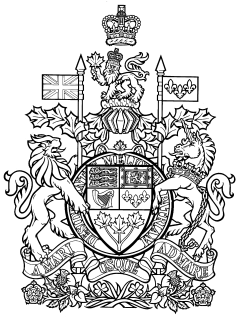

CANADA

Debates of the Senate

2nd SESSION • 37th PARLIAMENT • VOLUME 140 • NUMBER 89

OFFICIAL REPORT
(HANSARD)

Monday, October 27, 2003

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Monday, October 27, 2003

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

Prayers.

SENATORS' STATEMENTS

THE ENVIRONMENT

GLOBAL WARMING EFFECTS ON ARCTIC ANIMALS

Hon. Laurier L. LaPierre: Honourable senators, I would like to read a message from a young friend of mine. Skye Wilson, who is 10 years old, made a statement to her class about the effects of global warming on arctic animals, and I thought it was a good lesson for all of us. After explaining what global warming was all about, she went on to say the following:

> The Arctic is very snowy, but not all people know that it is mostly sea and ice. The animals depend on this sea and ice for their food in one form or another. But the circle of life is changing.
>
> Birds that generally migrate south use the Arctic for summer breeding. However, since the summers have grown longer, the birds do not know when to leave. When they finally do leave, the temperature in other parts of the world is already freezing, killing off many birds.
>
> Fishermen have cut into salmon and have found numerous strange insects inside. Some hunters are finding willow trees growing where no tree has ever grown. The whales appear sick and undernourished. The meat from the gray whales, according to the native people smells bad (like medicine) and even the sled dogs won't eat it. In recent years, seabirds have washed up dead by the thousands and deformed seal pups have become a common sight. The walrus is becoming scarce as well as the tundra rabbits.
>
> The polar bears and seals are dependent on sea-ice for foraging, resting and reproduction. The ice is used as birthing dens for seals and for bears...
>
> Because of global warming, the freeze-up is coming later and the bears are left on shore for longer periods. Scientists estimate that for every week of delay, the polar bear loses about 10 kgs. of critical fat reserves. Pregnant females are losing so much weight that they cannot produce milk for their cubs. There is already a 15 per cent reduction in births...
>
> Our arctic animals are trying to warn us that their doom will be our downfall. We need to see that they are real, for even though most of us have never seen a polar bear, they are part of each and every one of us.
>
> The elders in the north, who keep thousands of years of history and legends without ever writing it down, have long told the native children this story: If the ice that freezes thick over the sea each winter breaks up before summer, the entire village could perish. The children always laughed — till now.

[*Translation*]

OFFICIAL LANGUAGES

TRIP OF COMMITTEE TO THE WEST

Hon. Rose-Marie Losier-Cool: Honourable senators, it is with great pride that I tell this house today of the warm welcome the members of the Standing Senate Committee on Official Languages received last week from the people of Manitoba, Saskatchewan, Alberta and British Columbia.

Over a four-day period, our committee met with representatives of the francophone communities in these four provinces, as part of our study of French-language education in minority communities. This was the first time these representatives had appeared before a federal parliamentary committee on official languages, and we could see how deeply they were touched by our visit.

[*English*]

These francophone minority communities have told us about their projects, their frustrations, their achievements and their needs for providing French-language education to their people, from daycare to post-secondary education. Among many other things, we learned that Saskatchewan is the western province where it is hardest to provide a French-language education, and where the francophone communities are most at risk of assimilation.

[*Translation*]

The quality of the presentations by these francophone communities, the pertinence of what they had to tell us, the frankness of their replies to our questions, and the sincerity of their thanks, all provided us with proof of the important role Senate committees can play in the regions.

Our work is not done. The committee will continue its study in central and eastern Canada, later this year and in the spring of next year. We expect to report to the Senate by May of 2004.

I am proud to chair the Standing Senate Committee on Official Languages, and I am honoured by the inestimable co-operation of my colleagues on the committee. I thank the Senate for this opportunity to promote our institution in the regions, while at the same time helping the communities we serve. I wish our committee many other such successes, and a long life.

• (1410)

ROUTINE PROCEEDINGS

CLERK OF THE SENATE

2003 ANNUAL ACCOUNTS TABLED

The Hon. the Speaker *pro tempore***:** Honourable senators, I have the honour to lay before the Senate, pursuant to rule 133, the document entitled "Statement of Receipts and Disbursements for the Year Ended March 31, 2003."

INTER-PARLIAMENTARY UNION

ONE-HUNDRED SEVENTH CONFERENCE, MARCH 16-23, 2002—REPORT TABLED

Hon. Joan Fraser: Honourable senators, I have the honour to present the report of the Inter-Parliamentary Union, following its one hundred seventh conference, held in Marrakech, Morocco, from March 16 to March 23, 2002.

[*English*]

OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on Official Languages have power to sit at 5 p.m. today, after the standing vote, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I would again make the following comment. Of course, I shall vote in favour of the motion put forward by the honourable senator. Nevertheless, I would like to point out that several other honourable senators have told me they intend to object to this motion. If they do so, I shall certainly join with them.

The *Rules of the Senate* do not allow committees to sit while the Senate is sitting. Unless it obeys the Rules, the Senate may find itself with insufficient numbers to deal with important bills. If plenary sessions of the Senate are not important, I wish to be informed. We need to know how many honourable senators wish to sit. Certainly, the honourable senator is doing an excellent job. Still, I find this practice a very bad one. If the rules displease us, let us ask to amend them. Then we could abide by them.

Hon. Eymard G. Corbin: Honourable senators, I believe there is good reason to make an exception in this case. When the Standing Senate Committee on Official Languages was established, it was agreed that it could hold its sittings and meetings on days when the Senate does not normally sit. We cannot hold the Committee on Official Languages responsible for the fact that the Senate decided, at 11 p.m. last Thursday, that it would sit today, a normal day of sitting for the Official Languages Committee. It is important to see the distinction.

[*English*]

Hon. Terry Stratton: Honourable senators, what is the regular meeting time for this committee?

Senator Losier-Cool: We usually meet at 4 p.m. on Monday afternoon. Today, we decided to move the starting time to after the standing vote as we have witnesses to hear.

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

Hon. Senators: Agreed.

Motion agreed to.

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY FIREARMS ACT

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

> That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on regulations made pursuant to An Act respecting firearms and other weapons, Statutes of Canada 1995, Chapter 39, as contemplated by section 118(3) of that Act;
>
> That the Committee submit its final report no latter than December 31, 2003.

NATIONAL SECURITY AND DEFENCE

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

Hon. Colin Kenny: Honourable senators, I give notice that on Tuesday next, October 28, 2003, I will move:

> That the Standing Senate Committee on National Security and Defence have power to sit at any time on Monday next, November 3, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[*Translation*]

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY ORDER OF REFERENCE THAT OTTAWA BE DECLARED BILINGUAL

Senator Jean-Robert Gauthier: Honourable senators, I give notice that on Wednesday, October 28, 2003, I will move:

> That the Senate Standing Committee on Legal and Constitutional Affairs be authorized to examine, for the purposes of reporting by February 14, 2004, the Order of Reference to the effect that Ottawa, the capital of Canada, be declared bilingual under section 16 of the *Constitution Act, 1867, et seq*, as declared by the 12,000 signatories to the petition tabled in this Chamber.

VISITORS IN THE GALLERY

The Hon. the Speaker *pro tempore***:** Honourable senators, I wish to draw to your attention the presence in the gallery of His Excellency João Bosco Soares Mota Amaral, Speaker of the Assembly of the Portuguese Republic. He is accompanied by Ms. Maria Ofélia Moleiro, Social Democrat Party; Mr. Carlos Luis, Socialist Party; Professor Narana Coissorò; and by His Excellency José Pacheco Luiz Gomes, Ambassador of Portugal. On behalf of all the honourable senators, I welcome you to the Senate of Canada.

[*English*]

QUESTION PERIOD

HEALTH

GREY MARKET PHARMACEUTICAL SALES— EFFECT ON DRUG PRICES

Hon. Brenda M. Robertson: Honourable senators, a report released last week cautions that the grey market sale of pharmaceuticals to the United States from Canada may result in higher drug costs to our country. Marcel Cote, the economist quoted in the report, says that drug companies may seek to make Canadian prices for prescription drugs more similar to American prices due to the rising number of Americans who are buying Canadian drugs.

While a pharmaceutical company, Merck Frosst, sponsored this particular report, similar warnings have been made by other organizations recently. For example, the Canadian Pharmacists Association has already stated that providing drugs to American buyers, as well as Canadians, may put our system under great strain and may even lead to drug and pharmacist shortages.

Could the Leader of the Government in the Senate tell us whether the federal government shares these concerns and, if so, how does the government plan to ensure that pharmaceutical companies do not raise costs here in an attempt to slow down the sale of prescription drugs to the United States?

• (1420)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I shall begin with the second part of that question. Canada does not impose price controls on pharmaceutical products but, like almost all industrialized nations, Canada regulates the prices of pharmaceutical products. In 2002, prices of patent medicines in the Canadian market were completely in line with the median prices in seven other industrialized nations. In 2002, patent holders in the pharmaceutical sector invested $1.8 billion in research and development in Canada.

As to the first part of the honourable senator's question, as she knows, the specific licensing and regulation of pharmacies is a provincial matter, not a federal matter.

Senator Robertson: Honourable senators, is the government concerned about the expected rise in costs, as we export our pharmaceutical supplies to the United States? I already had all the other information the Leader of the Government gave me. I am well aware of the other issues. However, the costs could easily match American costs if this continues, and that is the big concern. I should like the government leader to address that particular point.

Senator Carstairs: We are confident at this stage, honourable senators, that the regulating we do with respect to the price of pharmaceutical products — which regulating is ongoing — is sufficient to prevent any undue cost increase in this country.

APPROVAL PROCESS FOR NEW DRUGS

Hon. Brenda M. Robertson: I wish I were more comforted by the minister's remarks.

Honourable senators, the report also claimed that Canada's approval process for new drugs must be faster in order that it fall in line with the comparable European and American systems. This concern has existed for some time.

Our process for approving new drugs is so much slower than the European and American systems that it is frustrating for those people who are anxiously awaiting new drugs.

Could the Leader of the Government in the Senate tell us whether Health Canada is looking at the problem of slowness of approval?

Hon. Sharon Carstairs (Leader of the Government): As honourable senators know, Canada has a very rigorous review system and one of the best safety records in the world. Having said that, a great deal of criticism has been made that our approval process is not quick enough, particularly with respect to new drugs and drugs that may prevent loss of life.

The government is taking steps, in cooperation with the provinces, to see whether we cannot, while maintaining the same rigorous safety standard, speed up the approval process.

INVESTIGATION INTO PAYMENTS
TO KAGF CONSULTING

Hon. Marjory LeBreton: Honourable senators, in 1996, Health Canada was alerted to questionable payments being made to KAGF Consulting, a company owned by Keith Fontaine, the brother of Perry Fontaine, Chairman of the Virginia Fontaine Addictions Foundation. This month, the RCMP laid charges against Perry Fontaine relating to fictitious contracts that were funnelled through KAGF Consulting.

Can the Leader of the Government in the Senate tell us why Health Canada did nothing to stop the abuse of Canadian taxpayers' dollars when questions were first raised seven years ago during an internal audit at Health Canada?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I understand that questions were raised. At that point, there was no indication of the need for a forensic audit, which has now been ordered and is being conducted. As well, as the honourable senator indicated, criminal charges have been laid.

Senator LeBreton: Honourable senators, would the Leader of the Government in the Senate be good enough to find out what procedure was followed by Health Canada and who made the decision not to pursue it as vigorously as they now have?

Senator Carstairs: I will try to obtain the information that the honourable senator has requested.

PRIVY COUNCIL OFFICE

REQUIREMENT BY MINISTERS
TO READ CODE OF CONDUCT

Hon. Terry Stratton: Honourable senators, could the Leader of the Government in the Senate, in her position as a minister of the Crown, advise us as to whether ministers are required to read the code of conduct prior to signing their compliance documents?

Hon. Sharon Carstairs (Leader of the Government): I can only tell the honourable senator that if ministers do not use that kind of prudence I am not sure that they could be held accountable under the process. Certainly, I was presented with a code of conduct, and I read it before I signed any document to that effect.

Senator Stratton: Assuming that Allan Rock read such a document prior to taking his family vacation at the Irving family's fishing lodge, he would have been aware of section 23(1) of the code, which states:

> A public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization.

Could the Leader of the Government in the Senate tell us whether the Prime Minister has inquired of his Minister of Industry as to whether he has read and understands the code of conduct and, in particular, this section?

Senator Carstairs: The honourable minister has now reported all of this to the ethics counsellor and has opened himself to full investigation by the ethics counsellor.

INDUSTRY

MINISTER'S DECLARATIONS
ACCORDING TO CODE OF CONDUCT

Hon. Terry Stratton: Section 22 of the code of conduct states that ministers and other public office-holders are required to notify the ethics counsellor and make a public declaration about gifts received over the value of $200.

The Minister of Industry has made five such declarations, yet the free vacation to the Irving family's fishing lodge was not declared. Why not? When will the declaration be made?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, my understanding is that those declarations must be signed when such gifts are in line with the duties of the honourable minister. In this case, Mr. Rock has indicated that he did not think the vacation to the fishing lodge was in line with his portfolio responsibilities. Nevertheless, Mr. Rock has now submitted this file to the ethics commissioner for his investigation.

PARLIAMENT OF CANADA ACT

EFFICACY OF CODE OF CONDUCT

Hon. Terry Stratton: Honourable senators, this begs a question — and the debate should be an interesting one. If we pass Bill C-34, we will have a code of conduct. What is the point of having a code of conduct for parliamentarians, if they ignore the damn thing? Excuse my language.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, one would hope a code of conduct would not be ignored. It is hoped that the rules of the Senate that would come about were Bill C-34 to be passed would make it clear that the code could not be ignored.

Senator Stratton: Honourable senators, my apologies for swearing. I do not usually do that.

My apologies to you, sir. I will not do that again, if I can avoid it.

Senator Robichaud: Do you promise?

Senator Stratton: If I can avoid it.

Senator Robichaud: It is conditional.

Senator Stratton: How can we assure this chamber and the public that, should we pass Bill C-34 and bring in a code of conduct, someone will not do something like this? What is the point?

If the bill were to pass, then, after putting in all this effort, if a minister or individuals chose to ignore the code, all our work would be for naught and the public would be more cynical than ever. How can you tell me that Bill C-34 and a code of conduct, instituted in this chamber, will have an effect on the behaviour of individuals like this?

Senator Carstairs: Honourable senators, I think we are debating a bill rather than conducting Question Period. However, if we have a set of rules, the vast majority, if not all, will obey them. If we have an ethics counsellor or commissioner, that person will be able to report to us on grievous violations.

• (1430)

THE ENVIRONMENT

NEW BRUNSWICK—PROPOSED TOXIC WASTE INCINERATOR AT BELLEDUNE

Hon. Eymard G. Corbin: Honourable senators, for months now, concerned citizens of the Gaspé Peninsula and Northern New Brunswick have been forcefully expressing their concerns about the implantation of a toxic waste incinerator at Belledune, New Brunswick. Most of the toxic waste will originate from the United States of America.

I was rather astonished and surprised that, in answer to queries in the other place, the federal Minister of the Environment claimed non-jurisdiction over the whole matter, putting all the onus on the Province of New Brunswick, which did not, in the first place, undertake an environmental study with respect to this project. I repeat: For months, citizens have raised grave concerns.

I cannot imagine that a plant of that nature would not, in the long term, emit substances detrimental to human life or marine life in the Bay of Chaleur, for example. I am also concerned that the residue of the toxic waste could be mixed with other waste from a local pulp and paper company to be used as a fertilizer. One must ask this question: A fertilizer to fertilize what, the food we eat?

Initially, one does not necessarily need proof that there will be toxic emanations from a project of that order, but everything should be put in place to ascertain that the products of incineration will, in no way, shape or form, regardless of jurisdiction, eventually affect human or animal life on land, in the air or in the water.

Is the government — especially Minister Anderson and Minister Thibault — prepared to reconsider their position on this dossier?

Hon. Sharon Carstairs (Leader of the Government): The project is entirely within the borders of New Brunswick and is therefore subject to the environmental laws of that province. That province has not yet completed its process with respect to public consultation. However, the renewed Canadian Environmental Assessment Act does allow the federal government to review a very narrow area; that is, the potential transborder environmental impact. That is the only thing they have the power to review on this particular project.

I am pleased to tell the honourable senator that the agency will conduct an investigation, on a priority basis, to determine whether it would be appropriate to refer the project to a mediator or review panel with respect to its potential transboundary environmental effects.

Senator Corbin: I hope the minister realizes that Belledune is, for all practical purposes, on the shores of the Bay of Chaleur, and the waters of the Bay of Chaleur are federal waters. That would seem to me sufficient reason for the Minister of Fisheries to raise his hackles.

Senator Carstairs: I will raise that point with the Minister of Fisheries, but I shall repeat that the project is actually being built in New Brunswick. Environment, as the honourable senator knows, is a shared jurisdiction. When an environmental project is totally located within the boundaries of a province, there is little the federal government can do, with the exception in this case of raising the transboundary issue.

FOREIGN AFFAIRS

ZIMBABWE—TARGETED SANCTIONS AGAINST GOVERNMENT OF PRESIDENT MUGABE

Hon. A. Raynell Andreychuk: Honourable senators, the situation in Zimbabwe has not improved or disappeared, despite the lack of media coverage for the extreme human rights violations of Robert Mugabe's government. Zimbabweans are starving. It is estimated that 5.5 million Zimbabweans will require emergency food aid by early next year. That is almost half of the Zimbabwean population. People are dying, and not just from starvation. The government-sponsored youth militia are mass-producing child soldiers who violently carry out the agenda of the ruling Zimbabwe African National Union Patriotic Front. Members of the opposition party, the Movement for Democratic Change, are constantly in danger. Their lives are being threatened. They are arrested without justifiable evidence. They have been violently attacked and they are in danger day by day.

Honourable senators, the circumstances will not improve in Zimbabwe unless other countries mount pressure on the Mugabe regime. Canada needs to join other world leaders and fellow Commonwealth members in imposing targeted sanctions on the Mugabe regime. The United States, Australia, New Zealand and the European Union have all moved forward in imposing such targeted sanctions.

How will Prime Minister Chrétien respond at the Commonwealth heads of government meeting when the issues of Zimbabwe are addressed? Will he stand up and join with the United States, Australia, New Zealand and the European Union and impose targeted sanctions against President Mugabe's government, as I believe Canadians wish him to do, or will the Prime Minister remain silent on this critical issue of human rights violation?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can assure the honourable senator that Canada is continuing to build a consensus among the Commonwealth nations on measures that would encourage real and lasting change in the country of Zimbabwe.

Senator Andreychuk: Honourable senators, Canada needs to be assertive in this area. Australia and New Zealand have said they would boycott the Commonwealth heads of government meeting should Mr. Mugabe be invited. That seemed to be the direction in which some African leaders were tending to go, and it was only when the voices of New Zealand and Australia so forcefully put the issue to the Commonwealth that, surprisingly, Mr. Mugabe is not being invited. This is an opportunity for Canada to explore targeted sanctions, as we did during the time of apartheid, and to explore the support we can gain from South Africa, Nigeria and those closest to the Mugabe regime to ensure that they follow this consensus that seems to be growing in the Commonwealth.

Senator Carstairs: I thank the honourable senator for her intervention with respect to the concept of targeted sanctions. I will take her comments to the government in order to indicate that she supports targeted sanctions and that they have been supported by other Commonwealth countries.

In terms of the decision for Canada not to attend the Commonwealth meeting if Mr. Mugabe were to be in attendance, it is fair to say that the meeting would not be held if that becomes the wish of a great many of the states, but they have backed off. The Commonwealth meeting will take place. I anticipate that discussions to be held at that Commonwealth meeting might very well take place between the Prime Minister and the President of South Africa when he makes a state visit to Canada next week.

• (1440)

Senator Andreychuk: Honourable senators, I have a comment and a further supplementary question. The fact that some heads of government so strongly pointed out that they would not attend if Mr. Mugabe were to receive an invitation may have swayed others who were tending to protect Mr. Mugabe. I think those individuals should be commended for taking this kind of action, and I hope that Canada would have followed through if there had not been that positive response from the collective of the Commonwealth.

My supplementary question is this: We have a lot of contact with Zimbabwe, and in the past we have had a good relationship with that country. This gives us an opportunity to understand what is currently going on in Zimbabwe. As individual parliamentarians, we have supported Amnesty International by partnering with opposition members, and we have supported journalists, and this is all commendable. Is the government considering the initiative taken by Dr. Keith Martin and Professor Irwin Cotler to investigate ways and means of indicting Mr. Mugabe for what are tantamount to violations of not only the International Criminal Court definitions but other United Nations resolutions and treaties?

