the debate in this house would be on the record in the United States. That sounds like a kind of blackmail to me in that we had better tone down in case we are badly perceived over there. I do not like this approach.

I will put another motion on the record about what the honourable senator was kind enough to say to the American congressional subcommittee on human rights. I do not think Canadians would appreciate that coming from a colleague of ours who attended a committee in the United States and also attended the European OSCE. I have the record of the things that he said and I will put them on our record. You have to be careful when you talk about the United States.

Honourable senators, I am comfortable in speaking about this. In 1993, at the request of both Speakers, I wrote a full report on parliamentary associations. In 1998, both Speakers and both boards of internal economy asked me for a repeat performance, which I did with Mr. Chuck Strahl. I worked hard and I convinced Mr. Strahl to vote for the budgets of the parliamentary associations. I said that if we were ever to disband parliamentary associations because of the criticisms and the press, one parliamentary association should remain — the Canada-U.S. Inter-Parliamentary Group. Everything I have seen over the years of our relationship with the Americans, first as an elected person and now as an appointed person, has convinced me of that.

We have no lessons to learn. I totally agree with the words of Senator Lapointe and Senator LaPierre that one can disagree without immediately being perceived.

Senator Grafstein is always ahead of us. This bill was read the first time yesterday. We cannot prejudge what this house will do.

I think the time has come to put some fresh air into the debate on parliamentary associations. In the next Parliament, I would hope that my honourable friend will do as I did, because a change is always good, and release his position as Chair of Canada-U.S. Inter-Parliamentary Group. That is not to say that the honourable senator is not doing a fine job, but some people hang on too long and these associations need renewal in each Parliament. That has nothing to do with the intelligence that we recognize in the honourable senator. The fact remains that some parliamentarians do not understand the importance of Canada-U.S. relations. I call that the new parliamentary diplomacy.

Senator Grafstein has helped to this end with his good debate today. There will be another, more stimulating debate, but I would hope that the honourable senator will stop talking about his intentions to attack the House of Commons because this house is more reasonable. I respect the other side as much as I respect this side. They are entitled to their opinions; they are entitled to be outrageous, if need be; and they are entitled to have comments on the policies of the United States of America without being labelled as anti-American. I do not know of one senator here who is anti-American. However, I know many senators, on both sides of this house, who do not agree with the honourable senator, even though you, sir, have written in some Canadian newspapers that you blame the people of your faith, but it was your privilege to support the war in Iraq when the majority of Canadians totally disagreed with the position taken by the United States. The fact that we disagreed with the policies of the United States does not mean we are anti-American.

• (1640)

The way in which the honourable senator approaches debate is very important. Make us believe that if we talk too much, we will be perceived as anti-American. The honourable senator has given us notice that all our words will be put on the record of the Congress of the United States of America.

I am glad that I have been given that chance. They will know my name very well there. An ex-secretary of cabinet was my best friend. Ed Derwinski was the most active man in the IPU. He will see that I am still alive and kicking and a friend of the citizens of the United States of America. However, I disagree with some of their policies.

Senator Grafstein: Honourable senators, I again find myself almost in violent agreement with my colleague. I did not in any way, shape or form suggest that we should not disagree. I have said it a number of times. We should agree to disagree. Let us do it in a civil and proper manner.

If the honourable senator took from my words any implication that I was trying to stifle debate by suggesting that the record of the Senate Hansard should be printed in the congressional records of the United States, he takes my comments out of context.

Once debate is public record, the idea is to ensure that the Americans get a view that is balanced. I am not looking for a unilateral view here. I am not a unilateralist in that sense.

I welcome the debate, and I welcome the honourable senator's intention to participate in this debate and that his comments will be recorded in the *Debates of the Senate*. I would hope that he would have no objection, but I am free to do it with or without his objection —

Senator Prud'homme: The honourable senator always does it any way.

Senator Grafstein: — to send the record of the debate to Americans who are interested in what we have to say here.

Honourable senators, I would think that the honourable senator would be proud to have clearly outlined his views so that they could be known to the American Congress. There is no problem with that. I am not ashamed of anything that I have said in the Senate, in the United States before the Congress or in Europe at any time.

I would like the honourable senator to draw my attention to the words that in any way, shape or form would suggest that I am speaking against Canada's independence or Canada's rights in this world. Quite the contrary; I am proud to be a Canadian.

I have always supported Canadian policies, but when I disagree with Canadian policies, I try to do it in a way that even he would understand in order that there is no misunderstanding. My opinion is not veiled. It is open, direct, and precise.

I welcome the honourable senator on those terms to participate in this debate. If one were to say to me, "We are afraid to have the *Debates of the Senate* listed in the Congressional Record," I could not see other senators agreeing with that. We should be proud to have our words in the Congressional Record of the United States so they do not take our words out of context as they do through the media.

Those diatribes from members of our caucus that were taken out of context in the United States did not represent our view. They did not represent the views of senators. Let's put it in the proper context. The proper context is a debate in the Senate — both sides, all sides, good and bad.

Let us debate it. Let us provide a framework so Canadians can understand that there is a thoughtful discussion on both sides. I do not believe the debate on Canada-United States relations has been balanced. We hear the bad things. We do not hear the good things. That is one of the fundamental issues that I would like to examine here. We should be proud to put ourselves on record and let the Americans know where we stand. Why not?

This is a free country, just as the United States is, and they respect that. I welcome the senator's participation. I welcome his questions. I will listen very carefully, as he listens to me. If I disagree with him, believe me, I will let him know.

Senator Prud'homme: Honourable senators, I have a supplementary. It will be just a quick question.

The honourable senator said that this bill is very important. Could he imagine the reaction of the government and citizens of United States of America — the good folk whose company we enjoy — if the bill proposed were put to a vote and defeated? Would it not defeat the purpose of the honourable senator's attempt at a rapprochement?

On the topic of sending our debate to Congress, I have known the honourable senator for too long and too well. I know every word that he says in this chamber is sent around the world, including to His Holiness, the Pope. I have good contacts in the Vatican. Every word of Senator Grafstein is of such importance that he spreads them all around the world. I congratulate him that he is so well organized. I am not.

However, I am afraid of the reaction if people happen to disagree with him. People do not go into detail when they read the Congressional Record.

There is the question, are you with me, or are you against me? Did we not hear recently on television that those who are not with us are against us? I am a little bit more sophisticated than that. Senator Grafstein is a little bit more sophisticated than I am.

We are a chamber of sophisticated people to various degrees. We are afraid of the reaction to such a bill if it were not agreeable to the majority of the people, for all kinds of different reasons. I try to be positive. I will participate in a positive way, having calmed down a little bit.

Senator Grafstein: Again, I thank the honourable senator for his comments. I think they are cogent and useful.

He intimated earlier that somehow I would prejudge this bill by talking about it before I introduced it. He is predicting the will of the Senate. Let us have the debate, and then let us decide.

I am not afraid if this bill is delayed, as my resolution was last year. I am not afraid if it is turned down. I do not believe it will be. I believe that I will be able to convince most senators that this is a very useful bill for Canadians as well as Americans. Let us not prejudge the debate.

Yes, I do feel that I have a relationship with the Pope because my father and his father served in the same brigade in the Polish army in 1920.

Hon. Willie Adams: Honourable senators, I have a question for Senator Grafstein. My knowledge of history is not as good. I have watched many cowboy movies about when Americans first went West and fought the natives. Americans, just like Canadians, are all immigrants. They took over some of the native country. Buffalo Bill killed all the buffaloes, which was food for the natives.

How can we support this bill? I think of the history, especially what the Americans did to the native people.

The President did not make a planned trip to Canada because we did not join him in the war on Iraq. We are good friends.

I was very young at the time of the Second World War. I learned my language and English. There were not many people in the North who spoke English.

It is the same thing with Canada. The Americans do not know all the history either, especially in regard to other countries. I would not accept supporting the bill.

Senator Grafstein: Honourable senators, the Aboriginal community in Canada has much to learn from the Aboriginal community in the United States. I had an opportunity to examine this question when I participated in the Nisga'a debate on the Nisga'a Treaty.

Senators will recall that I was not in favour of that bill because of the questions of sovereignty. I thought I gave a reasoned position on why I disagreed with our Aboriginal colleagues on the Nisga'a.

The Americans have dealt with this issue in a very useful and interesting way. It strikes me that sometimes we can learn useful messages and ideas from the Americans who have come to grips in a different way with the same endemic problems of the unfair treatment of Aboriginals in Canada. There are things that we can learn from the United States.

• (1650)

The other issue that I learned from the United States is they are ahead of us on the treatment of water on reservations — way ahead. Senator Watt is nodding his head in agreement. They provide clean water to all their reservations. We in Canada do not. We can learn from the Americans there as well.

There are things we can learn in this debate from the Americans that will be useful for us; and by the way, I think there are a lot of lessons we can teach the Americans as well. There is no question about that. Again, I welcome the honourable senator's comments. I hope he will make a fuller speech so I can address it more fully at the end of debate.

The Hon. the Speaker: Senator Grafstein, you wanted to move the adjournment, I think. Did you have another question, Senator Cools?

Senator Cools: I was willing to move the adjournment. Perhaps someone else was planning to do that.

The Hon. the Speaker: Senator Grafstein asked to move the adjournment himself. Did you want to do that, Senator Grafstein?

Senator Grafstein: Forgive me, Senator Cools. I thought it would be appropriate to hear from the side opposite, and Senator Eyton has indicated his interest in participating. I hope there will be ample room for all senators to participate.