Senator Carstairs: Honourable senators, it would be inappropriate for me to confirm or deny the existence of any investigation on any individual. However, I assure the honourable senator that Canada is continuing to build consensus in the Commonwealth on measures that would encourage real and lasting change in Zimbabwe.

Senator Andreychuk: I know I did not give notice of this question to the leader, so I did not expect an answer, but I would request a written response on whether the government is following up on the initiative of Dr. Martin and Professor Cotler.

Senator Carstairs: As the honourable senator knows, these two individuals have made a request that Minister Cauchon seek an indictment. Such an indictment would be somewhat difficult to obtain, but that does not mean that attempting it should not be thoroughly investigated, and I can assure the honourable senator that that is being done.

[*Translation*]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, Bills, I would like to call Item No. 3, Bill C-41, last, after Item No. 9.

MODERNIZATION OF PUBLIC SERVICE BILL

THIRD READING—MOTION IN AMENDMENT—
VOTE DEFERRED

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, An Act 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.

Hon. Jean-Robert Gauthier: Honourable senators, since I was elected to represent the riding of Ottawa-Vanier in 1972, I have paid particular attention to the federal Public Service. I have been involved, I have listened, and I have tried to advance certain issues.

My predecessor, John Thomas Richard, had occupied the position for 27 years when I replaced him. He told me there were two things I needed to do. The first was to listen to my constituents as it was important that I know they had problems; and the second was to stay informed about the Public Service, since the majority of the people I represented were members of the Public Service of Canada. This I have done for the 30 years I have been in the House of Commons and in the Senate.

We have a top-notch public service, one whose good reputation makes it a model for many other countries. As a parliamentarian, I have attached a great deal of importance to government accountability. I chaired the House Committee on Public Accounts, and the estimates committee in general. I was actively involved in receiving reports on management. Departments must motivate and advise their employees to ensure that they fulfill their responsibilities with economy, efficiency and effectiveness.

The executive is accountable to Parliament, while public servants are accountable to the executive for the performance of their functions.

Over the past 30 years, we have had a fair number of studies and commissions: the Royal Commission on Financial Management and Accountability; the Lambert Report in 1979; the Report of the Special Committee on the Review of Personnel Management and the Merit Principle; the Davignon Report. Add to that the Finkelman Report in 1974 on employer-employee relations in the Public Service of Canada and many others.

I participated in almost all of these studies. I wish to commend the government. Things are not moving fast, but they are coming along. Let there be no mistake: a great deal of thought and work went into Bill C-25. Both officials and politicians had to come up with a solution that would bring about a change by making things better, making public servants more accountable and more responsible, and that is what Bill C-25 does.

Minister Robillard is a courageous and determined woman. This is a balanced bill. It will have an impact on the public service as a whole. I am one who believes that the public service will be more efficient and effective if this bill is passed. I wish to congratulate all the public servants at all levels who participated in the development of Bill C-25.

Bill C-25 is an omnibus bill in the sense that it covers all the legislation governing the Public Service of Canada. It contains serious, well-thought-out proposals concerning labour relations in the Public Service of Canada.

It is all there. The table of contents gives useful information about the new Public Service Labour Relations Act. Part 2 deals with grievances. Part 3 deals with the Public Service Employment Act and makes significant changes to the role of the Public Service Commission. The Commission will have sole authority over appointments. Naturally, it will be able to delegate powers to the deputy minister and, through him or her, to public servants. But they will be accountable to Parliament. That is the role a parliamentarian is expected to play: gather information, make inquiries, keep constituents informed. That is what I tried to do and what Bill C-25 is proposing to do. I find that important.

The Public Service Commission will be solely responsible for all appointments. Appointments will be made on the basis of merit, which was not set out in the legislation until now.

• (1450)

This is the first time in Canadian legislation that there has been a satisfactory definition of the famous merit principle. Clause 30 of Bill C-25 provides a very clear definition. Naturally, the complexity and scope of the federal government require the careful attention of parliamentarians. We must oversee the management of the human and financial resources entrusted to us. That is what Bill C-25 proposes.

Honourable senators, you will not be surprised that, in the few minutes at my disposal, I will talk about something that is dear to my heart: official languages and the way they are incorporated into Bill C-25. I had two concerns, which I did not hesitate to raise in committee and here in this chamber.

In Bill C-25, there is no indication of who would be responsible for language training for public servants. To date, this has been the responsibility of the Public Service Commission. However, Bill C-25 takes this responsibility away from it. I tried to clarify this issue in committee, but to no avail. I was told that the Prime Minister would decide and that Bill C-25 was flexible enough to deal with this. I therefore wrote a letter to the Prime Minister on September 4, 2003. He responded on September 26, 2003. In his letter, the Prime Minister said that the new School of Public Service would be in charge of all training, including language training.

I will read you an excerpt from his letter:

> You are wondering who will ensure delivery of language training and development under the new regime. Since you sent your letter, the President of the Treasury Board, when she appeared before the Senate Committee on National Finance, announced that the new Canada School of Public Service would provide these services. As you mentioned in your letter, the mandate of the new school provided for in Bill C-25 is sufficiently broad to include language training without having to introduce an amendment to the bill.

His response is satisfactory and I am pleased to say so. The Prime Minister has given clear instructions about what is to happen. Bill C-25 would also create a public service staffing tribunal. This tribunal will be made up of six people who will hear grievances and complaints related to internal appointments. I emphasize the word "internal." The tribunal will also provide a mediation service and will oversee political activities. It will even be able to hear grievances or complaints related to human rights. Nowhere in Bill C-25 are the bilingual abilities of this tribunal mentioned. Nowhere in Bill C-25 is it stated that the chairs of the appeals and grievances committees must be bilingual. You are going to tell me that that is understood. I say that it is not.

My experience as a francophone in Ontario taught me a long time ago that if a commitment is not written down, clearly and precisely, all sorts of excuses can be used to ignore it. Bilingual capability is not enough to ensure services in both official languages today. That is what is done in Ontario. That is what was done in the past. And it is still being done today.

I will give you a classic example: the Divorce Act, which is federal legislation administered by the provinces. In some corners of the province of Ontario, it is impossible to sue for divorce in French. Yes, you may have the right to do so, but the court is not currently able to meet the language needs of francophones. They will tell you that the judges are not bilingual, but that you may bring in a bilingual judge; it will just take two or three or four months. But if you proceed in English, you will be able to begin the next week. Any federal court, as a representative of the interests of various groups of citizens, ought to have bilingual capability.

I had serious reservations about the linguistic capability of this tribunal. I raised them in committee. I proposed an amendment to ensure that the tribunal would have the linguistic capability to hear complaints and grievances in either of Canada's official languages.

The amendment I proposed would have ensured that the Governor in Council, who appoints the members of the tribunal, would make certain that, as a group, the members would be able to hear complaints. When an officer of Parliament speaks to us, we must listen. The Commissioner of Official Languages made recommendations on this issue. I listened to her and I proposed amendments regarding the responsibility of the tribunal to be able to serve all Canadians in both official languages. They were rejected.

The Commissioner of Official Languages consulted with other federal courts; there are several. She gained strong support from most of these in saying that, in the legislation, we must ensure that the linguistic capability of the court meets Canadian requirements.

I can understand how some of you might be reluctant to let us amend Bill C-25 at third reading. A sunset clause entails a review every five years. This will give us a chance to see how the legislation performed in reality.

I wrote the Prime Minister on September 4, asking him if the government and its senior officials intended to see to it that the Governor in Council ensures the linguistic capacity of the court. The Prime Minister made that commitment on behalf of the government in a letter dated September 26, 2003. I take the word of my Prime Minister and the serious commitment of his seniors officials. I will read two paragraphs of this letter dated September 26:

> Finally, you wonder how the Public Service Staffing Tribunal will ensure that public servants can use the official language of their choice in their complaints. The Official Languages Act, a quasi-constitutional piece of legislation, already provides, in section 16, that courts such as the Public Service Staffing Tribunal must be able to understand the proceedings they hear in either official language without the assistance of an interpreter. There is therefore no need to amend Bill C-25 to ensure that these services are provided.
>
> However, I wish to reassure you with respect to the responsibility of the Privy Council in its advice concerning appointments and the responsibility of the Governor in Council in appointing members of the Public Service Staffing Tribunal; they will have to ensure that collectively the members of the tribunal have a bilingual capability allowing them to serve both language groups well in the official language of their choice.

This is what the Prime Minister told me. That is exactly what I wanted to hear. I am once again putting my trust in him. I would like to ask for leave, if I may, honourable senators, to table before the Senate both of these important letters so that they can be put on the record and printed as an appendix to the *Debates of the Senate* of this day.

I am seeking leave to table in the house the two letters I have received from Prime Minister Jean Chrétien: one on language training and the other on the public service staffing tribunal.

(*For text of letters see today's* Debates of the Senate*, p. 2208*.)

Honourable senators, I do not know whether I have much time left, but this bill has required a lot of time from many of you. This bill has been debated seriously. Amendments have been made. I was actively involved in all of these and have given my opinion on them. In committee, we heard a number of witnesses at considerable length. The bill was also discussed here in the Senate for quite some time. Now the time has come for a vote.

• (1500)

Honourable senators, pursuant to rule 48(2), I move that the original question be now put.

[*English*]

The Hon. the Speaker: Honourable senators, Senator Gauthier has asked leave to table two letters addressed to him by the Prime Minister in respect of Bill C-25. Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Senator Lynch-Staunton wishes to speak to the latter comment of Senator Gauthier. But first, Senator Gauthier is moving the original question under the rules and it is a debatable motion.

Honourable senators, I will put the motion and then ask whether any senator wishes to have debate on the motion.

It is moved by the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser, that the previous question be now put.

Are there honourable senators who wish to speak on this motion?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I listened carefully to Senator Gauthier's impressive intervention, and I concur with him that the Standing Senate Committee on Official Languages canvassed the matter of official languages in great detail. Senator Gauthier mentioned that he did bring forward an amendment dealing with the issues of official languages.

I would argue that the previous question should not be adopted by the house because there are a couple of items that were seriously considered by the committee. One of those items is whistle-blowing, and I have advised the Deputy Leader of the Government in the Senate that tomorrow I will introduce my amendments in respect of that issue so that honourable senators may have debate in the house because it has captured a great deal of attention.

We are close to the end of our deliberations on Bill C-25, but I would urge honourable senators not to support the motion on the previous question but to give our committee the opportunity to complete our work, which completion is only a matter of days away.

The Hon. the Speaker: Are there other senators who wish to speak to Senator Gauthier's motion?

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I agree with what Senator Gauthier has said. We have debated this matter for some time, and it did merit a great deal of attention. The Honourable Senator Gauthier has raised several points to that effect and I agree.

The Honourable Deputy Leader of the Opposition has indicated his intention to speak to this bill, as he told me this morning that he would, by way of an amendment, particularly in connection with whistle-blowing, and how the bill could be improved.

Now I find myself in a rather delicate position. In my opinion, we ought to go ahead with this bill. We do, however, have before us a motion which, if I understand the *Rules of the Senate* correctly, would mean the bill would be struck from the Order Paper if defeated. Such is certainly not the intent of either the Honourable Senator Gauthier or the Honourable Senator Kinsella.

I would like to propose a helpful solution. Suppose that the Honourable Senator Gauthier agrees to withdraw his motion. We would have to get assurances from the honourable senators that we could address this issue this week, perhaps in the next two days, provided that my colleague across the way agrees. In my view, this is in fact an important point. The Honourable Senator Kinsella has always talked enthusiastically about this protection that should be offered to public servants.

Consequently, if Senator Gauthier is asked to do this, perhaps Senator Kinsella could promise us that these issues would be taken into consideration this week.

[*English*]

Senator Gauthier: If that is the question posed by the Deputy Leader of the Government in the Senate, I wish to remind him that proposed legislation before this house does take a long time. However, 13 days on one bill, plus six days in committee, is a great deal of time, in my opinion. I have the dates in committee and in the house in respect of this matter. There were meetings of the National Finance Committee on June 17 and 18, and September 2, 3, 16 and 17. The house had third reading debate on September 23, 24, 25 and 30, and on October 1, 2, 8, 9 and 21.

I do not think anything could be added to this bill because it has been thoroughly debated, and amendments were disposed of. With all due respect, honourable senators, I do not want to withhold my goodwill and I do not like negotiating in public. However, if an agreement is reached between the official opposition and the government to deal with Bill C-25 this week, then I could possibly withdraw my motion — with unanimous consent, of course.

Senator Kinsella: We could have a debate —

[*Translation*]

Senator Robichaud: Honourable senators, I do not expect there to be agreement. I am somewhat embarrassed by the fact that we cannot agree. Therefore, I have invited the honourable senators on my side to vote in favour of Senator Gauthier's motion. This bill must go ahead. Voting against the honourable senator's motion would mean that this bill would be dropped from the Order Paper.

[*English*]

Senator Kinsella: The suggestion, as I understood it, is that Senator Gauthier would seek the unanimous consent of the house to withdraw his motion and that, pursuant to usual practice, I would be happy to meet with the honourable senator to carry on the discussions that we had this morning. I do not think we need to have that discussion in the chamber.

Senator Robichaud: Honourable senators, I think it would be proper to reach an agreement on this matter now.

Senator Lynch-Staunton: That would be highly irregular.

Senator Robichaud: In that way, all honourable senators would be aware of the question and the condition under which the Honourable Senator Gauthier would ask leave to withdraw his motion that Bill C-25 be dealt with this week. I think if we had the word from my honourable colleague that it would be done, then Senator Gauthier would probably accept it and I would certainly go along with that. However, not seeing that, I would have to invite senators on this side to vote in favour of the motion.

• (1510)

Hon. John Lynch-Staunton (Leader of the Opposition): First, it is highly irregular to discuss, in public, what is usually done discretely — that is, both sides agree to recommend to their caucuses how they would like to see business proceed. Each side will hold a caucus meeting tomorrow morning. Out of courtesy to that tradition of caucus discussion, I think the deputy leader could wait another 24 hours. We will certainly take his views to our caucus. We are aware that this bill is of particular priority and that the government would like to see it passed by the end of the week. We would be glad to advise the deputy leader tomorrow how our caucus feels. To ask us to have these discussions in public is highly irregular, and I will not be part of them.

Second, Senator Kinsella has an amendment he wants to bring forward tomorrow. I happen to have one today, which I will explain. It is not one to delay; rather, it is intended to bring a little order to how we approach this particular bill. I would ask the deputy leader to be patient and wait until tomorrow for his answer.

[*Translation*]

Senator Robichaud: Honourable senators, this motion that the previous question be put is not a government motion. I am asking for agreement, simply to enlighten the motion's sponsor, Senator Gauthier. I would not want to influence it one way or the other. If he is seeking an agreement in order to dispose of the bill this week, and seeking consent to withdraw his motion, I would not have any problem with him doing so. I believe that is what he was trying to do. The question is when can we dispose of this bill.

[*English*]

Senator Gauthier: Honourable senators, I have used this procedure because I am becoming impatient with the progress of this bill. I am concerned. We have been waiting 30 years for some action regarding the Public Service of Canada. We have got action now. Bill C-25 is a good bill. It is not a perfect bill — I agree, we can always fine tune it. However, unless I have a commitment that this bill will be passed before the government prorogues or adjourns — rumours are flying all over the place — I do not feel secure going along with the argument that says, "Trust us, we will look at it tomorrow." I have waited too long and I maintain my position.

Senator Kinsella: By my calculations, it would take us another two days to complete our work. Not knowing whether we are sitting this Friday, I could assure Senator Gauthier, at least from the opposition's point of view, that we will be done our work no later than next Monday, if we are sitting that day.

I would undertake to meet with the Deputy Leader of the Government to discuss when we will complete our work on this bill. At the outset, it would be no later than next Monday. It could be sooner.

I do not know Senator Gauthier's time line, but if my undertaking gives him the margin of comfort that he is seeking, it would facilitate us to complete the other matters that we wanted to bring to the chamber at third reading stage. My appeal to Senator Gauthier would be for him to seek unanimous consent to withdraw the motion, and I would undertake to meet with the Deputy Leader of the Government to negotiate time allocation. I do not expect it would be more than Friday or Monday.

Senator Gauthier: The facts, as I see them, are that we have had 13 days in this place, six days in the other place and 20 hours in committee. This bill has been studied; we have looked at it backward and forward. I do not question the goodwill of the opposition. I think they are trying to do a good job, and I think Senator Kinsella has proven to us that on the question of whistle-blowers, he has a serious issue. However, the government has answered. We have put together a study group to look at this question, with a mandate to report in January 2004, to get the views of all the people concerned. I do not mind saying this publicly: I respect Senator Kinsella's and Senator Lynch-Staunton's views, but I do not want to be part of any negotiating based on "if we can negotiate" or "if we do it by this day." I am fed up with this process. I think this bill should be debated at third reading now. There is no limit on time. I want the main question, which is on Bill C-25, to be put to this house and disposed of. That is what I am proposing. All the previous question is asking us to do is to vote on the main question. They cannot put any more amendments. That is the difficult issue. Additional amendments to Bill C-25 cannot be moved. The main question must be put.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, we have heard from Senator Kinsella that he is willing to make a commitment that all votes on this bill could occur by Monday or no later than Monday.

Honourable senators, rules 38 states:

> At any time while the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate may state from his or her place in the Senate, that there is an agreement among the representatives of the parties in the Senate to allot a specific number of days or hours to the proceedings at one or more stages of any item of government business.

If we were to exercise rule 38 and to indicate that all stages of this bill should be dealt with prior to 5 p.m. on Monday, then we would meet the objectives of both Senator Kinsella and Senator Gauthier. If we could announce that kind of agreement this afternoon, then we would have the proper procedure in place to allow for a few more days of debate. We have Senator Kinsella's motion and perhaps Senator Lynch-Staunton's motion, but such a process would also meet the needs of Senator Gauthier.

Senator Stratton: I would like to move adjournment.

Senator Lynch-Staunton: On what?

The Hon. the Speaker: It is a debatable motion. A debatable motion can be adjourned.

Did Senator Stratton want to vary his motion to adjourn debate?

Senator Stratton: I would like to withdraw my motion to adjourn debate.

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

Hon. Senators: Agreed.

Senator Gauthier: I am impressed and I am happy. I have a commitment, I think. Given the debate between the honourable senators, I would like unanimous consent to withdraw my motion.

Hon. Anne C. Cools: I find myself deeply puzzled by what is happening here because it is not so much a debate as it seems to be an exercise in horse trading. I find that process curious and troubling.

• (1520)

I understand and appreciate that Senator Gauthier moved a motion with regard to putting the previous question to the house, but it seems to me that perhaps there are other senators who have concerns as well. I mean, with all due respect, that I am under the impression that other senators in this chamber have concerns and wish to speak on this bill other than Senator Gauthier and Senator Kinsella. I just find it a little bothersome that this exchange does not seem to countenance the fact that there are other opinions in this chamber, and perhaps there are other senators who may want to speak or who have some interest in some aspect of this bill.

I just wonder, Your Honour, about the propriety of blessing this kind of exchange. If Senator Gauthier has moved a motion for the purpose of forcing certain senators here to make a commitment about when they will make a conclusion about certain proceedings, then there is something very wrong with all of this procedure. I just find it a little bothersome. This is the sort of discussion that we usually carry on in private meetings in caucus.

Senator Prud'homme: My caucus.

Senator Cools: You are a caucus of one. I am bothered by the whole exchange because I understand that Senator Kinsella has made a commitment to complete debate by Monday, and I think that is very worthwhile of him. However, is there no one else in this chamber involved in this discussion, other than the two senators I have mentioned? Have we become a chamber of three players?

It took me a long time, honourable senators, to show you my dismay because I had just arrived in the chamber. It took me several minutes to track down a copy of the motion. It was as though the motion that was being bandied back and forth was not even properly in the hands of senators. I just find this sort of thing not really worthy of senators. I think we can do much better. It is a subtle sort of blackmail, and I am not too sure that I like being held hostage like this.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, these little two-person meetings where agreements are made and some people speak on behalf of everyone are very dangerous. It is very awkward for those who belong to a political party.

I remember one debate where a similar agreement had been made between the two major parties and one of the two individuals forgot to consult his caucus. It gave rise to some very disagreeable debates in the Senate. Here we do not know what is going on and, if we decide to invoke the *Rules of the Senate*, none of these agreements will work.

I have always said that we are all equal. It does not hurt to inform those who could derail these little agreements made from time to time in the name of the entire Senate.

I do not feel I am personally involved, as an independent senator; I certainly cannot speak for Senator Roche, Senator Plamondon or Senator St. Germain. It is dangerous when two or three senators who could derail any such agreement are left out. The government will not have its legislation. A little more consideration has never hurt anyone and could help the Senate function more harmoniously.

Senator Robichaud: Honourable senators, to answer the questions of the two previous speakers, there has been neither secrecy nor deal. Senator Gauthier moved a motion, which is still before us. This motion has not been withdrawn, because consent to do so has not yet been sought. After the motion was moved, some honourable senators expressed the desire to have more time to speak to it because it has the effect of steering the debate in such a direction that we may not be able to entertain any more amendments and speak only to the main motion.