On motion of Senator Grafstein, for Senator Eyton, debate adjourned.

[Senator Adams]

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Lapointe, seconded by the Honourable Senator Gauthier, for the second reading of Bill S-18, to amend the Criminal Code (lottery schemes).—(*Honourable Senator LaPierre*).

Hon. Laurier L. LaPierre: Honourable senators, I rise in support of the Honourable Jean Lapointe, who introduced Bill S-18.

[*English*]

Sir, I am told that I have 45 minutes. I have decided that I am too excitable, and consequently I must take less time than 45 minutes. Hence, I will attempt to keep myself to the normal limit.

As honourable senators know, the purpose of the law is to remove what we used to call slot machines — and which now have astonishing names like "un dispositif électronique de visualization" or "un appareil à sous." The sponsor of the bill wants slot machines to be removed from places that are easily visible and accessible to where they really belong, which is in casinos and at racetracks, if my memory serves me right.

[*Translation*]

By introducing this bill, Senator Lapointe has suggested that one of the major problems was accessibility. The second problem was visibility.

[*English*]

Consequently, these are the questions that we need to look at. Before we do that, let me repeat that this proposed legislation is not meant to ban video lottery terminals, VLTs. Its aim is to place them where they belong, in casinos and racetracks. That is where they belong.

Instead, with the exception of Ontario, British Columbia, and the three territories — Nunavut, the Northwest Territories and the Yukon — we now have these machines in everyday accessible places, such as restaurants and bars, which are easily accessible and visible over and over again. I have no doubt that, in less than a decade, these machines will be found in drugstores, in depanneurs, in public washrooms, practically everywhere a citizen goes. Is this where we want them to be?

It would appear that Canadian public opinion is very much opposed to this. I must tell honourable senators that the senator has gone through an astonishing amount of research — and I want to congratulate him and his staff. When they asked me if I would do this, they gave me an astonishing amount of documentation — it took me three vanloads to carry them home — which I have read and which I keep losing. In fact, some of it had to be sent back from India, where I was in July and where I had them with me. So there you are.

[*Translation*]

Approximately 70 per cent of Canadians believe that video lottery terminals should be available only in casinos or at racetracks.

[*English*]

That is a very important statistic.

Furthermore, as far as public opinion is concerned, 64 per cent of the population believes that this kind of playful activity is not harmless at all — or even playful. Sixty-four per cent of our population holds it self-evident that this kind of activity engenders criminal activity.

Nor, honourable senators, as the honourable senator has so well pointed out, is it possible for us to close our eyes to the dangers that the widespread use of these terminals is causing to the health and welfare of Canadians.

[*Translation*]

Consider the following figures. Here is the amount of money lost per capita in each province: in Quebec, $147; in New Brunswick, $174; in Nova Scotia, $179; in Prince Edward Island, $124; in Newfoundland and Labrador, $200; in Alberta, $287; in Saskatchewan, $254; and in Manitoba, $220. You can imagine the repercussions.

[*English*]

They demonstrate that families, parents, children and individuals, and the overall national productivity are seriously affected by the economic fallout of the general placement of terminals where they are easily accessible to practically everybody, and so easily visible.

Frightening as the above is, the results of this inordinate placement of terminals leads to the growing number of addicts or problem gamblers. Allow me to quote some of the experts Senator Lapointe consulted on this problem with regard to our health and welfare, and above all the health and welfare of those who are affected by this disease.

First, the Canadian Public Health Association says that research has shown that the spouses of problem gamblers report higher than normal suicide attempts, nervous breakdowns and substance abuse, and that the children of problem gamblers have behavioural or adjustment problems related to school, drug or alcohol abuse, running away and arrest.

The Alberta Alcohol and Drug Abuse Commission says that the amount of money spent on VLTs has increased exponentially since their introduction into Canada. One study of VLT problems — gambling clients — found that although almost all of VLT clients studied indicated that they had gambled at some point in their lives, most reported that they had experienced no problems until they began to play VLT machines.

Dr. Smith and his colleagues have said that fast-paced, continuous gambling formats such as VLTs and slot machines are most closely associated with problem gambling. Therefore, by extension, the crimes commonly associated with problem gambling — fraud, domestic violence, theft and suicide — are linked to the gambling format with the highest addictive potency.

I could go on, giving honourable senators more and more of these statistics. However, let me only quote one of the researchers in Ontario, which, of course, has none of these machines. Dr. Rose, the director of the Iona College Gambling Institute of Windsor, Ontario, said that, as with any addictive substance or behaviour, availability is an important factor and that, as such, if VLTs are available in the nearest bar, their very geographical proximity can intensify their threat to reasonable, responsible usage.

Another great reason for restricting VLTs from bars has to do with self-exclusion. Allowing problem gamblers to inform those who regulate access to gambling venues of personal self-exclusion has merits. When it comes to VLTs in bars, however, there would not likely be someone to enforce compliance.

• (1700)

I could go on and on, honourable senators, giving statistics and quotes that would demonstrate what Senator Lapointe attempted to show in his remarks.

Honourable senators might ask what the provinces do to assist Canadians who are so afflicted. I have the statistics. Let me tell you what the provinces earn from these VLTs. The revenue in the province of Quebec is $692 million. The revenue in New Brunswick is $55 million. In Nova Scotia, it is $112 million. In Prince Edward Island, it is $8 million. In Newfoundland and Labrador, it is $67 million. In Alberta, it is $525 million. In Manitoba, it is $137 million. In Saskatchewan, it is $157 million.

I asked myself what the provinces do with all that money. They spend only a pittance on alleviating this problem. If I remember correctly, all the provinces together spend 28 per cent of the total revenue to assist those who have become dependent on gambling, after having earned hundreds of millions of dollars.

Honourable senators, this is a serious problem that we must study carefully in order to make a contribution to the health and welfare of our young people in particular.

Please understand that this bill is not about prohibition; it is about limiting access to a phenomenon that has already destroyed the lives of many people in our country. It is not only the addicted who suffer from an addiction. Their families suffer, and I could tell stories about that. Their communities suffer. Ultimately, all of society loses. The costs of these losses need to be weighed against the revenue derived from VLTs. We need to take some responsibility for this situation. Our citizens should not be expendable in the name of easy revenue for the government.

In conclusion, I would like to thank Senator Lapointe for having studied and raised this issue, and for having come to the conclusion that it is an important social problem with which we must deal.

On motion of Senator Stratton, debate adjourned.

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Serge Joyal moved the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Joyal, P.C.*).

He said: Honourable senators, this bill, which comes from the other place, is the result of tireless effort by the Member of Parliament for Burnaby—Douglas. It is a very important and serious bill because its goal is to amend the Criminal Code of Canada. It is also an important bill because it addresses one of the fundamental constitutional roles of the Senate, the protection of minority rights.

The Senate of Canada is one of the key public institutions in Canada that promotes and stands for minority rights. As Lord Sankey of the Judicial Committee of the Privy Council stated in the famous Aeronautics Regulation case of 1932:

> ...it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation, and the foundation upon which the whole structure was subsequently erected.

I repeat, the Senate was created precisely to protect the rights of minorities in Canada. The House of Commons exists to protect the rights of the majority; it falls to us in this chamber to protect minorities. As one of the 24 divisional senators in Quebec, I must stand for the minority rights of the group of people I was summoned to represent in this chamber, and I must promote their views in the legislative process. That is essentially our duty.

The Senate has had a commendable record in the past in advancing human rights. Professor Franks from Queen's University was a contributor to the book that Senator Murray and myself put together, the launching of which many of you honoured me by attending in May. Professor Franks wrote at length about the special efforts on the part of senators in the early 1990s with regard to advancing human rights. At pages 174-75 of *Protecting Canadian Democracy: The Senate You Never Knew*, Professor Franks said:

> The federal legal provisions regarding discrimination on the basis of sexual orientation only exist because of six years of persistent effort on the part of the Senate. After the Ontario Court of Appeal ruled in *Haig v. Birch* that sexual orientation be read into the Canadian Human Rights Act, Senator Kinsella, a Conservative who disagreed with his own government's views that this sort of legislation was unnecessary, introduced Bill S-15 into the Senate in order to insert sexual orientation as grounds into the Act.

Some of our colleagues were participants in that debate in 1992. That bill was adopted in this chamber but, because of prorogation in 1992-93, the bill died on the Order Paper.

Senator Kinsella reintroduced the bill in the next Parliament, in 1995, as Bill S-2, which was passed by the Senate and sent to the House of Commons. In the House of Commons, that bill prompted the then Minister of Justice to introduce a bill to the same effect in order to give weight to the protection that Senator Kinsella tried to achieve.

I will quote Senator Kinsella from the *Debates of the Senate* of 1992. He said:

> Not only does this Chamber serve as an important check on the exercise of state power, but the Senate can play a very special role in the protection of parts of Canada or groups of Canadians, which and who by themselves will never constitute a majority. This role of protecting the minority is especially important where a given minority group of Canadians might be perceived by the majority as a despised minority group.

• (1710)

We had a debate earlier on this afternoon on Aboriginal issues. I refer here to the position of Senator Kinsella. The Aboriginal people in our country will never constitute a majority. Gays will never constitute a majority. There are other groups that will never constitute a majority. However, it is our role in this chamber to stand for the rights of those minorities. Senator Kinsella was totally accurate in his comments in those days, in 1992, more than 11 years ago now, about our role as senators.

It is important to keep that role in mind, honourable senators, when we address Bill C-250 because it deals essentially with gay communities and their status in the Canadian society. This is not an easy issue because it is easy to caricature. It is easy to caricature because the media, television, film, literature, always likes to stereotype this minority with unflattering caricatures. Why? Because it is easy to just set aside the issues of a minority when we can laugh at them. If they are laughable, they are no longer to be taken seriously, and if we do not have to take them seriously, we do not have to deal with their concerns. That is essentially our common reaction or public reaction in many instances in regard to the status of the gay communities.

Bill C-250 amends subsection 318(4) of the Criminal Code. Section 318 of the Criminal Code is entitled "Hate Propaganda." Its purpose is to repress hate propaganda against identifiable groups in Canada. Why was that section put into the code?

In researching that question, I found that in 1965 a group of Canadian scholars was asked by the then Minister of Justice to study a phenomenon of those days — hate propaganda against Blacks and Jews. At the time, groups promoting hate against Blacks and Jews were multiplying. The report that I have in my hands was put together under the chairmanship of Maxwell Cohen who was then Dean of the Faculty of Law at McGill University. He was an expert who appeared often before the justice committees of both Houses to testify on human rights issues.

Our colleague Senator Prud'homme will remember that. I myself remember Mr. Cohen from when I co-chaired the joint committee on the Constitution. Our current Clerk of the Senate was clerk of the committee at that time and, on behalf of the Senate, we had Mr. Cohen appear as an expert witness on human rights issues under the Charter.

In that group with Mr. Cohen, there were seven scholars. Among them were former Supreme Court Justice Peter Corey; Mr. Mark MacGuigan, who was Secretary of State for External Affairs and a judge of the Federal Court of Canada, and who has unfortunately passed away; and the last one on the list was — guess who — Pierre Elliott Trudeau. I was surprised, in fact, to look into that report from 1965 and find the name of Mr. Trudeau.

What did that report say about hate in Canadian society? I want to quote from it because I think this is important to keep in mind when we address Bill C-250. The report states: "Canadians who are members of any identifiable group are entitled to carry on their lives as Canadians without being victimized by the deliberate, vicious promotion of hatred against them. In a democratic society, freedom of speech does not mean the right to vilify."

That was the major conclusion of the report that led to the enactment of section 318 of the Criminal Code in 1970, five years after the report was written. We will remember that by 1970, the Prime Minister was the Right Honourable Pierre Elliott Trudeau. Under his leadership, the Criminal Code was amended to prevent hate propaganda.

Honourable senators will remember very well that Mr. Trudeau, as Minister of Justice, Attorney General of Canada, became famous in the Canadian public in 1967 for his remarks in defence of an amendment to the Criminal Code. That is now section 159. We all remember the famous phrase that is now part of our political history: "We have to take the state out of the bedrooms of the nation."

Mr. Trudeau was very preoccupied as a scholar, as a minister and as a prime minister, to make sure that Canadians should not be victimized because of their innate characteristics and that Canada should prevent that victimization.

That is where sections 318 and 319 of our Criminal Code came from. These provisions establish three specific offences. I will not read the legal text; I prefer to put it in layman's terms. The first offence is the advocacy or the promotion of genocide. I think everyone will understand that. The second offence is the incitement of hatred against an identifiable group. The third offence is the wilful promotion of hatred against any identifiable group.

Who are the groups identified in section 318? There are four groups, identifiable by colour, race, religion or ethnic origin. In other words, the Criminal Code has very clearly established that hate propaganda must be essentially to bring physical harm to someone. It is not defined as the promotion of hate generally; but the promotion of hate with the objective of bringing physical harm to someone and to kill the person, including the murder of groups of people. That is genocide. We are talking about killing when we talk about genocide. We are talking about physical harm.

In other words, if someone hates Blacks and decides to get a group together on a Saturday night, and incites them to go into the streets and attack any Blacks they find and maybe even kill them, that is what we mean by advocating genocide. That is essentially what is prohibited under section 318. Section 318 also protects such identifiable groups as Jews and Aboriginal people.

This is a very important section of the Criminal Code because hatred is a feeling that leads to the diminution of value. When you promote hatred against people, you deny their value as human beings, you rob their respect and dignity in our society. It was seen in 1970 as fundamental to the well-being of Canadian society to establish this minimal respect among individuals.

What does this bill try to do? It does not change the three offences that I have just described in sections 318 and 319. Bill C-250 adds sexual orientation as a basis of determining an "identifiable group." In other words — and I will say it in French because the slang word in French is very descriptive and my colleagues who are fluent in French will understand it easily.

[*Translation*]

One Friday night, a group of people, egged on by one of them, decided to go fag-bashing, or "casser de la tapette," in French.

[*English*]

Honourable senators will remember that is exactly the term used among White supremacists. Even Mr. Trudeau was accused of being "tapette." In 1970, when the FLQ manifesto was read on national TV, and I am going by my memory here, Mr. Trudeau was described in the following way:

[*Translation*]

And we are going to get rid of Trudeau the fag and his whole gang.

[*English*]

In other words, they tried to vilify Mr. Trudeau on the basis of his alleged sexual orientation.

• (1720)

In 1970, going back in history, to accuse someone of being "une tapette" was the most effective way to absolutely undermine the credibility and the leadership of that person. As I described earlier, one could separate an individual from society and trample him or her, and no one would care.

Hatred of gays and lesbians has profound and devastating consequences: We all know what kids in schoolyards and playgrounds do when they want to gang up on one of their group. The most efficient and effective attack is to call someone a fag, "la tapette." That immediately destroys the capacity of that young person to be one of the group, to be seen as an equal member of society.

This bill is important because it adds to the identifiable groups those that can be identified on the basis of sexual orientation.

What did we do in terms of protecting Canadians on the basis of their sexual orientation? Senator Kinsella took two specific initiatives, private member bills. He even went against his own government at that time in his attempts to make sure that our Human Rights Act protected sexual orientation. In 1996, the Canadian Human Rights Act was amended to include sexual orientation as a non-discrimination ground protected in the act.

What did the government do in 1995-96? The government amended the Criminal Code again, in 1996, to include the current sentencing provisions at Part XXIII. Section 718.2 of the Criminal Code addresses what we call aggravating circumstances in the definition of a sentence. When an individual is sentenced after being found guilty, the judge takes into account a certain number of factors, including the presence of aggravating circumstances. Section 718.2 provides that evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor is deemed to be an aggravating circumstance.

In other words, in sentencing a convicted offender, our courts consider whether there is evidence that the offence was motivated on the basis of sexual orientation. That provision already exists in the Criminal Code, as a result of the amendment of 1995 that I referred to earlier.

So are we just making a mountain out of a molehill, or is there a real problem here that we have to address as parliamentarians? I should like to quote statistics from the Department of Justice in answer to that question. The hate crime statistics I am quoting are from police records for 1997, the most recent national records available.

For that year, 279 race-based hate crimes were reported. Sexual orientation comes in at second place, with 108 hate crimes committed against people simply because they were gay or lesbian. For the same year, there were 91 hate crimes committed on the basis of religion, 21 on nationality and 53 on the basis of ethnicity. My colleagues may be interested to know that there were 58 crimes based on gender. The list goes on to include disability, language, et cetera. In other words, 18.4 per cent of the hate-motivated crimes were on the basis of sexual orientation.

In the Vancouver area, recent statistics from the Chief of Police of Vancouver show that 62 per cent of robberies and assaults committed against identifiable groups in the Vancouver area are motivated on the basis of sexual orientation. Honourable senators, that is surprising and disturbing, especially given the reputation of Vancouver as being an open and welcoming community that seems to integrate a large segment of Canadian diversity, yet it is the place that has the highest level of these violent assaults motivated on the basis of sexual orientation.

Senator Oliver: What about cities like Toronto and Montreal?

Senator Joyal: I have other statistics I should like to give to you. In Toronto, based on the report I have here from the Toronto police, there have been 211 hate crimes against gays or lesbians over the past 10 years. Honourable senators, this type of crime is widespread. The problem is not limited to Vancouver. It is present here in Ottawa. It exists everywhere. It is not a local phenomenon; it exists throughout Canada.

It is important to make sure that our Criminal Code is consistent with the Canadian Human Rights Act, as amended through the initiative of Senator Kinsella, as well as with the Criminal Code itself. The code's provisions on sentencing, as I have said, include sexual orientation as an identifiable characteristic, as does our Constitution, since the *Egan* case in 1995. Section 15 of the Canadian Charter of Rights and Freedoms, which is the equality rights section, was interpreted by the Supreme Court of Canada in *Egan v. Canada* as including sexual orientation as an analogous ground on which claims for discrimination could be based.

In other words, in our two fundamental federal human rights laws, the Canadian Human Rights Act, the Charter, and in the key section of the Criminal Code on sentencing, sexual orientation is recognized as an identifiable characteristic. This bill simply makes subsection 318(4) of the Criminal Code consistent with those laws by adding sexual orientation in the definition of identifiable group.

This bill also has another important element, which is the protection of religious texts. It was mentioned during debate in the other place that some religious texts might be threatened because they condemn homosexuality. Many were concerned that the Bible and other religious texts that contain such passages would be affected by this bill.

Bill C-250 was amended in the other place to include protection of religious opinions based on a belief in a religious text, at paragraph 319(3)(*b*).