Senator Kinsella would have liked to have a little more time to speak to this issue, which is of great interest to him. Senator Gauthier just wanted to ensure that the bill moves forward and that we come to a decision. For him, that should be now. If we agree, he will withdraw his motion, allowing the debate to continue for a few days. This does not exclude anyone. It includes anyone who may wish to speak on motions in amendment or on the motion for third reading. I do not know whether I was successful in clarifying the matter or just obscured it further.

Senator Prud'homme: I would like to tell Senator Robichaud that, when the item was called, I shouted "question" to Senator Day. That means I am in a good frame of mind. I called for my colleague to have the question put. This means I do not intend to participate, which will reassure Senator Robichaud. I do not intend to water things down, nor slow down debate. I am merely making an appeal, as is sometimes done. I am not down on my knees. They are not what they used to be. I am beyond the days of getting down on my knees and asking people to be nicer to each other. I did not want to hold the debate up unduly, because I would have been prepared to vote.

[*English*]

Senator Cools: I think, honourable senators, we should be crystal clear that this particular device is a form of closure. It is a form of truncating the debate.

Senator Kinsella: It is worse!

Senator Cools: It is a very old system, and we have all had some experience with it before. It is the sort of thing that is, frankly, normally not moved by a private member. It is usually moved by a member of the government. I have only known it to be moved by a government member. I notice that it was moved by Senator Gauthier and seconded by Senator Fraser, as copies of the motion are being distributed.

I have difficulty accepting the fact that Senator Gauthier's intention would be to cut off debate and to keep some of us — well, some of the honourable senators on the other side — from speaking, because I always associate Senator Gauthier with, quite frankly, upholding the need of chambers and the need of members to debate. It seems to me, because this kind of discussion belongs within our caucuses, because of the unusual state of this particular motion, because of the rarity of its use and because usually it is a tool of government, that perhaps the solution might be for Senator Gauthier to withdraw this motion. Perhaps, as Senator Lynch-Staunton suggested, tomorrow the two major parties — and I am sorry, I know I always forget about the independents and so on — could canvass their caucuses to see whether some sensible and more satisfactory agreement could be arrived at.

In the interests of upholding the integrity of Parliament and the rights of members, I do not think that this procedure is healthy.

• (1530)

There is a part of me that cannot help but think that this procedure is extremely unhealthy and unusual because the bill is at no risk. I appreciate that Senator Gauthier is enthusiastic to see this matter pass rapidly. However, this bill is at third reading and the bill is at no risk whatsoever. It is healthy and desirable to see some good and thorough debate and research around here. Perhaps that is the solution, and the honourable senator could withdraw his motion.

Senator Robichaud: He has asked for consent to withdraw the matter.

Senator Cools: I thought we were debating.

The Hon. the Speaker: No, we are not debating; we are on house business.

Senator Cools: What item are we on?

The Hon. the Speaker: Perhaps I could assist honourable senators.

What is before us is a request for leave from Senator Gauthier to withdraw his motion to put the previous question. That item was interrupted by an exchange on what I consider to be house business, which has been listened to by Senator Gauthier, and that prompted him to make this request.

Honourable senators, is leave granted to accede to Senator Gauthier's request to withdraw his motion to put the previous question?

Hon. Senators: Agreed.

The Hon. the Speaker: We are now on Bill C-25.

Senator Lynch-Staunton: Honourable senators, allow me to say that I am quite troubled by the discussion that just came to an end. I can appreciate the frustration and impatience of Senator Gauthier to see this bill go through, which it will. Certainly, it is better than we have now, but it could be improved, and every amendment that was brought here was an attempt to improve upon the bill.

Tomorrow, Senator Kinsella will move a motion in amendment that will introduce a whistle-blowing provision which may or may not be turned down. It is not enough to be told, as Senator Gauthier has told us, "Well, forget that aspect of it, because the government has already told us that they are forming a committee to study the whistle-blowing thing and we should be satisfied with that." We should not be satisfied with what the government is doing; we should be satisfied in coming to a decision collectively on whether we want things done in a particular way.

Tomorrow, Senator Kinsella will give us the option of whether we want the concept of whistle-blowing introduced in this bill immediately, or whether we are satisfied to wait for the government to come out with its report early next year. That is why we are here: not to listen and agree to unilateral decisions taken elsewhere, but to agree amongst ourselves on what course we want a bill to take, and how we want to see it changed or not changed.

I know I am off topic now, but I must say this anyway. I do not know what Senator Gauthier meant by saying that he got a commitment. I do not know anything about a commitment. All I know is that Senator Kinsella said publicly that, as far as he could see, we could be through with debate on this bill by Monday. Then again, I am not too sure whether he said we would be through by Monday, but when Senator Kinsella gives an indication, it can pretty well be taken as something that can be confirmed shortly.

Senator Robichaud: Very close to a commitment.

Senator Lynch-Staunton: Very close, but not there yet.

That is why, for the sake of all of us, I wish to ensure that we know where we are going with this bill, and that each caucus reflect tomorrow on what is being said today. We will discuss in caucus tomorrow what our approach is and whether we have more amendments to bring. Senator Robichaud and Senator Kinsella will then get together, as the rules provide, and agree to disagree, or agree to agree, and the house will be so informed tomorrow afternoon. I hope that we will continue to follow that procedure rather than negotiating here, ad hoc, without having all the facts at hand.

Finally, I will say this: What is the rush to have this bill go through by Monday or Tuesday of next week? Will the government please come clean? We are still working on the basis that legislation in front of us and to come will continue to be debated and voted on, if the government so requires, according to the calendar that we have before us, which is that we sit here until a few days before Christmas.

I said last week that we will not delay the vote on any bill on which the government wants a final decision taken prior to our Christmas-New Year's break. It now appears that certain bills must be brought to a vote over a month before that. There must be a reason.

Why must Bill C-25 be decided next Monday, when we continue to be told, and the House leader in the other place keeps telling his colleagues, that he is planning a legislative agenda to take them right up to Christmas? The Minister of Justice, for one, has said that he has one particular bill, the topic of which I have forgotten, but in the newspaper he said that he hoped to see it passed by Christmas.

This continues to be the official position of the government. It happens to be the official position of the leadership on the other side. Thus, it must be our position also. If the calendar is to be changed — and the government has a complete right to change it — then do let us know. If not, we will go on the basis that we are here with a one-week interruption in November, right through until, if necessary, the third week of December and, if necessary, into January.

I address this subject for the last time, it is to be hoped, and also that the government will come clean as soon as possible.

Meanwhile, on this particular bill, honourable senators will know, through points of order that have been raised here on Bill C-41, that Bill C-41 includes two amendments to Bill C-25. We are in the peculiar position of having before us one bill, and another bill that has yet to pass second reading and that contains amendments to the bill that is before us. In other words, Bill C-25 is in two places at the moment: Here before us at second reading, and in Bill C-41, which has yet to be discussed. It is being assumed, of course, that both bills will pass as is, but that is an assumption that I find rather excessive.

I have never done this before, but I would move what should be, perhaps, a government amendment. In other words, I suggest to the chamber that we take the amendments to Bill C-25 out of Bill C-41 and make them our own amendments so that the bill will have attached to it amendments directly put to it rather than amendments put to it indirectly through a bill that is before us, but whose course has yet to be determined. Who knows, it might be rejected or re-amended. To be on the safe side, let us take those amendments and make them ours by attaching them to Bill C-25.

The corrections brought in Bill C-41 are really of a technical nature. They are to make a French and English term interchangeable as far as the language goes.

[*Translation*]

The French version does not exactly match the English. The proposed changes merely bring the French in line with the English. This technical correction ought not to be a topic of debate, therefore. It is nothing more than an improvement to the wording.

[*English*]

MOTION IN AMENDMENT

Hon. John Lynch-Staunton (Leader of the Opposition): Therefore, I move, seconded by Senator Kelleher:

That Bill C-25 be not now read a third time but that it be amended in clause 230, on page 249, in the French version,

(*a*) by replacing line 32 with the following:

"saire, commissaire délégué et employés de"; and

(*b*) by replacing line 34 with the following:

"les commissaire et commissaire délégué sont".

• (1540)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the government has introduced Bill C-41. Bill C-41 was adopted by the House of Commons, was then given first reading in this place and is on the Orders of the Day.

Bill C-41 contains an amendment to Bill C-25. We have yet to pass Bill C-25. Bill C-41 assumes that we will pass Bill C-25. If we do that, and if we pass Bill C-41, a certain amendment will be brought to Bill C-25 by way of Bill C-41, which has yet to receive second reading.

Senator Lynch-Staunton has laid before this chamber an amendment to Bill C-25 which the government itself has brought through Parliament, has itself supported in the House of Commons, and which, I anticipate, will be supported by government senators in this chamber. Honourable senators, clearly the government has seen a flaw in Bill C-25. Having seen that flaw, they brought in the bill that is now before us.

What is our job here in the Senate? If our job is not to review and improve legislation, then what is it? Why are we here if not as a chamber of review of legislation from the other place? Indeed, the best argument for a bicameral system is that two houses working on a bill results in better legislation than a unicameral system.

The other place has accepted a bill from the government that detects a flaw in Bill C-25. How can we possibly hold our heads up if we do not look at Bill C-25 and deal with the flaw that the government and the House of Commons have found in it? The House of Commons has passed a bill to amend Bill C-25, should this house adopt it.

Honourable senators, I do not know how the majority will get out of this one. We know that they march to the drum that is beaten across the street. However, if we are serious about our responsibilities as legislators, we must find that the government has placed them in an extraordinary box. The government has told us that there is a flaw in Bill C-25, and that they have brought in a bill which they got their majority in the House of Commons to adopt, and which is now in the Senate, amending Bill C-25.

We have clearly apprehended a flaw in the bill. Will we stay in the box and do nothing about it, or will we meet our responsibility and amend the flaw in the bill, which is exactly what the amendment now before this house proposes to do? Honourable senators, we have no alternative but to accept this motion in amendment. If we do otherwise, we will have a hard time explaining what kind of legislative chamber this is in terms of legislative review.

Hon. Terry Stratton: Honourable senators, why would an amendment to Bill C-25 be brought forward through Bill C-41? Why would the government not bring forward those amendments to Bill C-25 in this chamber? We could study the bill, incorporate the amendments and send it back to the House for adoption, rather than confusing the matter by having the amendments in Bill C-41 and dealing with them there.

It is inconceivable that the correction would not be made in the logical way in which most people would approach the matter. This is, after all, the Senate. Why would we not give the matter logical, sober second thought, put these amendments into Bill C-25 where they belong, and take them out of Bill C-41? That is the logical way to proceed and I would support that action.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

Hon. Bill Rompkey: Would it be agreeable to have the vote at 3:30 p.m. tomorrow?

The Hon. the Speaker: A vote on a government motion is deferrable. The government and opposition whips have suggested that the vote be at 3:30 p.m., which requires unanimous consent.

Is it agreed, honourable senators, that the vote on the motion in amendment will be at 3:30 p.m. tomorrow, Tuesday October 28, with the bells to ring at 3 p.m.?

Hon. Senators: Agreed.

INCOME TAX ACT

BILL TO AMEND—SECOND READING

Hon. Wilfred P. Moore moved the second reading of Bill C-48, to amend the Income Tax Act (natural resources).

He said: Honourable senators, I am pleased to speak at second reading on Bill C-48, to amend the Income Tax Act with respect to natural resources. This bill implements federal income tax changes that were announced in the 2003 Budget for Canada's resource sector. This sector, as you know, comprises the mining, oil and gas and fertilizer industries. Honourable senators will recall that the 2003 Budget was marked by milestones and major new commitments. It was also a budget based on continuity: maintaining the prudent, balanced approach to fiscal planning that has contributed so much to Canada's economic stability and success.

• (1550)

When the Minister of Finance was preparing the 2003 Budget, Canadians told him that they wanted a society built on their commonly held values, an economy that maximizes opportunity for all, and an honest and transparent accounting of government's efforts to achieve those goals.

Budget 2003 responded to this challenge in three ways: first, by building the society that Canadians value by making investments in individual Canadians, their families and their communities; second, by building the economy Canadians need by promoting productivity and innovation while staying fiscally prudent; and third, by building the accountability Canadians deserve by making government spending more transparent and accountable.

Central to today's discussion is the action taken in the 2002-03 Budget to enhance Canada's position as one of the best places in the world to invest and to do business. The 2003 Budget introduced measures that built on the government's five-year $100 billion tax reduction plan, with further equivalents to the tax system and enhanced incentives to save and invest; measures such as increased assistance for children and low-income families, and increased RRSP and registered pension plan limits.

As well, the budget supported investment and entrepreneurship through changes to the tax system. Many of these changes were contained in Bill C-28, the Budget Implementation Act, 2003, which we debated last spring and which also contained measures of benefit to the resource sector. Bill C-28 eliminated the federal capital tax over five years and increased the amount of qualifying income eligible for the reduced federal small business tax rate. It extended the existing temporary mineral exploration tax credit until the end of 2004, and it provided an additional year for issuing corporations to make expenditures related to these arrangements.

Those measures, together with the changes contained in Bill C-48, would help build on the Canadian tax advantage for investment. Before discussing the elements of Bill C-48, let me take a moment to put the issue of resource taxation in context and to review the need for change.

As honourable senators know, the resource sector is a significant component of the Canadian economy, generating investment, exports and jobs for Canadians. In 2001, for example, the resource sector accounted for almost 4 per cent of Canada's GDP, with over $64 billion in exports and more than $30 billion in capital expenditures.

Over 170,000 Canadians work in resource businesses. The sector is important to almost every part of Canada. As well, the potential for future resource development exists in virtually every region of the country. Moreover, Canadian resource industries are large investors in innovative technology and major participants in the provision of exploration and extraction services internationally.

With respect to the current tax structure, income earned in Canada from the extraction and initial processing of non-renewable resources has historically been subject to a series of sector-specific tax provisions. There are three main reasons for these provisions. In the first place, the fact that the development of non-renewable resources can create significant economic and social benefits is a very strong incentive for governments to design a sound economic and fiscal framework for the large capital investments that are required. The second reason is that governments have come to accept that there is a specific set of risks and benefits inherent in the distinctive business of resource exploration and extraction. The third reason is the increasingly intense competition for international investment dollars, which is so critical to the development of our resource industry.

At present, there are several sector-specific income tax provisions that apply to the resource sector. Four provisions — Canadian exploration expenses, Canadian development expenses, Canadian oil and gas property expenses and capital cost allowance — determine the timing of deductions for capital expenditures. These provisions recognize the risks inherent and the large investments required for resource exploration and extraction, and they also play an important role in ensuring a competitive business environment. The special capital-raising needs of junior exploration firms are recognized by flow-through shares, which allow firms to flow out deductions to individual investors. A 15 per cent mineral exploration tax credit for flow-through share investors was introduced in October 2000 as a temporary measure to moderate the impact of the global downturn in exploration activity on mining communities across Canada. Another provision, the 25 per cent resource allowance, functions as a proxy for actual royalties and mining taxes paid to provinces. Finally, while not specifically targeted to the resource sector, the Atlantic Investment Tax Credit provides significant support for resource sector investment in Atlantic Canada.

Honourable senators, in designing a new federal taxation structure for the resource sector, the government identified three main goals: First, the sector has to be internationally competitive, particularly in North America; second, the tax structure has to be transparent for firms and investors; third, it has to promote the efficient allocation of investment both within the resource sector and between sectors of the Canadian economy. The new tax structure in Bill C-48 will help to achieve these goals. At this time, I should also mention that the government held extensive consultations with the industry when this new tax structure was being designed.

In a global economy with intense competition for mobile capital, a tax system with a lower rate of tax applied uniformly across all sectors, with a simpler and more efficient tax structure, is far more effective than one with a higher rate of tax applied on a less efficient tax base. The new regime introduced in Bill C-48, to be phased in over five years, will ensure that resource sector firms are subject to the same statutory rate of corporate income tax as firms in other sectors and that they will be able to deduct actual costs of production, including provincial and other Crown royalties and mining taxes, rather than an arbitrary allowance.

Let me explain further with respect to the corporate tax rate reduction. The first measure in Bill C-48 reduces the federal statutory corporate income tax rate on income earned from resource activities from 28 per cent to 21 per cent by 2007. As honourable senators know, the corporate income tax rate is often the first piece of information viewed by prospective investors. It is therefore imperative that we have a uniform lower rate if investors are to receive a positive message about our relative competitiveness. In addition, a single rate will reduce compliance and tax administration costs.

With regard to resource allowance, Crown royalties and mining taxes, a second measure in Bill C-48 eliminates the arbitrary 25 per cent resource allowance and provides a deduction for the actual amount of provincial and other Crown royalties and mining taxes paid. The resource allowance was introduced in 1976 primarily to protect the federal income tax base from what were then rapidly increasing provincial royalties in mining taxes, which had been deductible for federal tax purposes. While the fixed allowance puts a ceiling on deductions, it distorts economic signals. In some cases this may result in a bias against investment in more valuable resources, which are more likely to yield a higher royalty return. In other cases, it provides a deduction greater than the actual royalties and mining taxes paid.

As honourable senators are aware, today's economic conditions are different from the environment that existed in the 1970s, thereby leaving the original need for the resource allowance less relevant. Today, there is a greater pressure on producers to be efficient and on host jurisdictions to levy royalties at competitive rates. At the same time, the complexity of the resource allowance calculation has resulted in substantial compliance costs for industry and substantial administrative costs for government. With the implementation of this measure, investment decisions will be based more consistently on the underlying economics of each project.

• (1600)

Another measure Bill C-48 introduces is a new 10 per cent mineral exploration tax credit for corporations that incur qualifying exploration expenses before a mine reaches production in reasonable commercial quantities. This new credit is not to be confused with the 15 per cent temporary mineral exploration credit for investors in flow-through shares that I referred to earlier.

In proposing this new credit, the government has recognized the particular circumstances of the mining sector. This new credit will be available only to corporations and is not refundable or transferable under a flow-through share agreement. It will apply to both Canadian grassroots exploration and pre-production and development expenditures for diamonds, base or precious metals, and industrial metals that become base or precious metals through refining.

I wish to turn now to the transitional measures that are included in the bill. Following the announcement in the budget that the government intended to improve the taxation of resource income, the Minister of Finance released a technical paper on March 3 explaining the proposals. The new measures were to be phased in over a five-year transition period. The government reviewed the proposals with industry and the provinces and subsequently made two changes to the transition provisions of the new tax structure.

The first change will achieve a better measure of taxable resource and non-resource income for the purposes of applying the general corporate rate reduction during the transitional period by utilizing resource pool deductions in the determination of resource income.

The second change targets the Alberta royalty tax credit transitional relief set out in the technical paper to a greater number of small- and medium-sized producers. Both the general five-year transition and the 10-year Alberta royalty tax credit transition will provide investors with the certainty they need when making investment decisions.

Some people have questioned whether the measures in this bill are consistent with Canada's Kyoto commitment to reduce greenhouse gas emissions. They are completely consistent. As I noted, these proposals will result in firms in the non-renewable sector being subject to the same tax rate as firms in other sectors, including the renewable resource sector. They will also be entitled to deduct only actual costs of production instead of the arbitrary resource allowance. These changes will treat investment more consistently, both across projects and between the resource sector and other sectors of the economy. This will ensure that economic activity is allocated more consistently with underlying economic factors.

The oil and gas and mining industries will be called on to play their part in implanting Canada's Kyoto commitment. They will make a significant contribution to a 55-megaton reduction target to the large industrial emitters program.

Renewable energy initiatives figure prominently in the government's Kyoto response. Budget 2003, for example, allocated an additional $2 billion over five years to support alternative energy technologies that help reduce greenhouse gas emissions.

The budget also supported renewable energy through tax measures. It introduced an excise tax exemption for the ethanol content of blended diesel fuel and bio-diesel. It also extended the accelerated tax depreciation provided for investment in renewable energy and energy efficiency equipment. This regime now covers stationary fuel cell systems and equipment that generates electricity using bio-oil.

Even this bill we are considering today includes a measure to promote renewable energy projects. Bill C-48 promotes the treatment of certain intangible expenditures known as Canadian renewable and conservation expenses. Corporations will be able to reduce these expenses to flow-through share investors in a year where the expenses will be incurred by the corporation only in the following year. This will provide greater flexibility in the timing of renewable energy projects financed using flow-through shares.

Honourable senators, in conclusion, not only will the measures of Bill C-48 result in more competitive tax rates, but they will also result in a more competitive overall tax structure. Together with the elimination of the federal capital tax, which I mentioned earlier, effective tax rates for both the mining and oil and gas industries will be substantially reduced. For oil and gas, this reverses a current disadvantage relative to the United States. For mining, it builds on an existing advantage. In both cases, the changes place the Canadian resource sector in a markedly improved position to attract capital for exploration and development.