In other words, although religious expression is already protected in the Criminal Code, Bill C-250 adds further protection. The Criminal Code would be amended through this bill to protect the good faith belief on an opinion based on a religious text. Whatever a religious text may contain on the issue of sexual relationships between persons of the same sex, and the interpretation thereof, it would be protected under Bill C-250.

Honourable senators, this bill is very important to me. As I mentioned earlier, Bill C-250 simply makes this provision of our Criminal Code consistent with our Human Rights Act, and reconciles the discrepancy in the definition of identifiable group in the sentencing and hate propaganda provisions so that we have a streamlined approach on the prohibition of discrimination based on sexual orientation.

You may ask me, who is supporting this initiative? Who is supporting C-250?

• (1730)

I would like to quote from an article on the annual meeting of the provincial and federal Ministers of Justice in November of 2001. It refers to Minister McLellan, the then Minister of Justice. It states:

> McLellan met with the provincial justice ministers yesterday. She said there was "unanimous consent" to make good on an earlier promise to designate verbal attacks on "sexual orientation" as hate propaganda.

In November of 2001, all 10 provincial Attorneys General, along with the Attorney General of Canada, agreed that hate propaganda on the basis of sexual orientation should be included at section 318 of the Criminal Code.

There is more. The Canadian Association of Chiefs of Police adopted a resolution last August that states:

> Be it resolved that the CACP urges the Government of Canada through the Minister of Justice and Attorney General to amend the Criminal Code of Canada to add sexual orientation to the list of identifiable groupings in subsection 318(4).

In other words, the Canadian Association of Chiefs of Police, who have the responsibility to implement the Criminal Code, recognized the statistical reality that hate crimes against gays and lesbians are a problem in Canada and that it is time to act now.

There is more. The Canadian Bar Association, in a letter of May 2003, addressed to the Honourable Andy Scott, who was then the Chairman of the House of Commons Justice and Human Rights Committee, demanded that Bill C-250 be adopted as they had requested previously on many occasions.

Honourable senators, there is in the police community, the legal community and among governments across Canada a consensus that sexual orientation should be included as a ground of discrimination in the hate propaganda provisions of our Criminal Code.

I hope that we can refer this bill to our Standing Senate Committee on Legal and Constitutional Affairs where members would have an opportunity to examine this issue at greater length. I have attempted to put the issue squarely before you this afternoon, rather than to exhaust the legal minutia of the Criminal Code, which as honourable senators know, when you start reading it you need a magnifying glass because two thirds of the text is in insurance policy-sized font.

It is important for us to remember that ignorance is the foundation of hate. As Parisa Baharian said, "In our society, silence in stamping it out is the spark by which hate spreads."

We, as senators and as a chamber of the Canadian Parliament, can do a useful job for Canadians and for minorities. Think about minorities — those who will never be the majority and those who will never be able to be elected in a sufficient number to have their views aired and accepted. They rely on the majority, as much as francophones rely on the majority of anglophones and as much as our Aboriginal people rely on us to listen to them.

This is not an easy issue. I am the first one to recognize it. In our souls and conscience, we have to act fairly on this issue. We have to act with balance; but we have to act because this is a problem that must be addressed. The way it is addressed in Bill C-250, with the support of the present Minister of Justice, is worthy of our support.

Hon. Anne C. Cools: Honourable senators, I have some questions. I will tackle them one at a time.

I thank the Honourable Senator Joyal for his words. He has said and it is well known that the Minister of Justice supported this bill. In actual fact, this bill made its way through the House of Commons on the strength of the support of the Minister of Justice.

It is a well-established principle that ministers of the Crown should not interfere in private members' business. If in actual fact that there is a private member's bill that the Minister of Justice feels so strongly that he or she should support or that it should pass, the minister should adopt the bill and bring it forth to the chamber under the rubric of ministerial responsibility.

To the extent that this bill was supported somewhat furtively by the Minister of Justice, what impact does that have on this bill? Is this bill still a private member's bill, is it a government bill, or is it a new hybrid bill?

Senator Joyal: Honourable senators, this bill comes to us from the House of Commons, so we address it as any bill coming from the House of Commons. It is a bill that is the result of an initiative, as I mentioned, by the Honourable Member of Parliament for Burnaby—Douglas over the past 15 years to make this amendment to the Criminal Code.

There is no doubt that the Minister of Justice supports the bill. As I mentioned, very early last spring, there was consensus among the police and the provincial Attorneys General to seek this amendment to section 318 of the Criminal Code.

As it is a private member's bill, the honourable senator will know that normally, as is the procedure in the other place, each member is free to vote the way they want. The Minister of Justice mentioned that he would support this bill because it contains the same language as the consensus agreed to by the previous Minister of Justice, Anne McLellan.

I do not think we should call it a hybrid bill. It is a private member's bill that comes from the other place with the large support of members, and it happens that the Minister of Justice supports this bill.

Senator Cools: Honourable senators, I am aware of the history. I have followed the matter with considerable interest. I am saying to the honourable senator that perhaps we can examine in committee that there is no such thing as a matter that a minister individually supports. As soon as a minister supports a question, it means the government is involved and supports it because, after all, the principle is the unity of cabinet. Cabinet can only speak with one voice, but we can debate that another time.

My second question has to do with the actual amendment to the Criminal Code that is before us. The honourable senator used the term "hate propaganda" often. That is the name of the bill. The amendment is actually an amendment to section 318, which is referred to as the section on hate propaganda.

I do not think that I heard Senator Joyal explain the word "genocide." Perhaps he could expound on that a little bit.

Senator Oliver: He did mention it.

Senator Cools: I did not hear him. I am asking him to expand. If he does not want to expand, I can accept that.

Section 318 of the Criminal Code is the section that lays out the crime of genocide and the penalties for genocide.

This bill would not only add the term "sexual orientation" to the Criminal Code as an identifiable group, which includes colour, race, religion and ethnic origin, but in actual fact it also creates a new crime of genocide against homosexual people. Would the honourable senator comment?

I would also like for the honourable senator to comment on another point. Historically, the term "genocide" was born around the Nuremberg trials.

• (1740)

The preoccupation with the notion of genocide and the protection from genocide had to do with bad relationships between the peoples of the earth. Genocide is derived from the word "gens," from anthropology, meaning "peoples" or "race." For example, if you look at me, it is clear that my gens is African. I am Black and a member of the African races, gens. The suffix "-cide" means "killing." Thus "genocide" is the killing of a race or the killing of people connected by gens.

I am trying to understand what evidence or what grounds Mr. Robinson or anyone else relied on to assert that persons who are homosexuals are members of a gens. In other words, what scientific evidence was relied on to treat homosexual individuals as a people?

Senator Joyal: I would refer the Honourable Senator Cools to section 318, subsections (1) and (2) that define the word "genocide." The word "genocide" used in this section has a specific definition:

318.(2) In this section, "genocide" means any of the following acts committed with intent to destroy in whole or in part any identifiable group, namely,

(*a*) killing members of the group; or

(*b*) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction.

It is clear that in the code the definition of "genocide" may not be exactly the same as the definition that is generally known in other international conventions. That is the first point.

Concerning the honourable senator's second question about the word "gene" in the word "genocide," the identifiable groups in the existing section 318 are based on colour, race and religion. Religion, as the honourable senator is aware, knows no colour. The identifiable group of religion, per se, does not contain the "gene" aspect by the very nature of religion that spans all persons regardless of colour. I do not think that genocide, in the context of gene only, is completely in accord with the traditional definition of genocide. When we use the word "genocide," we are usually referring to a well-identified cultural group or nationality, as the honourable senator mentioned in reference to the trials at Nuremberg. We knew exactly what the genocide referred to, just as we knew in the trials at Kosovo and at Rwanda. For instance, when we talk about genocide in political contexts, we know that it is about a specific group of culturally identifiable people. In terms of religion, of course, we have another example where genocide is used as a concept but cannot be absolutely parallel with genocide used in a political context.

Senator Cools: The honourable senator misunderstood because I did not say "genes" but rather "gens," which is an old anthropological term.

Those sections that govern genocide are not intended to include two people who have a quarrel and one kills the other. I was on the parole board, so I have read many cases. Those sections are intended to speak to hate propaganda — attacks to destroy and to eliminate, in a very profound way, peoples who are described as peoples and not people who have certain sexual proclivities. Those sections speak to "peoples" in the sense of nationality, ethnicity and religion.

It is only recently that religion is not connected to race. The Hebrew race was a race and a religion and the Arabs comprise races and religions. I do not think that is a particularly good example because most religions grew up around tribal behaviour, if one wants to say it that way.

Honourable senators, the term "gens" developed over centuries from tribes, clans or groups of people who are usually connected by a kind of racial or ethnic origin. I am concerned that homosexual persons are being redefined now as a nationality or as a people.

I am aware that Senator Joyal is well acquainted with the law because he has spent a great deal of time studying it. I do wonder why this matter is being drafted in this way. Homosexual persons are many things, but they are not a people.

What are people then? This has been a big debate in Canada. Are the Québécois a people? I could go on to discuss the concept of a distinct society. When are a people a people? Then I could take the debate on a bit. When are a people an identifiable group? Then you would have to show me the identifiable characteristics that determine they are an identifiable group. These are features of peoples. We are doing homosexual persons a great disservice in using such a wide, sweeping brush.

Could Senator Joyal comment on that further? I understand his concerns because of his great love of the law and justice. However, why are we proceeding in this way? I am certain that Senator Joyal is aware that much protection is provided in sections 22 and 810 of the Criminal Code in respect of inciting or counselling violence against any person. When we determine by law that a specific group, activity, predisposition, et cetera, are peoples, we will step beyond the scope of the Criminal Code into the area of anthropology.