In summary, let me say that this new tax structure for the resource sector will achieve what it was designed to do. This new regime contained in Bill C-48 will build upon a Canadian tax advantage to support investment, innovation, productivity, economic growth and jobs for Canadians.

I urge all honourable senators to give their full support to this legislation.

Hon. James F. Kelleher: Honourable senators, I am pleased to join the debate on Bill C-48, which overhauls the tax regime for resource income.

Three and a half years ago, the February 2000 Budget announced that the general federal corporate tax rate would be reduced by seven percentage points, to 21 per cent from 28 per cent, by 2004, but with two notable exceptions. The first exception was manufacturing, which already had a 21 per cent rate. The second exception was the resource sector, where the former finance minister left the rate at 28 per cent on the basis that he wanted to consult with the sector on a new tax structure. He did, however, put in a temporary 15 per cent mineral exploration tax credit that will expire next year.

Mr. Martin then dragged his heels, leaving it to the current finance minister to bring in a technical paper last March. The resource sector has several unique tax rules, and as well as reducing the income tax rate to 21 per cent, Bill C-48 revamps those rules.

One of these is the 25 per cent resource allowance. This dates from the 1975 federal budget and allows a taxpayer to deduct 25 per cent of resource profits with the result that the effective tax rate is reduced to 21 per cent from 28 per cent. This rule replaces the deductions of provincial Crown royalties or mining taxes on the production of natural resources. As a result, such provincial charges currently do not affect federal taxes payable. This bill will phase out the 25 per cent resource allowance by 2007 and phase in a deduction for Crown royalties and mining taxes over the same period, as well as phasing in a new 10 per cent credit for mineral exploration in Canada.

A transitional measure until 2012 will reduce the amount of Alberta royalty tax credit that must be included in taxable income. Other changes are intended to ensure that mining expenditures qualify as Canadian exploration expenses and for accelerated capital cost allowance if incurred before the mine achieves production in a reasonable commercial quantity.

Finally, the flow-through share rules are amended to provide renewable and conservation expenses with the same one-year look-back treatment given to expenses on non-renewable resources.

• (1610)

This measure was originally announced back in July of 2002. The government tells us that, when fully implemented, this will reduce taxes on the resource sector by $260 million per year. The government also tells us that Bill C-48 will reduce combined federal and provincial corporate tax rates for the resource sector to below the rates for equivalent industries in the United States. We hope they are right.

Indeed, one wonders why it has taken the government so long to reduce the corporate tax rate on this industry to a level comparable to that of other industries in other countries. To leave that rate at 28 per cent when others are taxed at 21 per cent is discriminatory, insensitive and uncompetitive.

While this bill is positive in the aggregate, we should be concerned that it may actually increase the tax burden on some parts of the resource sector. In this regard, I would draw the attention of honourable senators to the testimony of Mr. Gordon Peeling of the Canadian Mining Association before the Finance Committee of the other place on October 1. He said:

> The effect of Bill C-48 on individual commodities, potash, uranium, diamonds, precious and base metals, and the effect on individual companies, both existing operations and proposed new projects, will vary widely, depending on the maturity of assets and the jurisdiction of operation.
>
> The government suggests that the proposed new tax structure will be simpler; streamline tax compliance and administration; send clear signals to investors; improve the competitiveness of the Canadian mining sector; support investment and innovation and productivity, economic growth, and jobs for Canadians.
>
> We are not convinced that all these objectives will be met as fulsomely as both we and the government would like.

He then comments on the effect of phasing out the federal resource allowance by noting that:

> One perverse effect of this change is that it will increase taxes paid by the industry in several provincial jurisdictions.

Addressing the issue of whether the provinces will adjust their own tax rules, he then points out:

> If provinces do fail to act, the tax competitiveness of key parts of the mining industry will in actual fact worsen, and that worsening will take effect at a time of intense global competition for mining investment.
>
> Base metal and some gold operations concentrated in northern Quebec and Ontario, but also located in Manitoba and Atlantic Canada, will be the most affected. For some companies, their competitiveness will be reduced, even if the provinces do their part. That is a maturity issue...
>
> The impact of Bill C-48 is greatest on mature mines, those less likely to benefit as much from some of budget 2003's other positive measures, such as the phased elimination of the large corporation tax.

He then goes on to point out that unless the provinces act, the combined federal-provincial net income tax changes will increase tax revenues on existing mature mines by as much as 29 per cent in 2007 and that even if the provinces act, the combined income tax changes will be as much as 6 per cent.

He then points out:

> Mature mines have substantial invested capital, and they are effectively captive to the changes in the tax rules.

He then further pointed out that the 10 per cent exploration credit introduced with this bill is insufficient to offset the other changes.

Honourable senators, I will support the principle of the bill at second reading, as it does reduce the overall tax burden on this vital sector. However, it cannot be stressed enough that the concerns of the Mining Industry Association need to be given proper examination and that, in committee, we may want to consider amendments to address those concerns.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Moore, bill referred to Standing Senate Committee on Banking, Trade and Commerce.

CANADIAN FORCES SUPERANNUATION ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Wiebe, seconded by the Honourable Senator Maheu, for the second reading of Bill C-37, to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts.

Hon. Norman K. Atkins: Honourable senators, it gives me great pleasure to rise today to speak to second reading of Bill C-37, to amend the Canadian Forces Superannuation Act or, as we have referred to it informally, the former pension modernization act.

I congratulate Senator Wiebe, my colleague on the Standing Senate Committee on National Security and Defence, for his speech on second reading, and I identify myself with his remarks on this bill. Being a champion of the reserve forces, he must be very pleased.

This bill had its origins in the 1998 report of the Standing Committee on National Defence and Veterans Affairs in the other place dealing with the quality of life in the Canadian Forces. This is a report that I have addressed previously in the Senate, and I must admit I am pleased to see at least parts of it being implemented by the federal government. This report called for the improvement of compensation and benefits for military personnel, particularly in relation to pensions plan.

The new pension plan implemented by this bill covers pension arrangements for over 50,000 members of the regular forces and approximately 28,000 members of the reserve. With regard to reservists, this bill will mean that long-term, full-time reservists and their regular force counterparts will have equivalent pension arrangements. Also, the groundwork is set out in this bill to develop a pension plan for the more usual case — the part-time reservist.

• (1620)

The vesting of pensions has been brought up to date. As well, pensions will vest after two years. Also, pension credits will now be portable, allowing the accumulated payments to be transferred to other pension vehicles.

The bill will also provide for early pensionable retirement after 25 years' service. As well, early retirement would be possible if the retiree is between 50 and 60 years of age. Also, members who have served for 10 years or more and are released because their health no longer allows them to carry out their military duties will be entitled to an immediate pension. Survivor benefits have also been enhanced to both spouses and children.

Honourable senators, this is a good bill. It brings one aspect, an important aspect, of military life in line with most public service pension plans. As has been pointed out one of the goals of this pension modernization is to help make our Armed Forces more competitive, and to aid in recruitment. Let us modernize the pension plan but let us not forget the other areas where our military is in great need.

I look forward to the discussions on Bill C-37 in committee and would urge members of this place to pass this bill.

Hon. Senators: Hear, hear!

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Wiebe, bill referred to Standing Senate Committee on Social Affairs, Science and Technology.

PUBLIC SAFETY BILL, 2002

SECOND READING—ORDER STANDS

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, perhaps I could have some indication from the Honourable Leader of the Opposition, who tells us that this is an important bill, when the opposition will speak to this bill so that I can organize my work accordingly?

Hon. John Lynch-Staunton (Leader of the Opposition): Someone will speak before November 7, 2003.

The Hon. the Speaker: No one has said "stand."

Senator Kinsella: Stand.

Senator Lynch-Staunton: It is a government bill.

Senator Carstairs: Stand and adjourn it.

Senator Robichaud: I call the question.

Order stands.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE SUSPENDED

On the Order:

Second reading of Bill C-49, respecting the effective date of the representation order of 2003.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators —

Hon. David P. Smith: I am moving second reading of this bill.

Senator Kinsella: Honourable senators, I rise on a point of order.

The Hon. the Speaker: Before the point of order, Senator Kinsella —

Hon. Fernand Robichaud (Deputy Leader of the Government): There is a motion —

The Hon. the Speaker: Senator Smith made a motion that I must put to the house.

Hon. Marcel Prud'homme: It was not seconded by anybody.

The Hon. the Speaker: Senator Smith has put the motion, and I will see Senator Kinsella on the point of order as soon as the motion is put —

Senator Kinsella: I do not want the motion put.

The Hon. the Speaker: — unless it has to do with the appropriateness of the motion.

Senator Kinsella: Honourable senators, I believe that the motion that is intended to be proposed is out of order. I hesitate to stand and raise this point of order because it speaks to the long title of a bill that we received from the other place. The long title of Bill C-49 is An Act respecting the effective date of the representation order of 2003. Indeed, the bill at first reading in the House of Commons did just that: It changed the effective date of the proclamation of August 25, 2003, to the first dissolution that occurs on or after April 1, 2004.

Yet, in reading the version that was given first reading in the Senate, I see two additional clauses. Clause 2 amends section 25(2) of the Electoral Boundaries Readjustment Act. This amendment enables returning officers under section 24 of the Canada Elections Act to be appointed and the registration of electoral district associations under subsection 403.22(4) to be deemed effective on the date the proclamation was issued. Clause 3 deems the proclamation to be effective on January 1, 2004.

The issue is not on the merit of the amendments. The issue is that, once again, we have a long title of a bill that does not represent the elements contained therein. There is no reference in the title to an amendment to the Electoral Boundaries Readjustment Act.

If one refers to Beauchesne's *Parliamentary Rules & Forms,* 6th Edition, section 627 states:

> ...Both the long title and the short title may be amended, if amendments to the bill make it necessary.

Section 627(1) states:

> The long title sets out in general terms the purposes of the bill. It should cover everything in the bill.

Honourable senators, we now have a case where the content of a bill has been amended by the House of Commons, but no amendments were made to the title of the bill. We cannot tell from the long title of Bill C-49 that the Electoral Boundaries Readjustment Act is being amended. The members of the other place, in their haste, again, to ram this bill through, possibly because of a magic date, ignored the basic principle that the long title of a bill should cover everything in the bill, and if amendments are made to the bill, the title should also be amended.

The government house leader in the other place —

The Hon. the Speaker: Honourable senators, it being 4:30 p.m., pursuant to the order adopted by the Senate on Thursday, October 23, 2003, it is my duty to interrupt the proceedings for the purpose of putting the deferred vote on the motion for second reading of Bill C-34, moved by the Honourable Senator Carstairs.

Pursuant to the agreement, the bell to call in the senators will sound for 30 minutes.

Debate suspended.

• (1700)

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Graham, P.C., for the second reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Motion agreed to and bill read second time on the following division:

YEAS
THE HONOURABLE SENATORS

Adams	Lavigne
Bacon	Léger
Banks	Losier-Cool
Biron	Mahovlich
Callbeck	Massicotte
Carstairs	Merchant
Chaput	Milne
Cook	Morin
Cordy	Pearson
Day	Phalen
De Bané	Plamondon
Downe	Poulin
Fairbairn	Poy
Finnerty	Prud'homme
Fraser	Ringuette
Graham	Robichaud
Hubley	Roche
Jaffer	Rompkey
Kenny	Smith
Kolber	Trenholme Counsell
LaPierre	Wiebe—43
Lapointe	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Cochrane	Meighen
Comeau	Nolin
Doody	Robertson
Forrestall	Spivak
Johnson	St. Germain
Kelleher	Stratton
Keon	Tkachuk—20

ABSTENTIONS
THE HONOURABLE SENATORS

Cools	Gauthier
Corbin	Joyal
Ferretti Barth	Maheu—6

REFERRED TO COMMITTEE

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

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

> That Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, be not now read the third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I rise to speak to the motion.

The Hon. the Speaker: First, I will put the motion and the relevant rule.

It is moved by Honourable Senator Kinsella, seconded by Honourable Senator Stratton, that Bill C-34 be not now read the third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Honourable senators, this is not a debatable motion. I will read rule 67(5) of the *Rules of the Senate*:

> When a deferred vote is requested on one question that is the first of a series of questions to be put to the Senate without further debate, the bells to call in the Senators shall be sounded once; they shall not again be sounded, at that sitting, in relation to any subsequent standing vote on the same item of business.

Perhaps the deputy clerk could provide the house with the reference number that indicates that motions referring a bill to committee following second reading are not debatable. I refer honourable senators to rule 62(1) of the *Rules of the Senate*, which states:

> Except as provided elsewhere in these rules, the following motions are debatable:

Without reading each motion, unless it is the wish of honourable senators, I would say that this motion does not fit under one of the motions described in the rule. Accordingly, I put the question to honourable senators now.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I rise on a point of order. The rule that His Honour refers to speaks to the motion at second reading and then to the motion to refer the bill to committee. We have no objection to the bill being referred to committee. We have substantive objection in respect of procedure as to which committee it would be referred. There is a major distinction between asking that this bill be not now read the third time but that it be referred to committee, and to which committee the bill is referred. Last week, the Chair of the Rules Committee made statements to the effect that led some honourable senators to the conclusion, and some members of that committee said, that preparations were being made by the Rules Committee to receive Bill C-34. We will argue on a point of order that the Rules Committee is not a legislative committee and that legislative committees are comprised of 12 members. The Rules Committee is a management committee, as is the Internal Economy Committee, which has 15 members.

• (1710)

There is a substantial difference between the Rules Committee and the Internal Economy Committee, on the one hand, and our legislative committees, on the other hand, which we call Senate standing committees. In the other place — and one can refer to Beauchesne at page 222, where that distinction is made — they sometimes set up a special legislative committee. That is not what we do. We define the bills that will be referred to given committees in the very definition of the committee in our rules. For example, rule 86(1)(f) speaks to the Rules Committee being composed of 15 members, but there is absolutely no reference in rule 86(1)(f)(ii) to legislation being referred to the Rules Committee.

We find the phrase "and also to study bills" among the charges the legislative committees or standing committees have. The issue of whether or not this question could fall under residual matters does not apply — rule 86(2) — because clearly Bill C-34 is not a residual matter. It is a substantive matter of legislation.

Furthermore, rule 86(3) — and this is perhaps the most important one — speaks to legislative committees being composed of 12 members.

Rule 86(1)(k) defines the mandate of the Standing Senate Committee on Legal and Constitutional Affairs. It is explicit that bills relating to legal and constitutional matters are to fall under the mandate of that committee.

In terms of orderliness, this motion is not only in order, but the counter-argument, where we cannot have a debate, is that the Rules Committee is certainly not the committee to which the bill can be referred.

The Hon. the Speaker: Before I hear more on the point of order — and I will hear more — we have just concluded a vote on second reading of Bill C-34. We are operating under the rule that I read, which requires us to deal sequentially with all matters to dispose of it, including the one before us. They are not subject to any delay in terms of votes.

We have a motion before us by Senator Kinsella. He has spoken to a point of order that I think is prospective, that if this bill were referred to the Rules Committee, as some senators have anticipated in debate, that that would not be in order because it is not a committee that could study the bill. I want to keep track of these events.

I want to emphasize to all honourable senators that we are obliged to dispose of all matters relating to the order that was adopted.

I will hear senators because I think this is an issue. The Leader of the Government in the Senate wishes to speak, as does another senator.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I will speak to the point of order raised by Senator Kinsella because I totally disagree with all of his statements. While the honourable senator says that the Rules Committee is not a standing committee, rule 86(1) begins with, "The standing committees shall be as follows," and lists the Standing Committee on Rules, Procedures and the Rights of Parliament as a standing committee of this house. In addition, when the rule defines the mandate of the committee, paragraph 86(f)(iii) very clearly states:

> to consider the orders and customs of the Senate and privileges of Parliament.

Nothing could be more appropriate in terms of our discussion on orders and customs of the Senate and privileges of Parliament, as we have listened to the debate and discussions, than this particular piece of legislation.

We also, of course, sent the draft piece of this legislation to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament. That, in itself, would recommend that this bill clearly be referred to the Rules Committee and not to the Legal and Constitutional Affairs Committee. Never mind the fact that the Standing Senate Committee on Legal and Constitutional Affairs already has a number of items on its agenda, and I think we all want this bill to be debated as quickly as possible in committee. I do not think there is a point of order on this matter, although I would recommend to all honourable senators that they vote against the motion.

Hon. Tommy Banks: Honourable senators, I rise to speak to His Honour's reference to rule 62. Rule 62(2) states — and if I understood correctly, I think this is what His Honour was getting at:

> All other motions, unless elsewhere provided in these rules or otherwise ordered, shall be decided immediately upon being put to the Senate, without any debate or amendment.

Preceding that is the list to which Your Honour referred, which talks about those bills that are debatable. Is not the present motion, one which would be referred to under rule 62(1)(f) — that is to say, instructions to a committee — therefore debatable?

The Hon. the Speaker: I will take that as a question, Senator Banks. The answer is yes and no; yes because you have described it correctly, but no because there are other rules that apply to the situation we find ourselves in now, which is that this is a matter subject to order of the house pursuant to the time allocation rules. Therefore, I will go back to Senator Kinsella and Senator Carstairs' point. Senator Cools wishes to speak about it.

Hon. Anne C. Cools: I would ask His Honour to repeat something he said a few minutes ago. I believe he stated the order to the chamber and read the rule that requires the disposition of every aspect of Bill C-34. I wonder if he could read that again. I thought that the rule and the order essentially refer to the disposition of everything to do with second reading. In my view, we have passed second reading and we are now moving on to a totally different stage of the debate. Perhaps His Honour could read the very rule and the order that he is bound to obey.

I would contend, honourable senators, that His Honour is bound to obey the order that says the issues around second reading are to be disposed of by a particular time. There was a vote 10 minutes ago and that matter was disposed of and voted upon. In point of fact, His Honour cannot comment on that vote. We have moved past it.

We are now on the motion to consider whether we move on to third reading directly. I believe the motion that Senator Kinsella made is that we not now read the bill the third time but that we refer it to a particular committee. Therefore, in actual fact, we have moved past second reading. We are now discussing whether we want to debate the bill at third reading or whether we want to send the bill to committee. Could His Honour clarify the matter for all of us and read again the order which he is bound by and also read the rule itself?

The Hon. the Speaker: It is more on the matter of clarity than it is on the question of order that Senator Kinsella and Senator Carstairs have spoken to. I will read the provisions of rules 67(4) and (5):

> (4) When a deferred vote has been taken and there is subsequent business to be disposed of, any standing vote requested in relation thereto shall not be deferred and the Speaker shall proceed to put forthwith and successively every question necessary to dispose of the business.
>
> (5) When a deferred vote is requested on one question that is the first of a series of questions to be put to the Senate without further debate, the bells to call in the Senators shall be sounded once; they shall not again be sounded, at that sitting, in relation to any subsequent standing vote on the same item of business.

• (1720)

I have just read rules 67(4) and 67(5). That would be my answer to the point you are raising. I said earlier that I consider the house to be dealing now with the business that the order related to in terms of having to deal successively with the questions so that we can dispose of the matter.

Senator Cools: I am telling you, Your Honour, that the question has been dealt with and the question has already been voted on. In point of fact, your order is exhausted. We have now moved on to a new stage of debate, which is third reading. I do not see that you can just simply apply an order that concerns second reading debate and a vote at second reading. Your Honour cannot simply apply that to third reading. In point of fact, we are on third reading debate, because the motion is a routine motion that is moved after votes at second reading. The question now before the chamber is whether we proceed to third reading, or whether or not we commit the bill to committee.

What I am trying to say, Your Honour —

The Hon. the Speaker: I will rule on that. We have disposed of the second reading vote. We now must take the next step. The next step has been proposed. It is a motion put forward by Senator Kinsella, seconded by Senator Stratton, that this bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs. That is something that we will either put to a vote or not, but Senator Kinsella has raised another matter that might be relevant if someone moves that this bill be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.

Honourable senators, because this matter is both important and expected, I am hearing the positions of honourable senators on it. I have heard from Senator Kinsella and Senator Carstairs. Do any other senators wish to comment on that problem?

Some Hon. Senators: Question!

Senator Kinsella: In conclusion, I take it that the interpretation that is being suggested we give to rule 67(4) is that, when a deferred vote has been taken — which has been taken — it does not specify subsequent business. What subsequent business are they talking about? The matter of second reading, to which time allocation had applied, has been met. We had a vote. The clerk rose from the table and said that the bill is now read the second time. The question is then called, "When shall the bill be read the third time?" and I moved that, no, it not be read the third time. That is not subject to time allocation. I do not think rule 67(4) can be read in the way in which, perhaps, some are reading it.

We all understand that, under time allocation, all motions, including the main motion, have to be disposed of successively. Whether it be closure brought at second reading, at committee stage or at third reading, the closure that was brought at second reading has been concluded. We are now into third reading, and I am suggesting with my motion that we not proceed to third reading but, rather, that we send the bill to committee.