Senator Joyal: Senator Cools is raising points that we could certainly review at committee. We might hear expert testimony on those points.

I read the Criminal Code as it exists and its definitions of "genocide" and "identifiable groups." Of course, section 718.2 of the code in the sentencing provisions specifically refers to hate based on a person's sexual orientation as an aggravating circumstance when a judge has to sentence an individual. In other words, it is an important element to maintain. Coherence in the approach of the code is in order if we are to respect the logic of the code. We will certainly have an opportunity in committee to hear expert testimony on this issue. We will be able to conduct a thorough review of this point with members of the committee and other honourable senators who wish to attend.

The Hon. the Speaker: Honourable senators, I regret to advise that Senator Joyal's 45 minutes have expired.

Senator Cools: Let us give him time.

The Hon. the Speaker: Only Senator Joyal can ask for additional time and all senators must agree. He is not rising.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I am rising to participate in the debate, honourable senators, and in doing so, I wish to canvass a number of basic points of principle given that second reading debate is on the principle of the bill.

My first reflection is that the emergence and development of criminal law is, in many ways, the development or the story of a passage from the barbarism of its early history through to a developed understanding and assertion of basic human rights and fundamental social justice.

• (1750)

Honourable senators, the Universal Declaration of Human Rights and our domestic Canadian Charter of Rights and Freedoms, as well as John Diefenbaker's Canadian Bill of Rights, testify to the great advances made across Canada in this journey for freedom.

My second reflection flows from the basic assertion that human rights, such as the right to life and the security of the person, have their genesis, not only in the enactment of legal instruments, but also as the results, sometimes, of the misadministration of criminal justice systems across time and across societies. This consideration applies directly, in my opinion, to the affirmation of the right of all persons to equality of protection by the criminal law.

Bill C-250 seeks to amend, as has been explained by the Honourable Senator Joyal, the Criminal Code of Canada with regard to hate propaganda so as to provide explicit protection to everyone from those who advocate or promote genocide or those who incite hatred on the basis of sexual orientation.

Senator Joyal has explained to us the provisions of sections 318 and 319 of the Criminal Code that currently provide the advocacy or promotion of genocide, the proscription against the incitement of hatred against any identifiable group — that is the key to this bill — and the wilful promotion of hatred against any identifiable group.

Let us turn our attention, honourable senators, to "identifiable group." This is what the bill is about. We find identifiable group, as Senator Joyal has explained to us, currently defined by the code as "any section of the public distinguished by colour, race, religion or ethnic origin."

Honourable senators, before us is the task of turning immediately to the issue that is sometimes described as applying the *ad eiusdem generis* principle. By adopting Bill C-250, we would be appropriately applying the *eiusdem generis* principle to the list of distinguishing grounds listed in the current definition of identifiable group.

This is also referred to as adding an analogous ground to a list of proscribed identifiers. The Senate of Canada, as has been indicated, has shown leadership in this regard in the past.

Our attention was drawn, honourable senators, to the work of this house of the Canadian Parliament that first adopted the bill adding sexual orientation to the list of prohibited grounds in the Canadian Human Rights Act. I just wish to ensure that the record is clear that successive governments of Canada of different political stripe have struggled in their caucuses to deal with adding sexual orientation as a prohibited ground of discrimination in the Human Rights Act. It is not surprising that it was difficult, whether in the Liberal government or within the Progressive Conservative government, to achieve the kind of consensus that is necessary to bring in that kind of legislation.

There was great debate, and it took a long time, which is why I wish to underscore the point that Senator Joyal has raised, namely, that this house of our bicameral system has been working rather successfully, honourable senators, for 136 years. It does place on our shoulders that special responsibility to deal with issues affecting identifiable groups, to use the language of the Criminal Code.

The history speaks well of this chamber. We have not shirked traditionally in ensuring that minority groups that are identified by grounds such as colour, race, religion or sexual orientation would get the protection required.

Honourable senators, there are those, of course, who oppose this bill because of an ill-considered assumption that special rights are being afforded a given group in society. This criticism is false because these opponents fail to understand the distinction between formal equality and substantive equality.

Formal equality refers to the equality in the form of the law and assumes that equality is attained if the law in its form treats everyone the same unless they are differently situated. Clearly, for a disadvantaged group, this theory poses several fundamental problems. It fails to deal with the reality that some groups in society are more subject to hate and violence than others groups. It defines equality as a question of sameness and difference rather than, honourable senators, as a question of dominance and subordination. It makes disadvantage invisible.

On the other hand, substantive equality means equality in the substance of one's condition. Therefore, the hate provisions of the Criminal Code explicitly state that the hate expressed against racial or religious groups is to be explicitly proscribed. In order to provide for the substantive equality to freedom from victimization for sexual orientation to be enjoyed by such an identifiable group, this explicit provision is required.

Honourable senators, the sad reality is that a great deal of harm and injury has been visited upon Canadian society by the purveyors of hate propaganda targeted on the basis of sexual orientation. Sadly, we read of reports of violence and discrimination in many parts of the country. This bill would extend protection to fellow citizens who are under attack and give substantive equality where it does not presently exist.

Furthermore, I reflect that attempts have been made by some to oppose this bill on the spurious argument that its adoption might result in parts of the Bible being criminalized. Such a claim, in my view, has no basis in law and no credible theological support. Indeed, in all of the faith traditions that I have studied the virtue of love always trumps the vice of hatred.

The debate on this bill in the other place saw some Canadian Alliance members raise this ill-based thesis, which all Canadians recognize as more fitting of the description of the proverbial crimson fish — the red herring.

It is not a serious objection. In reality, section 319(3) of the Criminal Code contains the protection of the right to free speech. Section 319(3) provides that no person shall be convicted of an offence under subsection (2) if he establishes that the statements communicated were true or if in good faith he expressed or attempted to establish by argument an opinion on a religious subject.

Remember, honourable senators, the other four grounds remain. Are we to suggest that a text of religious tradition — whether it be the Bible, the Koran or whatever — that makes comments about race or ethnic origin is a valid argument? It would have been addressed and we would have heard about it a long time ago. If that were the case, we would have heard about it long ago.

The Hon. the Speaker: Honourable senators, it is six o'clock.

Is it your wish, honourable senators, that we not see the clock?

Some Hon. Senators: Agreed.

• (1800)

Hon. Gerald J. Comeau: Far be it for me to attempt not to see the clock, but the Standing Senate Committee on Fisheries and Oceans has very important witnesses to hear at 6:15 p.m. Given that those witnesses have travelled all the way from Nunavut, I am asking permission of the Senate for the Fisheries Committee to meet while the Senate is sitting.

The Hon. the Speaker: Is leave granted, honourable senators, for the Standing Senate Committee on Fisheries and Oceans to sit at 6:15 p.m.?

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have no problem allowing the Fisheries and Oceans Committee to meet, even if we do not see the clock and are still sitting. However, the Banking Committee also has witnesses who travelled a long way and who have not been heard. If we allow the Fisheries Committee to meet, then we have to do the same for the Banking Committee. I think we would be accommodating a lot of people, and we would not see the clock.

Hon. Marcel Prud'homme: Honourable senators, frankly, the former minister and member of the government side is once again placing an unbearable burden on the shoulders of a few people who simply want to follow the rules. Today, we broke with a long tradition. I am strongly opposed to that. We all have schedules to keep. Senator Robichaud waits until 3:30 p.m. or 3:40 p.m. to rise and say: "Listen, just a few more minutes."

[*English*]

That is the way to run an orderly house. We expect that and we set our agenda accordingly, sometimes with a few minutes more or a few minutes less. It is not gracious for me to say that, but I felt that I should affirm my right. Why should all these senators speak today on this bill when we have Thursday, or next week, or

two weeks from now? We have established a new precedent and, in the British tradition, a precedent being established today will be thrown in our face after the recess in November. We have already done it. If we want to change the rules and the tradition, let us have a debate. I may agree to that and then we can do it.

Senator Comeau is putting an immense burden on our shoulders because these people have come from far away. Senator Kroft's committee has witnesses here from Toronto now, and he is still waiting. I am the only one who was not informed. Furthermore, the honourable senator who is to replace a member on the committee has not been told anything.

Your Honour, I do not know what to do, but I see that the member of the Banking Committee is here. He is in consultation. The new member is over there, as is the other one. We may not be too intelligent, but we are not that stupid. We see that we are the only people who are not consulted. If you want to play in a nice orchestra, then make sure everyone plays the same tune.

Personally, if senators want to sit, okay, sit; but I will not sit. The solution is as simple as reaffirming the principle that this is not the way to run our affairs, even if I am the only one who is saying it. Things will be said such as, "It is because of Prud'homme. It costs a fortune to bring back these witnesses." In an orderly fashion, we could do so.

We have had a long day. If my honourable friends do not wish to see the clock so that we continue sitting and committees are permitted to sit while the Senate is sitting, I do not know how many senators will be left in the chamber. We will not even have a quorum.

The Hon. the Speaker: Honourable senators, I am not sure how to interpret this matter. I have asked honourable senators if it is agreed that we not see the clock. Some conditions have been attached for agreement, and I gather they are that Senator Comeau would consent if he gets agreement for his Fisheries Committee to sit. Senator Robichaud has said that the Banking Committee should be added to the list.

Senator Cools, do you have something to say? We are discussing the point of whether leave will be granted.

Senator Cools: It takes more than leave to be granted for committees to sit. It takes a motion. Leave alone does not allow committees to sit. The committee chairmen would have to bring motions to allow the committees to sit. I would have loved to have heard Senator Kinsella complete his remarks, but I think he can complete them tomorrow. Let us see the clock, but first let us allow the committees to meet.

The Hon. the Speaker: I take it, then, there is no leave for me to not see the clock, honourable senators. I have no choice but to leave the Chair.

Senator Prud'homme: Your Honour, I want to be on record. I have had more than ample time this afternoon to make my point, and I was ready to say that you want to not see the clock, and that is okay. You want to sit, but I will not sit.

The Hon. the Speaker: Honourable senators, either we have leave or we do not. I gather we do not have leave.

Senator Kinsella: Honourable senators, if it is helpful, I am quite prepared to move the adjournment of the debate on the item that I was on and continue the rest of my time tomorrow.

The Hon. the Speaker: Honourable senators, would we agree, then, to not see the clock to this point so that Senator Kinsella might conclude by doing as he suggested?

Senator Roche does not agree, I gather?

Hon. Douglas Roche: Your Honour, I gave my consent last night to the general desire to end the sitting without going through the full scroll. Today, we have been going through the scroll. I have been waiting for two days to make a relatively short speech on Motion No. 146. I will give my consent to not see the clock now if I can speak on Motion No. 146 tonight, which will be a brief speech.

Senator Cools: But there is a motion before us, Your Honour.

The Hon. the Speaker: This is getting a little complicated. I will put Senator Roche's suggestion forward, but first I think I should go to Senator Kinsella and give him the opportunity to adjourn his debate. I will then come back to the issue of whether further time will be granted to not see the clock on Senator Roche's question.

It may be, honourable senators, that when I do return to Senator Roche and I say, "Are we agreed now to dispose of his item and not see the clock for that purpose?," that there will not be consent and we will return at 8 p.m. In any event, I will recognize Senator Kinsella now.

On motion of Senator Kinsella, debate adjourned.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, we are now on the matter of leave. Senator Roche is withholding leave to not see the clock because he wishes to speak to Motion No. 146. Is there agreement that Senator Roche be allowed to give his speech and that we not see the clock for that purpose? Is there leave?

Hon. Jean-Robert Gauthier: Honourable senators, I have been patient in waiting to speak on Motion No. 92, which is the last item on the scroll. Every time I come here with my speech and I am ready to go, I cannot get the damn thing out. Please, could we have some order in place and know where we are going and who is speaking? Let us stop this nonsense about continuous questions.

The Hon. the Speaker: Where we are going is either I leave the Chair and return at 8 p.m. or we not see the clock. I will put it in those stark terms.

Senator Cools, it is now 6:10 p.m. I should have left the Chair 10 minutes ago. In respect for the rules, I must at least try to constrain the amount of time we spend on deciding this question.

Honourable senators, we can deal with this question in one of two ways. Either we not see the clock, for which there must be unanimous agreement, or I leave the Chair.

Is it your wish, honourable senators, that we not see the clock?

Some Hon. Senators: Agreed.

The Hon. the Speaker: Agreed?

Hon. Eymard G. Corbin: Honourable senators, I want to note that there are committees, but others have also made plans for the evening. We did not expect to sit. Can the Deputy Leader of the Government give us an idea of how long we will be around here? That is all I want to know. That is a fair question.

• (1810)

Hon. Fernand Robichaud (Deputy Leader of the Government): The Leader of the Opposition is right in saying we are not on government business. He is right. I have an idea that there are two items that we would have to deal with, the motion from Senator Gauthier and the motion from Senator Roche. As to how much time it will take, I do not know.

The Hon. the Speaker: Are you on house business, Senator Cools?

Hon. Anne C. Cools: Yes, I believe in all fairness, Senator Comeau and the other senators should be allowed to move their motions so that their committees can sit at 6:15, and then Senator Roche would be able to speak, and everyone will be happy.

The Hon. the Speaker: Senator Comeau?

Hon. Gerald J. Comeau: I ask for leave to move that motion, that our committee be allowed to sit at 6:15, notwithstanding that the Senate is sitting.

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

Hon. Senators: Agreed.

Hon. Marcel Prud'homme: I will be silent. I totally disagree, but I will not go further for today. I think I made my point all afternoon. I will come back much more vigorously next time. I think I have done enough to put our points together, and Mr. Speaker had a long day, so I will pretend that I am not even hearing what is going on.

The Hon. the Speaker: Is it agreed, honourable senators, for Senator Comeau to put his motion?

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted.

Senator Comeau: I move that the Standing Senate Committee on Fisheries and Oceans be allowed to sit at 6:15, even though the Senate may then be sitting.

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

Motion agreed to.

The Hon. the Speaker: Do you wish to make a motion, Senator Kroft?

Hon. Richard H. Kroft: I move that, notwithstanding the *Rules of the Senate of Canada*, the Standing Senate Committee on Banking, Trade and Commerce be allowed to meet immediately. There are witnesses that have been waiting since four o'clock.

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

Hon. Senators: Agreed.

The Hon. the Speaker: Senator Prud'homme?

Senator Prud'homme: If you shout for me too fast, you may have a different tone. Those who agree rapidly were not there for the full debate this afternoon, and I take strong objection to that.

I will repeat the same thing for Senator Comeau. I have made my point. I will not attend the committee. However, I hope that next week we will not go through this.

However, prior to allowing this committee to sit, I want Senator Robichaud to tell us that if Senator Roche speaks — he says 12 minutes; you all agreed to that — it will mean that every other item will be postponed until tomorrow.

The Hon. the Speaker: That is an unusual condition of consent. Let me ask one time — and I do not want conditional, unless it is absolutely necessary — is leave granted for Senator Kroft to put his motion for his committee to sit tonight?

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted.

Senator Kroft: I move that the Standing Senate Committee on Banking, Trade and Commerce be allowed to sit at 6:20 this evening.

Senator Prud'homme: I want the record to show that I totally disagree, but I will not go further in saying no for Senator Kroft's committee to sit. However, I want to be on record saying that I object to the way we ran our affairs this afternoon. I want to see that on the record tomorrow in the newspaper.

The Hon. the Speaker: I cannot promise anything.

Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

FOREIGN AFFAIRS

MOTION TO REFER 2002 BERLIN RESOLUTION OF ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPEAN PARLIAMENTARY ASSEMBLY TO COMMITTEE—ORDER STANDS

On the Order:

Resuming debate on the motion, as modified, of the Honourable Senator Grafstein, seconded by the Honourable Senator Joyal, P.C.:

That the following resolution, encapsulating the 2002 Berlin OSCE (PA) Resolution, be referred to the Standing Senate Committee on Human Rights for consideration and report before December 31, 2003:

Whereas Canada is a founding member State of the Organization for Security and Economic Co-operation in Europe (OSCE) and the 1975 Helsinki Accords;

Whereas all the participating member States to the Helsinki Accords affirmed respect for the right of persons belonging to national minorities to equality before the law and the full opportunity for the enjoyment of human rights and fundamental freedoms and further that the participating member States recognized that such respect was an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation between themselves and among all member States;

Whereas the OSCE condemned anti-Semitism in the 1990 Copenhagen Concluding Document and undertook to take effective measures to protect individuals from anti-Semitic violence;

Whereas the 1996 Lisbon Concluding Document of the OSCE called for improved implementation of all commitments in the human dimension, in particular with respect to human rights and fundamental freedoms and urged participating member States to address the acute problem of anti-Semitism;

Whereas the 1999 Charter for European Security committed Canada and other participating members States to counter violations of human rights and fundamental freedoms, including freedom of thought, conscience, religion or belief and manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism;

Whereas on July 8, 2002, at its Parliamentary Assembly held at the Reichstag in Berlin, Germany, the OSCE passed a unanimous resolution, as appended, condemning the current anti-Semitic violence throughout the OSCE space;

Whereas the 2002 Berlin Resolution urged all member States to make public statements recognizing violence against Jews and Jewish cultural properties as anti-Semitic and to issue strong, public declarations condemning the depredations;

Whereas the 2002 Berlin Resolution called on all participating member States to combat anti-Semitism by ensuring aggressive law enforcement by local and national authorities;

Whereas the 2002 Berlin Resolution urged participating members States to bolster the importance of combating anti-Semitism by exploring effective measures to prevent anti-Semitism and by ensuring that laws, regulations, practices and policies conform with relevant OSCE commitments on anti-Semitism;

Whereas the 2002 Berlin Resolution also encouraged all delegates to the Parliamentary Assembly to vocally and unconditionally condemn manifestations of anti-Semitic violence in their respective countries;

Whereas the alarming rise in anti-Semitic incidents and violence has been documented in Canada, as well as Europe and worldwide.