Honourable senators, unlike the House of Commons, the motion at second reading is not inclusive of a motion to refer. In the House of Commons, the motion at second reading is inclusive of the motion to refer to committee. In this place, it is a separate step: We decide whether or not to send the bill to committee. In this case, we are deciding, yes, we should send it to committee, and we on this side of the house are proposing that it go to the Legal and Constitutional Affairs Committee.

However, I do not think the house can rely on rule 67(4) to suggest that this is not a new matter but that, somehow, it is a matter tied to the time allocation.

Senator Carstairs: Honourable senators, with the greatest of respect, it is tied; otherwise, we would be in a state of limbo with respect to second reading. We have passed second reading and there must be another step to deal with where the bill goes now. Where the bill goes now is that it either proceeds to third reading, in which case we would do without the committee stage, or we could refer it to a committee. That is what we are purporting to do now through the honourable senator's motion, namely, to refer it to a committee. I just happen to think the honourable senator has chosen the wrong committee.

Senator Banks: Honourable senators, I am seeking instruction again. It seems to me that the argument in respect of the point of order has moved to questions that are not before us. The motion that is before us is that the bill not be read the third time now, but that it be sent to the Standing Senate Committee on Legal and Constitutional Affairs. It seems to me the only question before us is the one to which Your Honour referred earlier, as to whether or not that motion is debatable. If it is not, we are on a vote.

The Hon. the Speaker: No, it is not debatable. We are on a point of order, though. I have indicated to the chamber at what stage I thought we had reached. I was prepared to deal with the point of order on whether the Standing Committee on Rules, Procedures and the Rights of Parliament is the one to which the bill should be referred, which is Senator Kinsella's point of order.

However, he has now raised a point of order that I should resolve first, namely, that there is a view that rule 67(4) and 67(5) did not require all matters to be disposed of now. Senator Carstairs has commented on it. I think I should resolve that before I go to the other point of order, and I will ask for five minutes to confer. I will rule on that matter, and then we will go to the point of order that Senator Kinsella first raised.

The sitting of the Senate was suspended.

• (1730)

The sitting of the Senate was resumed.

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, I will try to dispose of both the points of order, and it may be somewhat repetitive, but my ruling is as I said it would be. By saying that, I mean as I had indicated as a statement where I thought we had reached in our proceedings. That was then questioned as a point of order and now I feel obliged to now dispose of that question because it was so questioned and commented on by Senators Kinsella and Carstairs, and I thank them for the point of order and for their comments.

The question is: Are we obliged, under our rules, to now dispose of all matters with respect to what we are in the process of doing pursuant to the order of time allocation; to deal with, as we have, the vote on second reading, as well as the next step, to dispose of the matter, and that is either to proceed to third reading, which is an option, or to refer the bill to a committee, which is the other option that we follow, and which in fact has been done: that we vote on that and on any subsequent motion until we dispose of it without bells because of the provisions of rule 67?

I again refer honourable senators to rules 67(4) and 67(5). If you wish, I will read them again, but the effect of the rule is that we do that because we are under order to dispose of all stages, and the bells to do that are to be sounded only once. I am referring to rule 67(5). That is my ruling, and I will pause to see if honourable senators are in agreement.

As to the second point of order, which is really an anticipatory question of whether or not it would be in order for the house to refer the bill to the Standing Committee on Rules, Procedures and the Rights of Parliament, it is a little unusual to anticipate a question such as that. However, in this case I believe that the rules are clear, and I will read from rule 86(2), which states:

> Any bill, —

— we are discussing a bill —

> — message, petition, inquiry, paper or other matter may be referred, as the Senate may decide, to any committee.

The committees are listed, and I will not specify any one of them, but those committees that are listed in our rules would be covered by the words "any committee" in rule 86(2).

Honourable senators, we are now on the motion put by Senator Kinsella, seconded by Senator Stratton, and I will read it, because we have had a lot of things happen in the meantime:

> That Bill C-34, an act to amend the Parliament of Canada Act, Ethics Commissioner and Senate Ethics Officer, and other acts in consequence, be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: A division is being requested. I will ask the table to poll senators on the division.

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Adams	Kinsella
Andreychuk	Kroft
Atkins	LeBreton
Bacon	Lynch-Staunton
Banks	Maheu
Beaudoin	Meighen
Cochrane	Moore
Cools	Nolin
Corbin	Prud'homme
Ferretti Barth	Robertson
Forrestall	Spivak
Joyal	Stratton
Kelleher	Tkachuk—26

NAYS
THE HONOURABLE SENATORS

Biron	LaPierre
Callbeck	Lapointe
Carstairs	Lavigne
Cook	Massicotte
Cordy	Merchant
Day	Milne
De Bané	Morin
Downe	Phalen
Fairbairn	Poulin
Finnerty	Poy
Fraser	Ringuette
Graham	Robichaud
Hubley	Rompkey
Jaffer	Smith
Kenny	Trenholme Counsell
Kolber	Wiebe—32

ABSTENTIONS
THE HONOURABLE SENATORS

Mahovlich	Plamondon—3
Pépin	

The Hon. the Speaker: Senator St. Germain, did you wish to rise to abstain?

Hon. Gerry St. Germain: No, Your Honour. I was not in here and the bells did not ring, so I would like to raise a point of order later.

The Hon. the Speaker: That can be done later.

Senator Carstairs: Honourable senators, I move that, instead of third reading of this bill, we refer the bill to the Standing Committee on Rules, Procedures and the Rights of Parliament.

Senator St. Germain: I have a point of order.

The Hon. the Speaker: I must first dispose of all of these matters, and then I will deal with the honourable senator's point of order.

Senator Cools: On his point of order, Your Honour, as well as to what just happened, you cannot move on to —

REFERRED TO COMMITTEE

The Hon. the Speaker: I am in the process of putting a motion to the house.

• (1740)

It was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud, that the bill be not now read the third time but that it be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.

Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: I will ask the senators to be polled.

Hon. John Lynch-Staunton (Leader of the Opposition): Your Honour, the doors are opening and closing while we are having a vote, which is out of order. The doors must be kept shut during the vote. No one is allowed in and no one is allowed out, and that has not happened.

The Hon. the Speaker: I have not been watching the doors, honourable senators, but it has been raised as an important matter. I will put the question again in a moment. I will interrupt to refer to the appropriate rule so that I can deal with it.

Rule 66(4) states:

> The doors of the Senate shall not be locked during the taking of standing votes. Senators may enter the Chamber at any time but no Senator shall vote who was not within the Bar of the Senate when the Speaker puts the question. Senators shall vote only from their place in the Senate.

Honourable senators, I was not watching the door, but clearly our rules provide that the door can be opened or closed, and senators can come in, but they cannot vote unless they were within the bar when the vote was called.

I will pause for a moment to allow senators who are objecting to anyone who did vote or who is here improperly to do so.

Hon. Gerry St. Germain: On a point of order, honourable senators, I came into the chamber during the vote. I did not vote. I have a question to ask. Why was not at least one bell rung to advise senators that a vote was taking place? This seems totally unfair. If you have a weak bladder, you can be virtually destroyed, lose a vote, and change the history of the country.

The Hon. the Speaker: This point of order has arisen before, Senator St. Germain, and I will attempt to answer your question by reference to the rules. They provide that when we are under a time allocation order, all votes with respect to the matter be taken sequentially and that the bells be sounded only once. The bells were sounded from 4:30 to 5 p.m., and that bell was sounded for all votes with respect to the disposition of all stages of the bill that was subject to the time allocation order.

Motion agreed to and bill referred to the Standing Committee on Rules, Procedures and the Rights of Parliament on the following division:

YEAS
THE HONOURABLE SENATORS

Biron	LaPierre
Callbeck	Lapointe
Carstairs	Lavigne
Cook	Massicotte
Cordy	Merchant
Day	Milne
De Bané	Morin
Downe	Phalen
Fairbairn	Poulin
Finnerty	Poy
Fraser	Ringuette
Graham	Robichaud
Hubley	Rompkey
Jaffer	Smith
Kenny	Trenholme Counsell
Kolber	Wiebe—32

NAYS
THE HONOURABLE SENATORS

Adams	Kroft
Andreychuk	LeBreton
Atkins	Lynch-Staunton
Bacon	Maheu
Banks	Meighen
Beaudoin	Moore
Cochrane	Nolin
Cools	Prud'homme
Corbin	Robertson
Ferretti Barth	Spivak
Forrestall	St. Germain
Joyal	Stratton
Kelleher	Tkachuk—27
Kinsella	

ABSTENTIONS
THE HONOURABLE SENATORS

Mahovlich	Plamondon—3
Pépin	

Senator Lynch-Staunton: Your Honour, my earlier objection just before the vote was based on an interpretation of the rules which was completely wrong. I apologize to you and my colleagues for that interruption. It was completely out of order. Next time I will consult the rules before being so abrupt and know-it-all.

CHILDREN OF DECEASED VETERANS EDUCATION ASSISTANCE BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-50, to amend the statute law in respect of benefits for veterans and the children of deceased veterans.

Bill read first time.

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

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

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

POINT OF ORDER—DEBATE SUSPENDED

On the Order:

> Second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we were on Bill C-49, and I was raising a point of order and speaking to the error in the bill in terms of its title.

• (1750)

I had been citing some of the procedural literature and precedents. Let me pick up with Speaker Sauvé's ruling in the other place on July 20, 1982, which you will find at page 19866 of Hansard. It says clearly that the long title should be amended when amendments of substance are made to the bill. Speaker Sauvé said as follows:

> The long title sets out, in general terms, the purposes of the bill and should be amended only if and when amendments of substance are made to the bill which would necessitate as a consequence changes to that title. For the benefit of the honourable member, I refer him to page 465 of May's which reads in part,
>
> > Both the long title and the short title are amended, if amendments to the bill make it necessary.

Honourable senators, the question then before us is: Do the amendments that were made in the other place make it necessary to amend the long title of the bill? My position is that these amendments were substantive: they were not formal; they were substantive — and that the title of the bill should have been amended. The amendment to the Electoral Boundaries Readjustment Act changes how and when returning officers are appointed and when electoral district associations come into effect. These are substantive changes. They are major changes to the wording of the present act.

Honourable senators, let us review again the long title of Bill C-49. It says:

> An Act respecting the effective date of the representation order of 2003

Let us look at the representation order of 2003. It states:

> And whereas section 25 of the Electoral Boundaries Readjustment Act provides that, within five days after the receipt by the Minister of the draft representation order, the Governor in Council shall by proclamation declare the draft representation order to be in force, effective on the first dissolution of Parliament that occurs at least one year after the day on which the proclamation was issued, and on the issue of the proclamation the order has force of law accordingly;

The date of that proclamation, honourable senators, is August 25, 2003. Nowhere in that proclamation is there mention of section 24 of the Electoral Boundaries Readjustment Act in the representation order referred to in this bill.

Last week, honourable senators will recall that we had a ruling from the Speaker of the Senate, who ruled on the long title of Bill C-41. His Honour, at that time, observed at page 2203 of the *Debates of the Senate* on October 22, 2003:

> While it is admitted that a title is important with respect to determining the scope of a bill and the amendments that can be proposed with respect to it, this can be somewhat less important in the case of amending bills intended to correct a battery of statutes. This is because amending bills do not have the same integrity as a bill that constitutes an original act.

Honourable senators will recall the Senate accepted that ruling of our Speaker. Therefore, we should see what that means when it is applied to this bill. This bill is not designed to correct, to use the words of our Speaker, "a battery of statutes." Rather, honourable senators, this bill is designed to change the effective date of a representation order. In doing so, our colleagues in the other place have added substantive changes to a statute that is not reflected in the long title of this bill that is before us. The correct action should have been a further amendment to the long title of the bill in the other place. That did not happen. In effect, the Senate has now received an imperfect bill.

Honourable senators, it has been argued in the past that if the long title of the bill is defective, the bill should not proceed to second reading. It was not the Senate that neglected to make amendments to the long title of the bill. Rather, it was members of the other place who were negligent — and, if I might add, negligent once again. Furthermore, it would not be right, in our consideration of this bill, to amend the long title if we have not made any amendments to the contents of the bill.

This bill should be removed from our Order Paper and returned to the House of Commons. Speaker Fraser from the other place, on July 11, 1988, in Hansard at page 17382 to 17384, said this about the Senate's power:

> There is not any doubt that the Senate can amend a bill, or it can reject it in whole or in part.

Speaker Lamoureux from the other place, in his ruling of June 12, 1973, rejected a Senate public bill and ordered it removed from the Order Paper.

Honourable senators, this bill should be rejected. I urge you to find this bill imperfect in form; and that our Speaker should so rule that it be removed from the Order Paper.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his comments. He will not be the least bit surprised that I do not agree with any of them.

The interesting part about this particular bill, respecting the effective date of the representation order of 2003, is that it has to do just that. It is an act respecting the effective date of the representation order of 2003. That is, in essence, all it does. It changes the effective date of when a writ can be dropped or when a writ cannot be dropped.

The honourable senator seems, in the last few weeks, to not like the title of any particular bill. Last week, and perhaps even continuing today, we have had a number of points of order on Bill C-41. The Speaker had some interesting things to say with respect to title. He said, for example, that while it is admitted that a title is important with respect to determining the scope of the bill and the amendments that can be proposed with respect to it, this can be somewhat less important in the case of amending bills to correct a battery of statutes. This is because amending bills do not have the same integrity as a bill that constitutes an original act. This is an amending bill. That is all it does.

Once enacted, the Speaker went on to say, the content of an amending bill is absorbed into the various acts to which it applies. This is exactly what would happen: this would be an amendment to the representation order that was passed earlier.

Honourable senators, we have a situation here where the honourable senator has argued that, somehow or other, the House of Commons cannot make amendments to bills without changing the title. With the greatest of respect, they make substantive amendments — as we make substantive amendments — to a number of pieces of legislation, and neither we nor they change the title.

Honourable senators, and you in particular, Your Honour, I would ask that you rule that this long title is perfectly in order, and that there is not a valid point of order.

The Hon. the Speaker: Honourable senators, I rise to draw your attention to the clock. It is now six o'clock. Is it your wish that I not see the clock, honourable senators?

Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: There is not unanimous consent, honourable senators, and accordingly, I must see the clock. I will leave the Chair until 8 p.m.

Debate suspended.

The Senate adjourned until 8 p.m.

• (2000)

The sitting of the Senate was resumed.

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-45, to amend the Criminal Code (criminal liability of organizations).

Bill read first time.

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

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

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

POINT OF ORDER

On the Order:

> Second reading of Bill C-49, respecting the effective date of the representation order of 2003.

The Hon. the Speaker: Honourable senators, at 6 p.m., I believe we were on a point of order. I believe Senator Lynch-Staunton had the floor.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I will continue, but I am sorry that I do not see here those who should be listening to this argument. I understand there is an event going on at this time that I also would have liked to attend. It is unfortunate that we did not see the clock at six o'clock so that we could all be there to support a very worthwhile event.

On this point of order to which Senator Carstairs objected, I want to point out that there is a significant difference between the objection we made to the title of another bill and the objection that we are making to the title of this bill. In the other case, the House did not pass any amendments to Bill C-41. While we feel that the long title is not in order, at least the argument was that when the bill came here, it came in its original state, as the House was first introduced to it.

In the case of this bill, Bill C-49, it was given two amendments in the House. One was to amend the Canada Elections Act and the Income Tax Act. We have in the same bill, after it was first introduced, an amendment brought at second reading, following a report of the committee — a significant amendment having nothing to do with the representation order. Senator Carstairs argued that only the representation order amendment was included in this bill. I sensed that perhaps she had read the original bill, which in effect had only one clause: that is, directly related to the title, or vice versa. The title directly refers to it, respecting the effective date of the representation order. That clause remains.

After that, however, two more clauses were added before the bill came to us. One was an additional amendment to the Electoral Boundaries Readjustment Act; the other one, which I just mentioned, was an amendment to the Canada Elections Act. The argument is that the long title should have been changed to say, "An Act respecting the effective date of the representation order of 2003 and an amendment to the Canada Elections Act and the Income Tax Act." That is the difference between the argument we gave on Bill C-41 regarding the long title and the argument being presented here by Senator Kinsella.

Senator Robichaud asked me earlier today when I would be speaking to Bill C-17. I said, "By November 7." He may have sensed a little sarcasm in that reply that was not intended. The fact is that Bill C-17 is a very complicated bill, and we received a briefing book for all senators. The briefing book has a backgrounder on the bill; a bill summary; a clause-by-clause analysis of each act to be amended, of which there are 23; another explanatory note; and it is in two languages, as it should be.

This is indirectly related to the point of order, but it is an opportunity to raise it here. I have the briefing book prepared on this bill, Bill C-49. It is called the "Opposition Briefing Book." We have never had an "Opposition Briefing Book" before. We usually get briefing books from the ministry and the department involved. The first page is a copy, not of the final bill but of the bill as amended by the committee of the House and submitted to the House for final approval — not even the final bill. I suppose we can assume that this is the final bill, but it would have been nice to have the bill as voted by the House of Commons. There is then a press release, dated September 15, 2003, announcing the original bill, before there are any amendments. Finally, there is another press release giving the backgrounder on Bill C-49. In fact, it is not a briefing book at all; it is a throw-away. That is exactly what I will be doing with it.

Honourable senators, I find it insulting to be given in this chamber this thin, useless book and, in addition to that, it is prepared in only one official language! This is an opposition briefing book only in one language. It should be a briefing book for all senators. It should have been prepared by the department or the minister involved, and it should have been presented to us in a more thorough fashion, with a clause-by-clause explanation like most briefing books. This one is not. That has little to do with the point of order, but at least it gets it out of my system, because I was very annoyed, not only on my own behalf but also on behalf of all colleagues to see —

Senator Robichaud: Get it all out!

Senator Lynch-Staunton: You can laugh all you want, Senator Robichaud —

Senator Robichaud: I am not laughing.

Senator Lynch-Staunton: — but it is not funny to get an official document from the government in only one language. Do you find that funny?

Senator Robichaud: No. Absolutely not.

Senator Lynch-Staunton: All right. That was the point I was making within the argument on the point of order.

The main argument is that the point of order raised here is different from the one raised on Bill C-41 — although it refers to the long title — because amendments were made in the House and the long title was not changed, but it should have been. For that reason alone, the bill should be rejected.

The Hon. the Speaker: Senator Lapointe, do you want to speak to the point of order?

Hon. Jean Lapointe: Honourable senators, I have a single question.

The Hon. the Speaker: This is not the time for debate; only for comment on the question of whether or not this point of order is valid.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I would like to follow up on what the Leader of the Opposition just said — or more formally Her Majesty's Loyal Opposition. After 40 years, I am learning that there are documents circulating for the majority and others for the minority. I do not represent the opposition.

• (2010)

I sit here in my corner, sometimes quietly, and sometimes less quietly. But if it is true that such documents are available — for and against — I wonder what Senators Plamondon, Roche, Lawson and Pitfield are doing here. What are we doing here? A good friend of Senator Fairbairn used to say that all senators are equal. I am therefore shocked when this kind of thing happens. Let me tell you something: you have not heard the last of me this evening.

[*English*]

The Christmas tree is already there, as if we were at the end of November. Perhaps there are things I do not understand because I am getting old, but are we in October, Senator Chaput, or are we at November 29? I do not know. I see the Christmas tree already there. It does not shock me; I believe in it.

[*Translation*]

Frankly, if there are indeed documents, should they not be made available to all honourable senators?

[*English*]

Honourable senators, I want to tell you one thing tonight. I do not give lessons to anyone and I do not take lessons from anyone. You will hear that later on tonight. I will speak on this motion because I am a Pearson boy, even though I disagree with certain of his policies.

[*Translation*]

To me, the Elections Act has always been sacred, beyond the control of politicians — and I have known both systems. It used to be that the electoral maps were designed by members of Parliament. They could say: "Give me this street corner in exchange for that parish". Mr. Pearson said: "That is enough. We are going to have a fine Elections Act that is beyond the control of politicians". I want to address this bill. However, I am currently speaking on the point of order of the Deputy Leader of the Opposition.

[*English*]

The Hon. the Speaker: I thank honourable senators for their interventions on the point of order raised by Senator Kinsella and spoken to by a number of senators. This point of order is quite similar to the matter on which we had a ruling earlier — similar enough that the principles are basically the same. It is something with which I should be able to deal, and I intend to rule now.

I have also benefited from the two-hour break in terms of having had an opportunity to review the matters that I have noted from the interventions, for which I thank all senators. I have also had a chance to consider the differences that are being put to me in terms of distinguishing this point of order from a similar matter where I ruled that there was no point of order, essentially because the deficiency complained of in the bill is something for the Senate as a whole to address and remedy by way of amendment rather than something that should be directed to the Speaker of the Senate in terms of having the matter taken off the Order Paper for procedural reasons.

In this case, the Senate has received a message from the House of Commons telling us that it has passed Bill C-49. Bill C-49 has received first reading in the Senate. The Senate has ordered that it be placed often the Orders of the Day for second reading. I recognize, however, that this initial stage is pro forma.

The point of order is essentially that the bill is deficient because the title is not complete and fully descriptive and that it is distinguished from the previous ruling on a similar matter. Honourable senators are asking me, in effect, to pass judgment on the decision of the House of Commons that adopted Bill C-49 and the way in which it was received by us and is presented here today on our Order Paper.

As Speaker of the Senate, I have no authority to rule on decisions of the House of Commons. This point is referred to in the previous ruling, and I would like to further substantiate it by referring to a newer text than the one we normally use. It is of no less authority, and it is of great interest to us. That is Marleau and Montpetit, *House of Commons Procedure and Practice*. I am looking at page 674, the section entitled "Passage of Senate Amendments (If Any) by the House of Commons." The observation is made there that, "It is not for the Speaker of the House of Commons to rule as to the procedural regularity of proceedings in the Senate and of the amendments that it makes to bills." I could go on because the section does refer to amendments, but I think by direct analogy it refers to the general principle of questioning what has taken place here by way of the procedures we have followed.

The principle followed in the other place is clear, and I think the rationale for that decision is the same for this place. We have no power to change or remedy, other than through amendment and through the sending of messages. Accordingly, I do not think this is something that the Chair has any power to remedy; rather, this is for the Senate as a whole to address in the way that it normally does — by message, indicating an amendment, and, of course, the Senate can amend the title to a bill.

My ruling on this question is that it is sufficiently the same as the matter already ruled on, that the same principles apply. The question is not for the Speaker of the Senate to address by way of having withdrawn a bill such as the one before us because of a deficiency in the title, but rather it is a question for the Senate as a whole to address, if it believes that it is necessary to do so, by way of amendment.

Accordingly, I rule that there is no point of order and that we now return to debate on Bill C-49.

SECOND READING—DEBATE ADJOURNED

Hon. David P. Smith: Honourable senators, I move second reading of Bill C-49.

The Hon. the Speaker: Since the point of order was raised prior to the motion being made, I will now put the motion.

It is moved by the Honourable Senator Smith, seconded by the Honourable Senator Léger, that bill C-49 be read the second time.

Does the Honourable Senator Smith wish to speak?

Senator Smith: Honourable senators, I am pleased to sponsor and open the debate in the Senate on Bill C-49, respecting the effective date of the representation order of 2003.

Senator Lynch-Staunton: That is all it is?

Senator Smith: That is all it is. This bill is very succinct. It is to the point. It originally was only one clause, and then the second and third clauses were added by the political marriage partners of the proposed conservative party. They were amendments brought in by the Alliance —

• (2020)

Senator Robichaud: Who? Who?

Senator Smith: — which were adopted by the government and agreed to.

Senator Kinsella: Your point is?

Senator Smith: This bill is about protecting the quality of our representative democracy by ensuring that Canadians have a new, up-to-date electoral map as soon as possible, rather than having —

Senator Lynch-Staunton: Careful, now; we have second thoughts in our party, too.

[The Hon. the Speaker]

Senator Smith: — a map that is based on data from 1991. The process happens every 10 years, every time we have a decennial census. It is pretty simple that the electoral ridings are updated in a way that reflects the changing face of Canada. This bill really delivers on that promise, and that is all that it does, and that is why I am pleased to sponsor this bill and encourage my honourable colleagues to give their support to this bill.

Some honourable senators may ask why this bill is necessary. As I said, there are only three clauses. It is not complicated. Its objective is to ensure that the new electoral boundaries contained in the 2003 representation order are not delayed any longer than necessary. I believe that is desirable and reasonable, because we want to ensure that a new electoral map is in place as soon as possible, and that will, in turn, increase the likelihood that the next election, whenever it is called, can proceed on the basis of electoral boundaries that accurately reflect current census data.

I am sure honourable senators are aware that the electoral boundary commissions for each province recently completed their work and, based on the result of the 2001 census, they have devised new electoral maps that reflect population growth and movements within and between provinces. The new ridings are contained in the 2003 representation order that was proclaimed on August 25. I will repeat that it was proclaimed on August 25. However, the new electoral map is not yet in force because of an automatic, one-year "grace period," which is provided for in the Electoral Boundaries Readjustment Act.

In other words, the grace period delays the coming into force of new electoral boundaries for one year following proclamation. Therefore, if it were August 25 of this past summer, that would mean it would not come into effect until August 25 of 2004. This one-year grace period is intended to give the Chief Electoral Officer and political participants time to prepare for and adjust to the new boundaries. As I mentioned, without this bill any federal election called prior to August 25, 2004, would have to be held on the existing, outdated riding boundaries based on population figures from the 1991 census.

Honourable senators, if that occurs, British Columbia, Alberta and Ontario would be deprived of the additional seats they are entitled to under redistribution — two new seats for each of B.C. and Alberta, and three additional seats for Ontario — as a result of population growth. Also, Canadians in all provinces would be denied their right to updated electoral boundaries to reflect changing population patterns within the province and ensure greater voter parity between ridings.

Bill C-49 would avoid this result by accelerating — and that is all it does — the coming into force of the new electoral boundaries. This bill does that by shortening the one-year grace period so that the new boundaries would take effect on the first dissolution of Parliament that occurs on or after April 1, 2004. Therefore, it is an acceleration of approximately five months.

Honourable senators, our Constitution mandates regular redistribution to ensure that our electoral system remains faithful to the principle of representation by population and other fundamental democratic principles. While the Constitution fixes the number of seats in this chamber, it requires that the size of the other place increases from time to time to reflect population growth. It is important to remember that the other place is affected in a direct way by this bill, whereas this place is not directly affected.

Senator Lynch-Staunton: You do not vote?

Senator Smith: They passed this bill with the support of the official opposition.

Senator Lynch-Staunton: So what?

Senator Smith: That may not mean anything to some honourable senators, but I wish to point that out to whomever finds it intriguing.

Based on the 2001 census figures, the number of seats in the House will rise from 301 to 308 MPs, and these new seats will go to the fastest-growing provinces, which are Alberta, B.C. and Ontario. In addition to these added seats, other adjustments must be made to boundaries with provinces to accommodate population shifts and other demographic changes.

There was an interesting article on the editorial page of *The Globe and Mail* today, written by John Ibbitson, in which he talked about how urban areas and cities are adversely prejudiced in regard to the average population of their ridings. Of course, if this bill goes through, I believe that will have some positive effect in the right direction, and so all of these changes, quite apart from a provincial basis, are essential to ensuring more electoral fairness and effective representation of local communities, given that the updated boundaries are, in fact, ready. They are now ready. There is no reason to delay bringing them into force any later than is strictly necessary for operational reasons.

In that regard, Bill C-49 takes its cue, and indeed its inspiration, from the advice provided to Parliament by the Chief Electoral Officer. What did he say? This last July, the CEO wrote to the Chair of the Committee on Procedure and House Affairs, outlining the feasibility of accelerating the implementation of the new electoral boundaries. Mr. Kingsley indicated that the full one-year grace period would not be necessary this time, and that it would be possible to meet an earlier date of April 1, 2004, provided the government introduced legislation to override the normal grace period which is automatically provided for in the existing legislation.

In his testimony before the House committee, the CEO reiterated that Elections Canada would be ready to implement the new electoral boundaries for any election called on or after April 1, 2004. In these circumstances, not only does it make sense to accelerate the implementation of the new boundaries but also I believe electoral fairness demands it.

Some may ask how it is possible to accelerate the redistribution process in this way. We must remember that there have been great leaps in technology. It has been 40 years since the Electoral Boundaries Readjustment Act was first implemented. At that time, a full year may well have been necessary to complete the necessary tasks. Now, with modern technology and computerized election systems having greatly facilitated the work involved, there is less need for an extended period of adjustment.

To take an example, one of the main tasks after readjustment is preparing new electoral maps. Most of us can imagine how much easier that is today with the computer technology that exists compared to what existed in 1964, which was virtually nothing.

For these reasons, the CEO has made it clear that he will be able to implement the new electoral map as of April 1, 2004, and delay beyond that point is unnecessary. In that context, it is pointless to maintain these outdated electoral boundaries. They do not really provide an adequate basis for effective parliamentary representation and all the shifts in population that have occurred. Like our colleagues in the other place, we need to heed the advice of the CEO and, I believe, act quickly.

In terms of criticisms, there have been a few criticisms about this bill. First, I would note that no one has seriously argued that the April 1, 2004, implementation date is administratively or operationally unworkable. That is the justification for the grace period in the first place.

• (2030)

When an operational concern was identified at the committee, albeit one unrelated to the acceleration, per se, the government agreed to the amendments that represent the second and third clauses that would address the perceived problem.

In regard to other objections, some have suggested that this bill is intended to set the stage for the next election. Honourable senators, those who have made this accusation are putting the cart before the horse. The next election will be held at a time of the Prime Minister's choosing. This bill simply addresses the increasing likelihood that when an election comes, it will be based on the new boundaries rather than on the outdated boundaries.

Senator Lynch-Staunton: It is a good thing you are not in court.

Senator Smith: Honourable senators, I certainly would defend this proposition in court. We all know the reality that the transition is under way. That is not unusual.

Senator Lynch-Staunton: We have one, too.

Senator Smith: I am aware that honourable senators on the other side are undergoing a similar process. This is not unusual when there is a new prime minister of a party that is already in power. This happened when Mr. Pearson turned things over to Mr. Trudeau. Mr. Trudeau wanted a mandate quickly, and he went out and got one.

Senator Lynch-Staunton: He did not change the election law.

Senator Smith: When Mr. Trudeau handed things over to Mr. Turner, Mr. Turner wanted a mandate quite quickly. When Kim Campbell succeeded Brian Mulroney, she sought a new mandate fairly quickly. This is a normal pattern. For some people to see conspiracies here that do not exist is really rather short-sighted.

Some people have suggested that somehow this bill interferes with the independence of the electoral redistribution process, and it does not. Independence from political interference is the hallmark of our system. The process has unfolded entirely as it should.

Each province has a commission made up of three people. A judge who is appointed by the Chief Justice of that particular province always chairs that commission. In Ontario, for example, the judge who chaired the panel was certainly not noted for wearing red ties before he went to the bench, and that is fine.

Senator Lynch-Staunton: What is your point?

Senator Smith: It was done without any consideration whatsoever of political ramifications.

Senator Lynch-Staunton: No one challenges that; they did a good job.

Senator Smith: There were some challenges. There were some submissions made. Fine-tuning did occur. At the end of the day, the right result occurred. These commissions were additional to the one appointed by the Chief Justice, and the two appointed by the Speaker.

These independent commissions have completed their work. Members of the public and MPs have had the opportunity to be heard and the new boundaries have been drawn up and proclaimed exactly according to law. The only thing that remains to bring them into force, as soon as operationally possible, is for Bill C-49 to come into place, because the proposed legislation will simply accelerate when these changes can happen.

Some may say: "Why does this bill deal only with the 2003 representation order rather than shorten the one-year period for time in eternity?" It should be noted that the Government Leader in the House of Commons referred the need for a more permanent solution to the House Procedure Committee for further study. He also invited the committee to consider other possible changes to the Electoral Boundaries Readjustment Act. As well, the Chief Electoral Officer indicated to the committee that he would be making his own recommendations for changes to the present system.

Bill C-49 is not the last word; it is, rather, a necessary interim measure to ensure that our electoral blueprints are up to date and reflect our ever-changing population. Honourable senators, this bill gives us the opportunity to deliver the promise of effective representation to all Canadians based on the most recent census. That is very reasonable.

An essential condition of effective representation is an up-to-date electoral map that reflects population size, movements and shifts, as well as the diversity of our communities. Bill C-49 would ensure that the new electoral boundaries reflecting Canada's changing face come into force as soon as operationally possible. The Chief Electoral Officer determined the date.

Not to act on this important matter would be pointless. Quite frankly, why should we put ourselves in a straitjacket that is totally unnecessary? The bottom line is, I do not believe that this occurrence will adversely prejudice anyone. Whereas, if it does not occur, certainly those three provinces that will gain seats will definitely feel they have been adversely prejudiced.

I trust that all my honourable colleagues will follow the gist of what I have been talking about and pass this proposed legislation quickly.

Hon. David Tkachuk: I have a question for the honourable senator. Would the honourable senator indicate whether Bill C-49 will make the grace period permanent?

Senator Smith: I thank the honourable senator for his question. In response, no, Bill C-49 applies just to the current situation. The Chief Electoral Officer, when he appeared before the committee, said that he would be coming in with something. It is difficult to predict what he might say. The raison d'être for being able to accelerate the period is simply all the computer technology and map-changing ability that technology has given us. Indications certainly were that he could very well be making that change, but I would not want to speak for him. He opened the door to that potentiality.

Senator Tkachuk: Why would the Chief Electoral Officer write a letter to the government to suggest a change in the grace period and not have that change made permanent? I could understand him doing it if he said, "Well, we have all this new technology," as the honourable senator so well stated in his speech, "maps do not take as long to make, we can do this quicker, and I would recommend that we amend the act to have the grace period set as seven, six or five months"; and it would be a permanent amendment, rather than the one-year grace period which would make some sense. Why would he write a letter just to say, "I will be ready early, if you do this"?

Senator Smith: Honourable senators, I cannot speak for the Chief Electoral Officer. However, it was not the government that he wrote to; it was the House committee. He wrote to the committee, not because he was asked to by the government but, rather, because he was aware that this was an issue under discussion. This matter was in the public arena. It is a fairly normal thing when there is a leadership change within the same party for a new leader, particularly when the government is in the fourth calendar year, to want to seek a mandate.

Should there be a straitjacket whereby an election could not be called because they have to wait an extra five months for ridings to come into effect, legally, where everything is done other than this one clause in the bill? To the best of my knowledge, it was on his own initiative that he advised them that, technically, this could be done.

Senator Tkachuk: If the Chief Electoral Officer agreed with this change, and the government, the Commons committee and the Official Opposition agreed, too, then perhaps honourable senators could amend this proposed legislation to make that seven-month period permanent.

I am sure the honourable senator would support such an amendment, because it does not make sense for us to pass a bill for this time only. Why would we not amend the bill to make the grace period seven months rather than one year and then send it back to the House for their ratification?

Senator Smith: The honourable senator may make whatever amendments he wishes.

Senator Tkachuk: I will.

Senator Smith: That is his option. The Chief Electoral Officer did indicate that he would study as to whether or not this made sense, and whether it was something that he would recommend on a permanent basis.

I cannot speak for the Chief Electoral Officer. Actions speak louder than words, and he did write this letter to the committee. That makes the case for itself.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I would like to ask Senator Smith if he is suggesting that this change is as a result of the Chief Electoral Officer's following the changes in the Liberal Party and, once he noted that there would be a change in leadership, he felt that it was his duty to advise the House committee that what has been called the grace period could be delayed or could be shortened in order to accommodate the new leader's electoral preferences?

Senator Smith: The letter in question is a matter of public record; it is dated July 15, 2003. It is written to Peter Adams, Chair of the Standing Committee on Procedure and House Affairs. The first sentence reads as follows:

> Dear Mr. Adams: I am writing to you in light of recent media articles concerning the possibility of accelerating the implementation of the new electoral boundaries, effective April 1, 2004.

The gist of the letter over two pages is it can be done.

• (2040)

Senator Lynch-Staunton: I find it extraordinary that the Chief Electoral Officer, who should be the one officer above politics, would volunteer to interject himself in the machinations of any political party, in particular the governing one, but we will have occasion to question him on that one when he comes before the committee.

I will ask another question. Had the Chief Electoral Officer not noticed in media reports that certain things were going on, would this bill be before us?

Senator Smith: That is a hypothetical question.

Senator Lynch-Staunton: No, it is not. It is a practical question.

Senator Smith: It is a hypothetical question, and I do not really have a crystal ball with which to answer it.

Senator Lynch-Staunton: It is a very practical question because the Lortie commission, which sat and came out with a very valuable report with recommendations on how make improvements — with Madam Pépin as a signing member — recommended at the time to shorten the grace period to six months. The Chief Electoral Officer, at least 10 years ago, said that the one-year period could be reduced. Senator Tkachuk's question is well-founded: Why is the amendment to reduce it only for this particular proclamation, if it was good enough for the Chief Electoral Officer some 10 years ago? There have been three bills on elections presented here, Bill C-18, Bill C-63 and another one which I have forgotten, but not one has touched on this particular item called the "one-year delay," what the honourable senator called the grace period.

Not only is it extraordinary that it only applies to the next election, when all experts have said it can be done for all elections for the future, but it also arises from the needs of the next leader of the Liberal Party, or to give the discretion to call an election earlier than it would be called under the new boundaries.

I am just trying to have the honourable senator deny that the Chief Electoral Officer has been influenced to come out with this amendment or to support this amendment, because that challenges his neutrality.

Senator Smith: I understand the question. I fully expect that the Chief Electoral Officer would be called as a witness, and that question can be put to him at that time. I am not aware that he was influenced to do this. The last paragraph of his letter was:

> I trust that the Committee finds this information useful and I would appreciate being kept abreast of any development concerning this matter, so that I may start preparations, if so required.

He was aware that this was a matter of debate within the public arena. Therefore, he says, "Well, if you want to do it, it can be done." I actually find it quite inspiring that he would take the initiative to do that rather than be shocked.

Senator Lynch-Staunton: There have been many representations in the press recently about the effectiveness of the registration system we now have that replaced the enumeration system, and I have not seen the Chief Electoral Officer respond to that. Suddenly, he quickly responds to certain media reports that there is a change in leadership, and, therefore, he, as I hear, volunteered a contribution to an accelerated process. I do not understand his role in all of this. Did anyone ask him, or did he, himself, write that letter without any incentive except wanting to do good for — I will not add anything.

Senator Smith: That may be a rhetorical question to some extent.

Senator Lynch-Staunton: It is not. It is a practical question.

Senator Smith: I know it is a practical and fair question, but I cannot answer it. Let us go back to what he said in the first sentence:

> I am writing to you in light of recent media articles concerning the possibility of accelerating the implementation of the new electoral boundaries...

He is an astute student of history. I was here in 1968 working on the Hill; Mr. Trudeau wanted a mandate. I was here in 1984; Mr. Turner wanted a mandate. I was not here in 1993 when Ms. Campbell decided she wanted a mandate, but the same dynamic occurred each and every time. I am a reasonably astute observer of what occurs in that dynamic. Someone comes in seeking a new mandate. Rather than have these three provinces be adversely prejudiced with their representation locked into a 1991 census, the Chief Electoral Officer says, "If you want to do it, it can be done." You can ask him these questions — they are all valid — when he appears before the committee.

Senator Lynch-Staunton: I have been around with Mr. Diefenbaker, Mr. Clark and Ms. Campbell. I do not recall any of them being given favourable consideration by a chief electoral officer.

Some Hon. Senators: Hear, hear!

Hon. Marcel Prud'homme: I must say that I very much admire the coolness of my long-time friend, Senator Smith, to discharge himself of a very difficult situation. That is bad English, but I want to practise my English tonight, at no cost to Canadian taxpayers.

The honourable senator mentioned 1984. Of course, at that time, there was already a census in 1981 and a new map, but it was not ready. We did not ask permission. I ran in 1988 on the 1981 map; I ran in 1968 on the 1961 census; I ran in 1979 on a new map based on a 1971 census. As the honourable senator very well said, we will see what happens when we come to the committee with a very good civil servant. Some will find him an accommodating civil servant. He is a good friend. He has a job to do, but so do we.

I want to ask the honourable senator if the true meaning of this is not to allow the one that is perceived to be the next leader of the Liberal Party — and, by the way, I congratulate you for having delivered Ontario three times in a row for Jean Chrétien, who is my old friend for 50 years almost today. It is almost 50 years that Jean Chrétien and I met in the Young Liberals in September/October 1953. The honourable senator is dispatching his job very well.

You know my reputation in many quarters is unbelievable. I hear it, and sometimes I help to propagate it so as to listen to how it will come back. I usually say that my reputation is that I talk a lot, but there is always someone to come to my rescue and say, "Oh, he talks a lot, but he delivers. When he makes a promise, he delivers."

The honourable senator is like that in other ways; he delivers. Is it not to avoid an embarrassment for the next Prime Minister of Canada, whose father I happened to be a friend of and himself a fine gentleman? Is it not truly to be accommodating so that the sooner he could win the election, the better he could control his mob of people who will have to wait until after August 22 if we were to follow the usual practice? Is that not real cool politics, or is the honourable senator ready to say that we should be so accommodating?

You are a Trudeau boy. So was I; I was a Pearson boy. Why do we change suddenly overnight only for one election? It would have less restriction if it were an amendment for the future because I agree with you.

• (2050)

We have modernized the institution. I agree with Mr. Kingsley. With computers, you can do more. As a matter of fact, I do not see why we should wait nine months. I think we should do it in six. Yet, it must be wrong because there is another bill tonight.