Appendix

RESOLUTION ON
ANTI-SEMITIC VIOLENCE IN THE OSCE REGION
Berlin, 6 - 10 July 2002

1. Recalling that the OSCE was among those organizations which publicly achieved international condemnation of anti-Semitism through the crafting of the 1990 Copenhagen Concluding Document;

2. Noting that all participating States, as stated in the Copenhagen Concluding Document, commit to "unequivocally condemn" anti-Semitism and take effective measures to protect individuals from anti-Semitic violence;

3. Remembering the 1996 Lisbon Concluding Document, which highlights the OSCE's "comprehensive approach" to security, calls for "improvement in the implementation of all commitments in the human dimension, in particular with respect to human rights and fundamental freedoms", and urges participating States to address "acute problems", such as anti-Semitism;

4. Reaffirming the 1999 Charter for European Security, committing participating States to "counter such threats to security as violations of human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief and manifestations of intolerance, aggressive nationalism, racism, chauvinism, xenophobia and anti-Semitism";

5. Recognizing that the scourge of anti-Semitism is not unique to any one country, and calls for steadfast perseverance by all participating States;

The OSCE Parliamentary Assembly:

6. Unequivocally condemns the alarming escalation of anti-Semitic violence throughout the OSCE region;

7. Voices deep concern over the recent escalation in anti-Semitic violence, as individuals of the Judaic faith and Jewish cultural properties have suffered attacks in many OSCE participating States;

8. Urges those States which undertake to return confiscated properties to rightful owners, or to provide alternative compensation to such owners, to ensure that their property restitution and compensation programmes are implemented in a non-discriminatory manner and according to the rule of law;

9. Recognizes the commendable efforts of many post-communist States to redress injustices inflicted by previous regimes based on religious heritage, considering that the interests of justice dictate that more work remains to be done in this regard, particularly with regard to individual and community property restitution compensation;

10. Recognizes the danger of anti-Semitic violence to European security, especially in light of the trend of increasing violence and attacks regions wide;

11. Declares that violence against Jews and other manifestations of intolerance will never be justified by international developments or political issues, and that it obstructs democracy, pluralism, and peace;

12. Urges all States to make public statements recognizing violence against Jews and Jewish cultural properties as anti-Semitic, as well as to issue strong, public declarations condemning the depredations;

13. Calls upon participating States to ensure aggressive law enforcement by local and national authorities, including thorough investigation of anti-Semitic criminal acts, apprehension of perpetrators, initiation of appropriate criminal prosecutions and judicial proceedings;

14. Urges participating States to bolster the importance of combating anti-Semitism by holding a follow-up seminar or human dimension meeting that explores effective measures to prevent anti-Semitism, and to ensure that their laws, regulations, practices and policies conform with relevant OSCE commitments on anti-Semitism; and

15. Encourages all delegates to the Parliamentary Assembly to vocally and unconditionally condemn manifestations of anti-Semitic violence in their respective countries and at all regional and international forums.—(*Honourable Senator Prud'homme, P.C.*).

An Hon. Senator: Stand.

Hon. Marcel Prud'homme: I think I should be consulted on that. It is under my name. At least, some should have the decency to ask if I want to speak on this. Stand.

Order stands.

[*Translation*]

THE SENATE

MOTION TO CREATE SPECIAL COMMITTEE TO OVERSEE IMPLEMENTATION OF BROADCASTING OF PROCEEDINGS—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser:

That the Senate approve the radio and television broadcasting of its proceedings and those of its committees, with closed-captioning in real time, on principles analogous to those regulating the publication of the official record of its deliberations; and

That a special committee, composed of five Senators, be appointed to oversee the implementation of this resolution. —(*Honourable Senator Robichaud, P.C.*).

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, this motion by Senator Gauthier is an important one. Normally, such motions are studied first by the Internal Economy Committee. Senator Gauthier and Senator Bacon, the chair of that committee, have been consulted, and they

have consented to move that the motion be referred to the Standing Committee on Internal Economy, Budgets and Administration and to have that committee report on it by May 27, 2004.

The Hon. the Speaker: Honourable senators, it is moved by Senator Robichaud, seconded by Senator Gauthier:

> That the motion be referred to the Standing Committee on Internal Economy, Budgets and Administration; and
>
> That the committee report on it by May 27, 2004.

Is it your pleasure, honourable senators, to adopt the motion?

On motion of Senator Kinsella, debate adjourned.

PARLIAMENTARY ASSOCIATIONS

INQUIRY—DEBATE ADJOURNED

Hon. Marcel Prud'homme rose pursuant to notice of Thursday, May 8, 2003:

> That he would call the attention of the Senate to the parliamentary associations, in particular their budgets and the very odd manner in which some of them, specifically the Inter-parliamentary Union, conduct their annual meetings.

He said: Honourable senators, Senator Day wished to say a few words, which will give me more time to prepare my remarks.

[*English*]

Hon. Joseph A. Day: I believe this is an important item for consideration, and therefore I ask honourable senators to consider the matter seriously.

The Hon. the Speaker: Are you wishing to adjourn for further time?

Senator Day: I would, honourable senators, like to do so, with the permission of my colleague, who has already adjourned the matter. With that permission, I would be pleased to do so.

The Hon. the Speaker: It is everyone's permission you are seeking. Did you want to speak to it, Senator Cools?

• (1820)

Hon. Anne C. Cools: I would have to take the adjournment, just in case.

The Hon. the Speaker: Senator Day will adjourn the debate.

Senator Cools: Perfect.

On motion of Senator Day, debate adjourned.

[*Translation*]

ACADIAN YEAR, 2004

MOTION REQUESTING GOVERNMENT RECOGNITION—DEBATE ADJOURNED

Hon. Rose-Marie Losier-Cool, pursuant to notice of June 19, 2003, moved:

> That the Senate of Canada recommends that the Government of Canada recognize the year 2004 as the Acadian Year.

She said: Honourable senators, I promise you that my remarks will be brief. On June 19, 2003, I gave notice of motion that the Senate of Canada recommend that the Government of Canada recognize 2004 as the Acadian Year.

[*English*]

I thank my New Brunswick colleague, Senator Robertson, who is not here right now, for her Senator's Statement on September 17, in which she was in agreement with this request.

[*Translation*]

The Government of Canada's recognition of 2004 as the Year of Acadia is extremely important to Acadians.

In 2004, many festivals will mark the four hundredth anniversary of the founding of the first permanent European settlement in North America at Port-Royal, in what is now Nova Scotia.

The expedition led by Pierre du Gua de Monts left the French port of Havre-de-Grâce in March 1604 for Acadia. Among the approximately 120 souls on board were Samuel de Champlain, Jean de Biencourt, François Dupont-Gravé and Louis Hébert.

In May 1604, a few weeks after leaving Le Hâvre, the flotilla of the Sieur de Monts arrived in La Hève, on Nova Scotia's Atlantic seaboard. The crew had crossed French Bay, known today as the Bay of Fundy, in search of mines and a good place to establish a settlement or trading post. While travelling up the St. Croix River, which now separates the State of Maine and New Brunswick, they discovered a small island.

Honourable senators, this gives you a brief historical overview of the early days of French settlement in North America. You will agree that after centuries of challenges and success, the Acadian people have reason to celebrate their ancestors' achievements.

Nova Scotia's Acadian community is organizing its largest celebration since its foundation; the Congrès Mondial Acadien will be the most important gathering of Acadia's 400th anniversary. On September 6, the national historical site of Grand-Pré will inaugurate its new interpretation centre. I am told it is a real gem. The *Grou Tyme* is preparing a major Acadian event for the Tall Ships 2004. Hundreds of youth will participate in the Festival Jeunesse de l'Acadie. This is a mere sample of what Nova Scotia is preparing.

In Newfoundland and Labrador, preparations are well under way. There will be construction of traditional Basque chaloupes and of bread ovens in various sites where the French fishermen worked, in addition to photo exhibits. Meanwhile, the Mi'kmaq and the people of Miquelon are planning the re-enactment, in July 2004, of the traditional canoe voyage to Miquelon made by the Mi'kmaq.

Prince Edward Island's Acadian community is pleased to be celebrating 400 years of history in the regions of West Prince, Évangéline, Summerside, Rustico, Charlottetown and the eastern part of the Island. The 2004 celebrations will be marked with festivals, family reunions, historical re-enactments, spectacular performances, and many other events. The Assemblée parlementaire de la Francophonie will hold its annual meeting in Charlottetown in 2004. More than 100 parliamentarians from all over the international Francophonie will be meeting in Acadia, where they will discover a vibrant segment of the Canadian and Acadian Francophonie.

In New Brunswick, 400 years of Acadian presence in North America will be celebrated in 2004, 400 years of successful community life. St. Croix Island is the site of the founding of the first permanent French settlement in America. There will be a spectacular celebration of that event on June 26, 2004. Throughout the entire year, a wide variety of activities will take place, all around the theme of sharing Acadian history.

Honourable senators, I invite you to join with the Acadian people, who want to show all Canadians how significantly their dynamism has contributed to the vitality of Canada and French life in North America. In this special context, the Acadian people believe that such a declaration by the Government of Canada would contribute to making the four hundredth anniversary of Acadia a more official event and recognize a significant date in the history of our country.

Thus, I ask the Senate to support this motion and ask the Government of Canada to recognize 2004 as the Acadian Year.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I wholeheartedly support Senator Losier-Cool's motion.

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

• (1830)

[*English*]

UNITED STATES BALLISTIC MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THE GOVERNMENT NOT TO PARTICIPATE—DEBATE ADJOURNED

Hon. Douglas Roche, pursuant to notice of September 17, 2003, moved:

> That the Senate of Canada recommend that the Government of Canada refuse to participate in the U.S.-sponsored Ballistic Missile Defence (BMD) system, because:
>
> 1. It will undermine Canada's longstanding policy on the non-weaponization of space by giving implicit, if not explicit, support to U.S. policies to develop and deploy weapons in space;
>
> 2. It will further integrate Canadian and American military forces and policy without meaningful Canadian input into the substance of those policies;
>
> 3. It will make the world, including Canada, not more secure but less secure.