Honourable senators, 37 members of the House of Commons want to change the names of their districts. This bill is not even passed and there is another law to ask that the names of their districts to be changed — 37 of them! In Quebec, they are all Bloc requests. I am not ready to accommodate anyone. I think this is a mistake.

Honestly, does the honourable senator not think he is doing a marvellous job but dispatching a very difficult cause?

Senator Smith: I am not quite so cynical. That was a long question. Perhaps I can recall the sequence of points made by the honourable senator.

First, the precedents to which I referred were not as to how long a period of time it was between the last census and when the election was called where the boundary was changing but as to the pattern that always occurred. When you have the same government in office, the same party, and you have a new leader, the pattern is that they like to go as quickly as possible to get a mandate. That happened in 1968.

Senator Lynch-Staunton: So we change the law to accommodate them?

Senator Smith: That happened in 1968, 1984 and 1990.

Senator Lynch-Staunton: It did not change the law.

Senator Smith: I do not find anything weird about that at all. I find it actually desirable that when you have a new leader, that leader is able —

Senator Lynch-Staunton: You change the law to accommodate him!

Senator Smith: — to call and get a mandate that they stay or go. In the case of Mr. Turner, you saw the mandate. I happened to be one of his ministers at the time.

Senator Lynch-Staunton: He should have extended the proclamation order then.

Senator Smith: I went back to Toronto to practise law as a result of that, an involuntary retirement. I do not see anything undesirable about getting out of the straitjacket.

The honourable senator asked if it would bother me if we were making it permanent. No, it would not, but that is not the bill that passed the Commons. This bill does not directly affect us in the way that it affects them. It did go through with the support of the official opposition, and I do not think that is totally irrelevant.

Senator Prud'homme: The spirit of these laws was to take away from the members of the House of Commons — and I was one for 30 years, as was the honourable senator — the tampering by the elected people because they had a vested interest.

What I tell them is devastating — and I tell each and every one of them — but they should not even touch the electoral districts. That should be left to the Senate alone because we have no vested interest. It should be left to us and not to them. Look at this law that we are being asked to vote on tonight. They want to change the boundaries because they have a vested interest. When I hear these members say, "They touched my district," I run to them and say, "Do not say that. It looks bad. Say the district that I have the honour to represent." They say, "They dare change the boundaries of my district," as if it were a personal possession. This is wrong. That is what we are trying to do — you and I and the young Liberals — namely, to take away the tampering that I saw happening in the 1950s, where members would go into the office, have a drink and say, "Give me these parishes; I will give you these streets." You were a very dynamic reformer. I know that, in your heart, you are still a reformer. It should not be left to the House of Commons to tamper with the Electoral Boundaries Act.

Senator Smith: I thank the honourable senator for that remark. I believe I still am a reformer. It is true that the word was and still is "gerrymandering." I think the system that we have in place avoids that. I believe it is done objectively and dispassionately without political influence. I think it is the hallmark of our legislation. I am very proud about it, especially when one reads the stories about what has gone on with the congressional seats in Texas, where they literally flew to Oklahoma. They are proud of how they will deny the Democrats a half dozen congressional seats by fiddling with the boundaries. We do not have that. We have here a bill that will simply accelerate the period to get out of the straitjacket. It will give these three provinces with over half the population of Canada between them the new seats that the population entitles them to rather than leave them in the straitjacket of the 1991 census. I think that is a desirable thing to do.

Senator Lynch-Staunton: They are there. They already have them.

Could I ask a supplementary question of the Honourable Senator Smith?

Senator Smith: Yes.

Senator Lynch-Staunton: Does the honourable senator agree with the following statement, which comes out of *The Globe and Mail* of July 4:

> Liberal leadership front-runner Paul Martin is planning to tell Elections Canada to speeds up its redistribution of House of Commons seats to facilitate a possible spring election, sources said yesterday.

Is that accurate?

Senator Smith: I do not really know. I have absolutely no idea. I am not here as an apologist for anyone. I know exactly what this Chief Electoral Officer said in his letter to the parliamentary committee. To me, it was perfectly logical and I think represents good and desirable public policy.

Senator Lynch-Staunton: In the case of Mr. Turner, who was heading for defeat, which the honourable senator mentioned, did the Chief Electoral Officer not offer, after reading media reports, to extend the proclamation period by a couple of years?

Senator Smith: I have always wondered about that election call myself because I had a seat then. I was not feeling too good about getting re-elected. It was nothing personal toward me, but just as a rising tide lifts all boats, an ebbing tide lowers all boats. The tide was going out, but I would not have minded a little more time in office. However, in the long run, I have no regrets about it because I went back to work and made it possible for me to finally afford to come here.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I wonder whether the honourable senator will provide a little more explication for what I understood to be a principle that he was arguing, namely, that this bill affects the people in the other place in a direct way; it really does not affect members of this place.

I am curious about that principle. Surely, the honourable senator is not suggesting that legislation should be assessed by legislators in terms of self-interest. Surely, the honourable senator would want to build any statute that speaks to elections upon the right to vote and the right to participate in government, which are fundamental values of the country, rather than what I understood him to have said; that is, that this bill does not affect this house but it does affect the people in the other place. Would the honourable senator care to explain and elaborate on that principle?

Senator Smith: Honourable senators, I am not suggesting for one second that we should not have jurisdiction and have to pass a bill such as this, even though it does not directly affect us in the same way as it affects them. It creates seven new seats in the House of Commons.

Senator Lynch-Staunton: No, it does not. They are already confirmed. The seats are there.

Senator Smith: It will implement them at a point five months sooner than they otherwise would if they have to wait for the full one-year grace period, which was put in legislation that was passed 40 years ago when they did not have the technical tools to do these things faster. Rather than sitting around moaning and groaning about that, I think it is refreshing that you have an official in this position saying, "If you want to do it sooner, it is technically possible. You decide." He was not saying, "I will decide." He was saying, "You decide. You have that option." They decided, and I do not think it is irrelevant. I know I keep harping about this, but the bill was passed by the House of Commons. An amendment was put — clauses 2 and 3 — by the Official Opposition, accepted by the government, and when the bill received third reading, both the government and the official opposition supported it.

• (2100)

Senator Kinsella: The position of the honourable senator would then be that the assessment of legislation, whether in this place or in the other place, must be guided by the best assessment of what constitutes the public interest, not what constitutes the interest of the members of the other place or of this place.

Senator Smith: I think that is true of all pieces of legislation. I fail to see how it is in the public interest for us go into an election on 1991 boundaries that would deny three provinces the seats that they are entitled to because of these population changes when it is totally unnecessary, and the person who brings it to our attention is the Chief Electoral Officer. What do we want to do? Put on blinders, close our ears and be in denial that it is possible for us to solve this issue? I applaud them for taking that initiative, and I applaud the house for solving it.

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: I remind Senator Smith that, in 1995, the House of Commons passed a bill, which was rejected here after long debate, to not allow the redistribution based on the 1991 census to be used for the 1997 election. The government introduced Bill C-18, and then another bill, and in June 1995, it was defeated in this house. The 1997 election, which was called in June, was based on the 1991 census figures and not on the one in 1981, which the government wanted at the time. Why? Because in that 1993 election, you had a lot of new members who were elected for the first time. When they saw the new maps, many of them panicked, because either the ridings were to be altered drastically or, in some cases, were disappearing into new ridings. They turned to the leaders in the caucuses and said, "Look, we worked hard for this for years, and we finally got it. How dare you change."

The mapmaker said it had to be done, for the same arguments the honourable senator is giving: Population shifts and changes and new ridings being added to Ontario, Alberta and B.C., I think. The government of the time, yielding to the pressures of its own caucus, introduced a bill to allow, had it been passed, the 1997 election to be based on 1981 census figures. It was this Senate, and this side of the house, that was able to defeat that bill.

Now we have the absolute opposite. Now we are being told that we have to accelerate the process, for the same reason. The caucus is saying we will have a new leader, and as the honourable senator said very openly, it is advantageous for a new leader, once elected, to take advantage of the momentum that the leadership creates to call an election as soon as possible. That is the only reason the government is doing this. If the government were serious that the grace period, as they call it, can be delayed six months, it would present us with an amendment to make it permanent — to tell us the six-month period is cast in stone, or so much so that it needs an amendment, which means that when the next election comes around, we may or may not be back to a one-year grace period. There may be at that time another change in leadership, and they will say, "Maybe we can do it in three months."

Think of the other political parties. I do not want to give my speech at this time. I have thoughts on this issue that I will share with the house either tomorrow or the day after, at the latest. Think of the other political parties and how they will be affected by these changes. Think of the political parties, including your own, which have great difficulty right now in abiding by the difficult provisions of the new Election Financing Act and all the paperwork it requires and all the people who have to be found to serve in certain offices that never existed before. Think of two parties that are talking about getting together, and who, by the schedule suggested, would not have a new leader until March. How can they abide by this agenda? You must think of the whole process.

You cannot have changes to an election act to serve strictly one political party. It has never been done before. You tried it in 1995, and thank God you failed. It did not stop you from winning the election in 1991. Old boundaries, new boundaries, you won it. Now you are saying that you want to change this because the tradition is that the leader, as soon as elected, has an advantage to call an election. I agree with that. Well, let him call the election on the existing boundaries. Why not?

I will stop after one more point, because I know we have been going on too long. I made mention of this so-called opposition briefing book on Bill C-49. Never have I seen a document called "Opposition Briefing Book." Briefing books are meant for all senators, in particular those who sit on the committee responsible for assessing the bill. I mentioned the one on Bill C-17, which is complete and which analyzes every aspect of the bill. As far as I have seen so far, it is as informative as any briefing book I have ever had, and it is a terribly complicated bill, as we all agree.

This one is not as complicated. This so-called "Opposition Briefing Book" does not even have the final version of the bill. It has two press releases in one language only. I reject this document.

I would hope that, before we go to committee hearings on the bill, Senator Smith will see that we have a proper briefing book that analyzes the bill clause by clause and explains those two clauses. The honourable senator has concentrated mainly on the grace period, but there are also two other clauses in that bill. It does not matter whether we deal with them now or later before the committee, but they should be dealt with in a proper briefing book available to all senators, not this pathetic, unilingual, useless, uninformative paper which I completely reject.

Senator Smith: I am not the author of that paper, but the honourable senator makes a point, and I will certainly make inquiries. It was a valid point. I was looking at our deputy house leader, who was nodding at your suggestion that you wanted one in a proper format. I agree with that.

I was asked "Why not call an election on the old boundaries?" I think that is particularly prejudicing the people in three provinces when it is entirely unnecessary. The honourable senator talked about political expediency. I am not defending what occurred back in 1995, but the last time I looked, four of the seven seats are in Alberta and B.C. The last time I looked at those results, we did not fare that well out there. On the law of averages, most of them will not be Liberals. Am I saying we should not do it? No, I am saying we should do it, because it represents good public policy.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: I regret to advise that Senator Smith's 45 minutes have expired.

On motion of Senator Lynch-Staunton, debate adjourned.

AMENDMENTS AND CORRECTIONS BILL, 2003

POINT OF ORDER

Hon. Anne C. Cools: Your Honour, this is not really a point of order. It is more in the nature of a correction that I would like to draw to Your Honour's attention. I was looking at the Debates and I discovered a mistake, so I guess it is a point of order, in a way. We are on Bill C-41. Your Honour, I was looking at the Debates of Thursday, October 23, and I was reading Your Honour's ruling. I noticed that Your Honour mentioned me. If I could, I would like to read what it says. October 23, *Debates of the Senate*, page 2219, it says:

• (2110)

> Senator Cools also participated in the discussion on this point of order. The senator raised several issues in her intervention. First, Senator Cools expressed her understanding of the nature of these omnibus amendment bills, suggesting that they did not indeed have to possess a common theme.

Honourable senators, that is not what I said. Therefore, of course, since I believe very strongly that omnibus amendment bills must have a common theme to tie the amendments together, I was a little bit puzzled about what it is that I possibly could have said that His Honour would have drawn the opposite conclusion to what I actually said. This is important because those thoughts may have been extremely critical to His Honour's ruling, so I thought I should bring it to the attention of the chamber.

What I did, honourable senators, is I went to the debates of the day before and I looked at what I had to say. I went to the debates of October 22, 2003, at page 2205, and I looked to where my name was and I found what I said, and I would like to read that direct quote so there is no misunderstanding.

> Honourable senators, I have just a few minor points. My understanding is that omnibus bills are in order, and that their purpose may be to amend many statutes. However, there must be a common theme running through the amendments to tie them together in a bill. A long time ago during the debate on free trade I remember that Herb Gray, in the other place, made a definitive statement about the need for proposed amendments in omnibus bills to have a consistent theme that ties them together. In other words, the bill has to be intelligible to members of Parliament.

Therefore it was clear, honourable senators, that what I was saying and what I actually said, in accordance with the quote that I just read, was that omnibus bills must clearly possess a common theme. I do not know how His Honour heard the opposite of what I said, or how it is that His Honour was able to make a mistake like that, but I thought I should call it to the attention of His Honour. He may want to correct that at some point, but it does sound as though, somehow or the other, I was saying something that I did not say and that I certainly do not believe. I just wanted to clarify that for the record. I hope that what His Honour thought I said was not the foundation of his entire ruling, because if it were the foundation of the ruling it would mean that he would have to reverse himself. Perhaps His Honour should look at that.

The Hon. the Speaker: Thank you, Senator Cools. I appreciate you drawing this to our attention. Rather than trying to respond, I should look at what you have suggested I look at and perhaps we can remedy the language in the ruling, and I will do that.

THE ESTIMATES, 2003-04

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A)— DEBATE ADJOURNED

The Senate proceeded to consideration of the ninth report of the Standing Senate Committee on National Finance (Supplementary Estimates (A) 2003-2004), presented in the Senate on October 22, 2003.

Hon. Joseph A. Day moved the adoption of the report.

He said: Honourable senators, I will say a few words with respect to the report. If honourable senators wish to follow along they will have on their desks the Supplementary Estimates (A) for 2003-2004, and the ninth report of our Standing Senate Committee on National Finance, which report was also attached to the *Journals of the Senate* in its entirety on October 23.

Honourable senators, as deputy chairman, I am presenting this report on behalf of the Standing Senate Committee on National Finance in his absence of our chair, Senator Lowell Murray.

Permit me, first, to compliment and thank our chair, Senator Murray, for a fine job in his leadership with respect to our National Finance Committee, and in particular with respect to the work done in relation to the Supplementary Estimates (A), which forms the subject of this report.

The 2003-2004 Supplementary Estimates (A) outline proposed expenditures of the government for which approval will be sought in a supply bill. I understand that the supply bill will be presented in the House of Commons tomorrow and dealt with there, and then it will proceed here.

As honourable senators will recall, with respect to supply we treat matters a little bit differently, and the report that our committee is asking you to consider forms the basis for the supply bill when it is presented. We do not go to committee with respect to the supply bill, unlike other matters. We use this report and the work that we have already done with respect to Supplementary Estimates (A). That is based on the assumption, subject to verification, that Supplementary Estimates (A) are reflected in the supply bill when it does come to us. We, as a committee, will of course verify that for you.

Our committee held meetings on September 30, 2003, and October 7, 2003, in order to review the Supplementary Estimates (A). From Treasury Board Secretariat we had new witnesses this time. Mr. Mike Joyce and Mr. Marc Monette appeared on behalf of Treasury Board. At this time, on behalf of your committee, I would like to thank Mr. Rick Neville, who has moved on to the Royal Canadian Mint as the Chief Financial Officer, and therefore is no longer with Treasury Board Secretariat. He was for many years the witness who appeared before our Standing Senate Committee on National Finance and has done a very fine job. We had a good rapport with him, and there was a lot of trust between us. I congratulate him on his new position and wish him well in that regard.

Honourable senators, permit me first to tell you about two general areas where we had concerns as a committee. The first area is with respect to transparency and clarity of what is presented to us in the Supplementary Estimates. This is not a new issue but we keep bringing it up, and there are attempts each time for Treasury Board to provide us with more precise and clear detail, but it still does not satisfy your committee. We have an undertaking from Treasury Board Secretariat that they will try to improve on that area.

What happens now, honourable senators, is that we have to ask the officials to look up the explanations for various expenditures in their book. We have asked them to give us the book so that we can look up the explanations so that we can ask more meaningful questions when the officials appear before the committee. We are hopeful and confident that we will continue to improve on that matter.

The other area is the difficulty that honourable senators have in going through the Supplementary Estimates when expenditures for a particular item are spread over different departments. They refer to that as a horizontal or multiple-department expenditure.

We did, for the first time, receive from Treasury Board a number of explanations where they went to various departments and brought it all together to explain the overall expenditure. We would like to see more of that kind of work so we may understand the full expenditures on any given item.

• (2120)

The Supplementary Estimates, honourable senators, indicate that there is a $5.7 billion increase over what has already been before Parliament. Of that $5.7 billion, $5.5 billion is listed as votable and $0.2 billion is unexpended funds that were approved in previous years. We approve that they be brought forward to this particular year, if we decide that that is what we would like to do.

With respect to horizontal items affecting more than one department or organization, I can give honourable senators an example that was work that was done by Treasury Board on our behalf: $233.7 million to strengthen research and innovation in Canada as announced in the budget. Of that, Industry Canada received $105.3 million; the Canadian Institute for Health Research, $56.5 million; the Natural Sciences and Engineering Research Council, $48.3 million; and the Social Sciences and Humanities Research Council, $23.6 million. When we bring those departments together, the total expenditure is $233.7 million. That is an example of a horizontal expenditure brought together for us.

Another example is $150 million for program implementation relating to climate change that Honourable Senator Oliver will be interested in. Natural Resources Canada is to receive $126.5 million and Environment Canada $23.5 million, for a total expenditure of $150 million. A number of other major horizontal expenditures are outlined in our report. I would encourage honourable senators to look at that report.

In relation to major expenditures by a department, I can go through a few of those that may be of assistance to give honourable senators a flavour for what is in the Supplementary Estimates. There is an expenditure of $1.288 billion for the Department of National Defence to sustain Canada's military and to maintain existing defence capabilities. An expenditure was announced in the 2003 Budget for incremental costs associated with the deployment of troops in Afghanistan. That figure is $387.7 million to this time. Honourable senators will know that the soldiers are still there. We asked what the total amount was and will be with respect to Afghanistan. They were unable to give us that figure. That is understandable, because the deployment continues, and there may well be other expenditures as times goes on.

For the Canadian Forces non-commissioned members and general service officers, as well as medical and dental officers, to maintain pay comparability, salary increases for doctors and other specialty services within the Armed Forces, we see an expenditure of $107.6 million in this fiscal year.

With respect to Agriculture and Agri-Food Canada, to help implement the Agricultural Policy Framework, which is a new government initiative, there is an expenditure of $354 million, total. Of that, food safety and food quality, science and innovation, $294.3 million; and loan guarantees to producers, $59.7 million.

Honourable senators, I could go through a number of other departments, but this information is laid out in our report for you to review. In addition to those items, honourable senators, members showed an interest in a number of other items contained in the Supplementary Estimates. I will take this opportunity to outline a few of those special items of concern.

For instance, senators noted that a substantial amount of funding in Supplementary Estimates (A) had been earmarked for Canadian health institutes of research. We wanted to know where these institutes of research were, because it is not clear in the Supplementary Estimates. It was explained to the committee that the Canadian Institutes of Health Research encompass 13 virtual institutes, and that a scientific director who is resident in an existing university or research hospital heads each of these virtual institutes. The host institution of each of these institutes receives a grant of $1 million annually to support the operation of the institute. The 13 institutes cover research in a broad range of areas, including Aboriginal peoples' health, aging, cancer research, circulatory and respiratory health, gender and health, genetics, health services and policy research, human development, child and youth health, infection and immunity, musculoskeletal health and arthritis, neuroscience, mental health and addiction, nutrition, metabolism and diabetics, and population and public health. A wide range of subject matters is covered by these virtual institutes.

Another topic of discussion during the hearings that concerned the committee was with respect to funding for the Canadian Firearms Centre. Your committee was on top of this issue long before other committees in the other place were concerned about the Canadian firearm expenditures in previous reports, and before the Auditor General. Honourable senators will recall that we had to go into two different votes — I believe it was votes 1 and 7 — under Justice in order to find out where the firearms expenditures were in previous years. We asked that that be lifted out and put as a separate category so that we could see specifically what was involved. That was done at our urging.

Under the heading for the Firearms Centre, there was an expenditure of $10 million, which was described as new appropriations under vote 7a. Upon questioning, it was determined that this $10 million is not new money, but is rather a carry-forward from a previous year where the $10 million was not used, and all the other funds are transfers from Justice to the Solicitor General. The information that we received is that there is no new money with respect to firearms. There was a delay in planned expenditure. That is the reason for the delay in using the $10 million from the previous year, because of the delay in passing Bill C-10A. That bill did not proceed as quickly as anticipated.