He said: Honourable senators, first, I should like to thank the Honourable Senators Robichaud and Kinsella for facilitating the possibility of making this speech tonight.

I want to advance three principal reasons why Canada should not participate in the U.S.-planned missile defence system.

First, ballistic missile defence, or BMD, will lead to weapons in space. Proponents of Canadian participation in BMD maintain that we will only be joining a ground-based interceptor system and that Canada will still hold to its longstanding policy opposing weapons in space. This is wrong.

The Missile Defense Agency has been very clear that the missile defence system will evolve over time. The system is to involve a layered defence, capable of intercepting missiles in boost phase shortly after launch, in mid-course in space, and in terminal phase as they near the target.

As a recent study by the American Physical Society pointed out, a terrestrial-based missile defence system will be incapable of intercepting missiles in boost phase launched from states such as North Korea and Iran, which will have at best a limited capacity to target the United States over the next several years. To account for this deficiency, the U.S. will have to deploy weapons in space.

It should not come as a surprise, then, that the Missile Defense Agency until recently planned to begin development of a space-based test bed in 2004, for deployment in 2008, in order to test space-based weapons. A recent announcement that the space-based laser development is being suspended must be taken in the context of the evolutionary nature of the system. The reason for the suspension is not one of principle, but of technology. As soon as the Missile Defense Agency can make a case for the feasibility of such development, funding approval from the Bush administration will not be far behind.

The administration's determination to be the first to weaponize space is also evident in numerous other initiatives sponsored by the Pentagon. In pursuit of the capability to strike any target on earth within minutes, the Pentagon intends not only to dominate near-earth space orbits, but also to maintain the capacity to deny

their use to others. In place of a space-based laser, the army is currently seeking funding from Congress to develop terrestrial-based anti-satellite lasers. Clearly, the U.S. Department of Defense intends to prosecute future wars using weapons that are situated in, or directed at, outer space.

Ballistic missile defence is an integral part of this wider policy of placing weapons in space. The Canadian Nobel laureate Dr. John Polanyi has called BMD a conveyor belt to the weaponization of space. Canada cannot cut BMD up into little pieces and pick and choose in which it will be involved. The system is an integrated one, and has to be in order to function effectively.

Canada's traditional stand against weapons in space is rooted in our commercial and security interests. The Canadian economy is increasingly reliant on satellites for everything from communications and weather to surveillance and navigation. Placing weapons in space will put these important commercial assets at risk of becoming the collateral damage of a war in space.

At a time when the Canadian Department of National Defence is considering a draft Space Strategy 2020, which suggests Canada seek anti-satellite capabilities that stop just short of placing weapons in space, it is important for the Government of Canada to reaffirm Canada's policy. The government needs to recognize that BMD is not just an extended defence system but is one that will lead to weapons in space. As the system develops, it will be impossible to separate out, in any meaningful way, ground- and space-based elements. It will be one package leading to U.S. space-based dominance. Canadian participation in missile defence, no matter how modest, will constitute an endorsement of U.S. intentions to weaponize space, ending Canada's policy opposing weapons in space. That is the stark fact the government must face.

Second, honourable senators, it is a delusion to think that Canada can determine the direction of BMD. Some have argued that Canada should push for command and control of BMD to be put under NORAD, a binational command in which we have a significant role. This would enhance Canadian sovereignty, they say, because it would give us a "seat at the table" when decisions are made concerning the development and use of the system.

This idea is a fanciful and dangerous delusion. A brief survey of U.S. foreign and defence policy-making under the Bush administration shows a determination to proceed with policies irrespective of the positions of the U.S. allies, or the international community at large, even when such policies are in clear violation of international law. U.S. defence policy-makers clearly reject the idea that U.S. actions should be constrained by the system of collective security institutionalized in the United Nations.

In Iraq, the U.S. failed to obtain UN Security Council approval for its actions, as required under the UN charter. The reason is clear: Iraq did not pose an imminent threat to international security, nor even to the U.S. itself. Instead of respecting the authority of the UN, the U.S. disregarded opposition in the Security Council and attacked nevertheless.

Recently, the Bush administration has come back to the UN seeking a resolution that will endorse the American occupation and hasten military and financial contributions from hesitant U.S. allies. Yet even now, faced with the enormous costs of proceeding unilaterally, the U.S. is reluctant to cede significant authority to the UN.

The U.S. is taking a similarly unilateral approach to nuclear disarmament in insisting that other states abide by the non-proliferation treaty by abstaining from acquiring or proliferating nuclear weapons, while the U.S. violates its own obligation, which it had reaffirmed as recently as 2000, to negotiate the destruction of its nuclear stockpiles. Instead, the Pentagon is opting to develop new nuclear weapons and to advance strategies for using nuclear weapons in war fighting. From these examples, it is clear that, when the Bush administration calls for international cooperation, what it really means is subjugation — the subjugation of the interests of other states to the will of the United States.

So, when the Pentagon invites Canada to participate in BMD, we should not be under any illusion about our role in the system. Regardless of where command and control of BMD is located, whether in the binational NORAD program or in the U.S. commands of NORTHCOM or STRATCOM, it is U.S. policy that will determine how the system is developed and deployed. If Canadians in NORAD object to the weaponization of space, or to other aspects of BMD policy, the U.S. will simply move that section of BMD to a command under its exclusive jurisdiction.

The U.S. has clearly shown that when it comes to what it considers its national security interests, it will not be constrained by the opinions of its friends and allies nor, even as it showed in Iraq, by the dictates of international law. It is an outright fantasy to believe that the Bush administration will defer to Canadian concerns regarding its flagship national security policy of BMD. Instead, Canadian participation in BMD will inevitably embrace and endorse the American policy agenda for missile defence, with no prospect for meaningful input into that agenda.

Third, honourable senators, BMD means less security for Canada. The system to be deployed in 2004 is, according to the Pentagon, aimed at protecting against an accidental missile firing by a nuclear weapons state, or an intentional missile launch by a so-called rogue state with only a limited number of missiles. If, as the American Physical Society claims, that system will be ineffective against even such a limited attack, then it will have to be supplemented with further developments, including the deployment of weapons in space, to function as planned.

Since the BMD system will never be 100 per cent effective, it will depend on a functioning arms control regime to limit the capacity of potential aggressors to overwhelm the system. In fact, it will depend on the arms control regime, while at the same time undermining the very foundations of that regime — the principle that nations agree to mutual disarmament in order to create a more peaceful environment for all.

It is understandably difficult to convince such states as North Korea to end their nuclear programs for good, while the U.S. is ready, willing and able to attack any nation, not in self-defence as provided for under Article 51 of the UN Charter, but whenever it deems a regime change to be sufficiently in its national interest.

BMD is an integral part of the U.S. defence policy, which includes the doctrine of pre-emption set out in the national security strategy and the development and use of nuclear weapons in warfare proposed by the Nuclear Posture Review. The missile defence system is intended to protect the U.S. homeland, but it will also shield U.S. forces deployed overseas. This is not merely a defensive system, but one that will actively contribute to U.S. offensive operations, including pre-emptive invasions such as the recent U.S. actions in Iraq.

• (1840)

Instead of trying to shoot down missiles before they land with a limited rate of success, it would be more appropriate and effective to work to ensure that missiles are never launched in the first place. The only way to achieve this is through international cooperation, a longstanding focus of Canadian foreign policy. To succeed, cooperation requires parties on all sides to negotiate in genuine good faith, instead of proceeding unilaterally with programs that threaten and further antagonize potential adversaries.

Honourable senators, it is abundantly clear that the U.S. administration is rushing to deploy the opening phases of a missile defence system by the fall of 2004 in order to make a political statement to the American people prior to the 2004 presidential election. The present U.S. aggressiveness on missile defence is being driven by the White House, not by the scientific community. The military-industrial complex has virtual control of the present administration. This may well change when the American people, so traumatized by the terrorist attacks of September 11, 2001, eventually recover their balance. Meanwhile, the reckless policies of the Bush administration are threatening the system of collective security painstakingly constructed over the last six decades.

I applaud the stand taken by Prime Minister Chrétien against the U.S.-led war on Iraq, which contravened the will and authority of the UN Security Council. However, our decision on BMD should not be a casualty of our willingness to stand up to the United States over Iraq. In respect of Iraq, we made our decision based on the values and interests of Canada and, as a result, have upheld our reputation as a good international citizen. In the discussions currently underway with the Americans on missile defence, we need to focus once again on the real values and interests of Canada: the maintenance of international security, the effective functioning of arms control regimes and the maintenance of a weapons-free space environment.

This is what a host of NGOs in Canada, including such important groups as the Liu Institute, Project Ploughshares and the Group of 78, are now urging the government to pursue.

Honourable senators, Canada must not compromise its values by joining this imprudent U.S. military plan that scientists say will not work; that analysts say is destabilizing; and that ethicists say is distracting the world from investing in true human security. This is a critical moment for Canada to stand up for its values instead of abandoning them in deference to misguided and, perhaps, transitional American pursuits. Saying no to missile defence will strengthen Canada's ability to continue to push for a world ruled by international law, upheld through international cooperation.

On motion of Senator LaPierre, debate adjourned.

The Senate adjourned until tomorrow, Thursday, September 25, 2003, at 1:30 p.m.

CONTENTS

Wednesday, September 24, 2003

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