Honourable senators, a third item of interest was the appropriation for the National Capital Commission. This raised a number of issues. There was an appropriation recommended of $31 million for a capital expenditure. Upon questioning, it was determined that this request was for the purpose of acquiring the Scott Paper Limited lands that are adjacent to the Canadian Museum of Civilization, across the river from the Parliament buildings. This was considered by many to be a once-in-a-lifetime opportunity to consolidate federal ownership of property along the shoreline of the Ottawa River and on Confederation Boulevard on the other side of the river. As a result, the National Capital Commission announced on October 3, 2003, that it had signed an agreement with the owners, George Weston Limited, to buy the property for $36.1 million. The amount will be made up of $31.1 million sought in the Supplementary Estimates, and $5 million in the current National Capital Commission budget. The current owner will continue to use the land for 25 years and will pay the National Capital Commission $29 million in rent.

Honourable senators generally support the acquisition of this land by the National Capital Commission. However, some had concerns regarding the lack of transparency in regard to the announcement of the initiative. Moreover, the public announcement gave the impression that the transaction had been finalized before the National Capital Commission had come to Parliament to request the funds to acquire the land. Upon questioning, it was determined that the National Capital Commission, with George Weston Limited, had only entered into an agreement to purchase, subject to approval by Parliament.

• (2130)

Nevertheless, it was the view of the committee that, in order to avoid future confusion, federal government departments and agencies should be careful with respect to public announcements that are contingent on obtaining the approval of Parliament for appropriations, or they should ensure that parliamentarians are fully informed of the status of the activities for which funding is sought.

Honourable senators, I have given you some of the highlights. We have a long report dealing with many different issues. I invite you to review the report. Your senators on the Standing Senate Committee on National Finance have been working diligently and doing some good work on your behalf.

[Senator Day]

I respectfully request that you support the motion to adopt this report.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I wonder if the honourable senator could help us. As he would know, in all the published Estimates documents —

[*Translation*]

The Hon. the Speaker *pro tempore***:** Honourable senator, I regret to inform you that your allotted time is up.

[*English*]

Are you asking leave to continue?

Senator Day: With the permission of the Senate, I would be agreeable to receive Honourable Senator Kinsella's question.

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

Hon. Senators: Agreed.

Senator Kinsella: The honourable senator will recall that — I think it is in the inside cover of all the published Estimates documents every year, as with this year — there is a paragraph, which states Supplementary Estimates, and it reads as follows:

> Supplementary Estimates directly support an Appropriations Act. Supplementary Estimates identify spending authorities...

Then this:

> Supplementary Estimates are normally tabled twice a year, the first document in early November and a final document in early March.

I wonder whether the honourable senator has an explanation as to why there is this significant deviation from the annual practice of having the documents tabled in early November rather than what we have now. These documents were tabled in early September or October. How do you explain that it is not early November that we are getting this, which is normally the practice?

Senator Day: I thank the honourable senator for his question. I am reading from the same paragraph in the Blue Book on the Supplementary Estimates. The term is "normally." In this instance, "normally" does not mean always. It means "usually," and in this instance, they were filed a few weeks prior to that.

Senator Kinsella: Does the honourable senator have an explanation as to why this year is unusual?

Senator Lynch-Staunton: It is like Bill C-49. Everything is unusual this year!

Senator Day: No, I do not.

On motion of Senator Oliver, debate adjourned.

PERSONAL WATERCRAFT BILL

THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Spivak, for the third reading of Bill S-10, concerning personal watercraft in navigable waters.—(*Honourable Senator Moore*).

Hon. Wilfred P. Moore: Honourable senators, I rise this evening to speak to Bill S-10, concerning personal watercraft in navigable waters, which was introduced by our colleague Senator Spivak on October 31, 2002. Senator Spivak, in preparing this bill, has demonstrated again to the public that the members of this chamber are abreast of their concerns. I congratulate the honourable senator for her hard work on this bill over the past year.

As well, I would like to mention the Standing Senate Committee on Energy, the Environment and Natural Resources and its chair, Senator Banks, and to commend him and all committee members for their participation in this matter.

Honourable senators, this bill addresses a situation that has been at the root of the displeasure of many people who enjoy cottage life or day trips to the beach or the lakes. It is an ongoing problem that clearly requires appropriate legislation and, in my opinion, Bill S-10 effectively does this.

The makers of personal watercraft might view this bill as a slight to their industry and those who enjoy these craft. However, I say not so. This bill simply provides opportunity of protection of the rights of those who would prefer more tranquil use of our lakes and beaches.

A quick trip to Web sites of manufacturers of personal watercraft demonstrates what these machines are all about. One encounters terms such as "full throttle" and "modern muscle," with depictions of these craft travelling at great speeds and leaving the water completely. What we have here is the promotion of a culture that extols power, speed and acrobatic manoeuvres in a marine setting, most of which are not appropriate. These images, I think, tell much of the story, but not all.

I would like to address the environmental, navigational and safety concerns that surround these personal watercraft.

First, with regard to the environmental concerns, our neighbours to the south have been dealing with this problem for some time. This has resulted in many states taking action to limit the use of these craft. Bluewater Network, an American environmental group dedicated to protecting ecosystems in the United States of America, has many concerns about the use of these personal watercraft. They conducted a survey in 2002 which arrived at some very interesting conclusions.

As to pollution levels, the study demonstrated that the engines that power these craft operate at a higher average horsepower than other watercraft, such as motorboats or the "putt-putts," which Senator Banks alluded to. Their throttle settings were found to be set higher, and these craft tend to be used more than their conventional motorboat cousins.

The point to be made here is that the smaller engines of personal watercraft combined with their frequency of use, as well as the manner in which they are used — that is to say, at full throttle most of the time — result in higher exhaust emissions.

The California Air Resources Board was created by the State of California to protect against air pollution and compiled its own statistics regarding personal watercraft and their effects on the environment. The Bluewater Network study quotes that board's statistics as follows:

> ...a seven hour ride on a personal watercraft produces the same amount of smog forming air pollution as over 100,000 miles driven in a 1998 passenger car.

That is a very disturbing statistic.

Furthermore, the impact of personal watercraft on wildlife has also been well documented. The design of these craft, with hulls of a very shallow draft and without a rudder, enable personal watercraft to travel in much more shallow and near-shore waters than other powered craft. This has an adverse effect on not only water plants but also the wildlife that inhabit these waters as well.

Second, I would like to address the problem which spurs most to become involved in this debate. The catch phrase today is termed "sound emissions," which most of us refer to as noise. There is a simple reason as to why these craft are considered louder than other craft that frequent our lakes and oceans, and that is, once again, the design of their hulls and propulsion systems. These hulls are designed to leave the water completely, exposing their propulsion systems and thus leading to the reverberating magnification of their noise levels. That noise pollution is erratic, grating and obtrusive and is more annoying to the human ear than a steady or constant noise.

Third, the operators of these craft often operate them in a manner that is not consistent with the nautical rules of the road. On many occasions, I have personally observed them passing on the wrong side of navigational markers, closely crossing the bows of other craft and proceeding at speeds in excess of the posted and safe limits. These craft create large wakes without regard to other motor craft, sailboats and people on the water, or our infants who might be playing in shoreline waters. Again, the design of these craft enables and encourages these demonstrations of lesser seamanship. In addition to these unsafe activities, I am concerned about the poor examples of seamanship and boating etiquette being set by the operators and their watercraft in the eyes of our young boaters.

• (2140)

In closing, Bill S-10 puts in place a process that the Canadian Coast Guard advanced in 1994 to deal with the various problems surrounding these personal watercraft. These craft are clearly not the same as small boats on which people go fishing, cruising or visiting friends across the lake or bay. They are not the same in their design or in the manner in which people use them and, thus, they require specific regulation.

We must provide the leadership that is expected of us. Some provincial governments have taken action on this file. It must be remembered that lakes and oceans are a federal concern and we must not be bypassed on this matter. Bill S-10 addresses this issue while allowing communities to decide what is the best use of the lakes and oceanfront waters in their locale. I urge all honourable senators to support Bill S-10.

On motion of Senator Robichaud, for Senator Hervieux-Payette, debate adjourned.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Marcel Prud'homme: Honourable senators, I have just the one question I would like to ask Minister Robichaud, as I always call him. I sat here until a bit past 11 p.m. last Thursday. We were to come back today for a vote that had been put off as long as possible, in order to adjourn and go and socialize with Senator Hubley. That is what I had understood last Thursday, but that is not what we are doing. We sat until 6 p.m., then had the bells and returned at 8 p.m.

I pay great attention to the work of the Senate, and have been here since 2 p.m. It is now 9:45 p.m. It would be inelegant to list those who are absent, and it is not done, but I will say to my constituents — as I call the people I represent — that I have been sitting here since 2 p.m. and will not budge until Minister Robichaud tells us that we have gone far enough.

Do you not find, Mr. Minister, that that time has come? Before moving to the next item, just look around. You will end up having to get the big whips out to stir up a quorum. There is no problem with me, I will be here.

Could you not — since we have graciously given you part of what you were looking for — rise to speak and tell us that, if the Senate consents, you believe there would be agreement for all unaddressed items on the Orders of the Day to be stood?

[*English*]

If you were to propose that, I think you would find unanimity in the Senate. However, I want to reaffirm what I said. When we adjourned on Thursday night, I knew that something was going on. I am not stupid. I can see and smell the atmosphere. However, I would prefer to do it tomorrow in a better atmosphere. You have done almost everything you wanted to do today: you sat longer than expected, so why do you not kindly ask if there is a disposition from all of us to say, if you would like, that we could adjourn, keeping the rules with respect to every other item. I can see the exchange going on between two good friends there. Would you accept my suggestion? If I could only hear a reply, I would see that I am not alone. Am I alone in saying that?

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am very flattered to hear Senator Prud'homme call me Mr. Minister. That is not quite correct.

Senator Prud'homme: Honourable senators, I belong to the old French tradition which says "once a minister, always a minister." So, to me, you are Mr. Minister.

Senator Robichaud: Honourable senators, I know that it is getting late and that we have already had a great deal of debate. When Senator Prud'homme says that I could obtain consent, I am sure that is the case. Still, certain senators have also asked that we get as far as we can through the Orders of the Day — and rightly so — because we were not able to get through them last week.

A little later, I shall ask for consent, but at the moment I believe I should press on.

Senator Prud'homme: Honourable senators, I wish to inform you that you will not get what you want, because it is my intention to speak to every item called by our distinguished Senate officers.

[*English*]

When the Orders of the Day are called — and I hope that someone will join me — we will speak on every item until you reach the one that you really want to reach. There may be one that you really want, and we will get up and ask for the adjournment. I am asking you again: Why don't we adjourn now, and start afresh tomorrow, on all the good items that you may have had in mind?

Senator Corbin has a very important resolution. If you give permission to him, you will have to give permission to the others. I have a speech prepared on the merger of the banks. If you give permission to one person, then why not give it to me or to this person or to that other one?

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator —

Senator Prud'homme: Honourable senators, I move, seconded by Senator Stratton, that the Senate do now adjourn.

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Prud'homme, seconded by the Honourable Senator Stratton, that the Senate do now adjourn.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: In my opinion, the "nays" have it.

FEDERAL NOMINATIONS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Murray, P.C., for the second reading of Bill S-4, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions.—(*Honourable Senator LeBreton*).

Hon. David Tkachuk: Honourable senators, our colleague Senator Stratton is to be commended for bringing forward Bill S-4, the Federal Nomination Act, which I will spend a few minutes to talk about today.

• (2150)

The bill would provide for significantly more transparency and objectivity in the selection of suitable individuals who are appointed by the cabinet to high public positions in Canada. It establishes a committee of cabinet to develop public criteria and procedures, and sets out a process to identify and assess candidates. More important, it provides for the parliamentary review of such appointments by the Senate.

Under the proposed law, the list of appointments for which hearings would have to be held would include those of the Governor General, the Chief Justice, the Senate Speaker, the Lieutenant-Governors, Territorial Commissioners, Supreme Court judges and, yes, honourable colleagues, senators.

It would also allow for a committee, if it so chose, to hold appointment hearings for a judge of the Federal Court of Canada or for a Superior Court judge. Parliament already has the right to hold hearings on certain appointments such as the Privacy and Access to Information Commissioners. Where we are moving forward is by expanding the list to include significantly more positions.

There are also areas where we might want to consider strengthening this bill in committee; for example, by including ambassadors such as Mr. Gagliano on the list of those for whom hearings may be held.

In recent months, the soon-to-be-leader of the Liberal Party has been talking about how to address what he calls "a democratic deficit." Honourable senators, increased transparency in the process of appointing those who hold high office would be an appropriate place to begin.

Indeed, if honourable senators on the government side are wondering about whether to support the bill or not, they might want to consider the position of their future leader. A year ago, on October 22, in an address on the democratic deficit, Paul Martin said:

> We should reform the process surrounding government appointments.

This was point five of a six-point plan to deal with the democratic deficit. He went on in that same speech to say:

> The unfettered powers of appointment enjoyed by a prime minister are too great; from ambassadors and consuls general to regulatory agencies to museum boards, and the list goes on. Such authority must be checked by reasonable scrutiny conducted by Parliament in a transparent fashion.
>
> When it comes to senior government appointments, we must establish a process that ensures broad and open consideration of proposed candidates.
>
> To avoid paralysis, the ultimate decision over appointments should remain with the government. But a healthy opportunity should be afforded for the qualifications of candidates to be reviewed, by the appropriate standing committee, before final confirmation.
>
> To this end, it will be necessary to determine which of the many thousands of appointments made annually would merit public review.
>
> For example, I agree with the position championed by Professor Monahan that a process of mandatory review must apply to prospective Justices of the Supreme Court of Canada.
>
> To determine which other senior appointments should also be subject to mandatory review in advance, we should turn to a parliamentary committee for direction. In this way, an improved but functional approach could be put into place in a transparent manner.

In considering reforms to this area, however, we must take heed of what not to do — as so graphically illustrated by congressional experience in the United States.

We want a system that sheds light on the appointments process for the public benefit. We do not want a system that creates a partisan circus with the effect of discouraging good people from public life. We do not want a kangaroo court.

But that need not be — and must not be — the case. Responsibly executed, such a process would actually insulate candidates from lingering suggestions concerning their qualifications by providing them an open forum to demonstrate their expertise and experience.

Honourable senators, this bill would help put into law the basic principle outlined by Mr. Martin in his speech, that senior appointments ought to be reviewed by a parliamentary committee. Under this bill, the committee hearings would be conducted by the Senate, thus addressing Mr. Martin's concerns about partisan wrangling, and there is no question that after the next election members opposite may be more prone to support the substance and principle of this bill since it will not be a Liberal Prime Minister who will be making many of these appointments.

I encourage all senators to help move this bill forward by supporting it at second reading.

On motion of Senator Cools, debate adjourned.

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Cools*).

Hon. Anne C. Cools: Honourable senators, I rise to oppose second reading of Bill C-250, an act to amend the Criminal Code (hate propaganda). It will amend the Criminal Code, section 318, the genocide, hate propaganda, hate speech section to add "sexual orientation" to the list of identifiable groups against whom genocide can be committed. "Sexual orientation" will be added to "colour, race, religion and ethnic origin." Honourable senators, Bill C-250 will confer upon sexual activities and sexual preferences those immutable, morally neutral, physical, racial characteristics possessed by peoples of common origins. Further, honourable senators, the term "sexual orientation" is still undefined and unlimited in law.

Honourable senators should grasp the enormity and danger of the proposal before us. Senators should understand its goal and should unmask it for the menace that it is. The measure is humanely couched and articulated in terms of equality, but it is a cruel proposition intended to criminalize the verbal and written expression of moral opinion on human sexuality and on human sexual practices.

Human sexuality, human sexual practices and sexual lust have always gathered unto themselves considerable moral beliefs, moral judgment and moral opinion. Bill C-250 proposes to deploy the Criminal Code as an instrument to overturn the moral opinion and the moral order of millions of Canadians, therein to impose different moral orders based on different concepts of human sexuality.

Bill C-250 is directed at those Canadians whose moral opinions are unwanted by an elite group of homosexual rights activists, a group that is well connected to the government and who seek to overwhelm their opponents and to impose their moral views on them. This elite disagrees morally with millions of Canadians. Not content merely to disagree with them and to co-exist with them, this elite, by Bill C-250, seeks to persecute and to prosecute them criminally.

Bill C-250 is pernicious and unprecedented. It is a direct attack on Canadians — religious and non-religious Canadians — who hold strong moral views about human sexuality, about the human anatomy, about the human body and about the human body's purpose, design and function. They hold moral views about sexual practices such as sodomy, swinging, sado-masochism, threesomes and other forms of sexual activity. Not content with equality before the law, Bill C-250 seeks by coercion to establish domination over those who disagree and to subjugate them by the oppression and weight of the Criminal Code. It will subject them to criminal prosecution. It will subject millions of Canadians to prosecution.

Bill C-250 is not about tolerance, diversity and difference; it is not about live and let live and co-existence; it is not about privacy in the bedrooms of the nation, nor is it about privacy of sexual activities. Bill C-250 is about forming and building a legal base from which modern inquisitions of persons for their moral beliefs, values, ideas, standards and moral opinions will ensue.

Honourable senators, on February 29, 1968, a great senator, a great legal mind, Senator Daniel Lang, in opposing the creation of these Criminal Code sections 318 and 319, said in the Senate Special Committee on Criminal Code (Hate Propaganda):

...enacting of this law is a slur on the people of Canada...

Senator Lang's opposition was legendary, as was his great intellect. Bill C-250 is a slur on many Canadians.

• (2200)

Hon. Marcel Prud'homme: On a point of order, if my friend will allow me, this is such an important item on the agenda. When we have a long day such as this one, I would kindly ask the honourable senator to speak a little bit slower, because I want to listen. Others may answer you or agree with you, but it is very difficult to follow you. You have a very good text, with which we may agree or not, but to get it in French, I do not want to lose any of the important points you may raise, in your view — not in mine — and I would just like you to go slower, if you do not mind.

Senator Cools: Senator, your point is well taken.

Bill C-250 is a slur on many Canadians. It is a criminal prosecutorial tool to cleanse these Canadians of their moral opinions.

Honourable senators, I turn now to the 1970 origins of these Criminal Code sections, the origins being in the 1965 Report of Professor Maxwell Cohen, McGill University's Dean of Law. Senators should be aware of the sharp controversy, division and disagreement in Parliament, in the legal community, in the media and in the public about the creation of these genocide, hate propaganda sections. One critic, the late Alan Mewitt, Professor Emeritus of law, then editor of the *Criminal Law Quarterly*, in his 1967 Quarterly article, "Some Reflections on the Report of the Special Committee on Hate Propaganda," stated:

> The report, in my opinion, represents everything that proposals for criminal legislative change should not be. It is attractive, superficially logical, factually quite accurate and completely misses the real point of any criminal law legislation.

Professor Mewitt died about a year ago. He had a great mind.

This is true of Bill C-250. It is everything criminal law should not be, but it seems attractive on the surface.

Another critic was Robert Hage, then a precocious law student, now a famous lawyer. In his article, "The Hate Propaganda Amendment to the Criminal Code," in the 1970 *University of Toronto Faculty of Law Review*, he stated:

> But in urging the adoption of a new law the committee appears to have overlooked the consequences of making a particular act criminal. The Criminal Code should not be open to additions or deletions without more evidence than that provided in the Cohen committee's report. Not one member of the committee was a criminal lawyer; in fact, the committee called oral evidence from only one such person and based its findings on the harmful effects of hate propaganda on the study of only one psychologist. And yet, Bill C-3, which introduced this "new law" into the Criminal Code was based wholly on the recommendations of this committee.

I am trying to give honourable senators a flavour of the divisions —

Senator Prud'homme: The few senators left.

An Hon. Senator: We are all listening, though.

Senator Cools: Good.

Honourable senators, Professor Mewitt and Mr. Hage asserted that the Cohen Report was not solid ground upon which to found the law and, further, that the report was insufficient in its grasp of the criminal law, and these concerns were repeated throughout the debates. The bill had many incarnations and finally became Bill C-3 in the time of Minister of Justice John Turner.

Honourable senators, Professor Maxwell Cohen was most eminent. In his article, "The Hate Propaganda Amendments: Reflections on a Controversy," published in 1971 in the *Alberta Law Review*, he shared his recollections and some history of the creation of these Criminal Code hate provisions. He said:

> In the voting on the Bill in the House...significantly a very large proportion of the House was absent on the Third Reading where the vote was 89 to 45, with 127 not voting or absent from the Chamber.

Pretty profound. He continued:

> In the Senate...there was determined debate and a serious but unsuccessful effort was made to have the bill referred, before enactment, to the Supreme Court of Canada...

Professor Cohen — these are his reflections — also told us:

> In general Canadian press opinion was strongly divided on the issues...

The professor also told us:

> That organizations and individuals with unchallenged credentials in the areas of human rights and general civil liberties should have been so seriously divided on this legislation, as was Parliament itself, undoubtedly suggests that the argument is by no means all one way.

Professor Cohen, in his learned style, told us of the reluctance of many to pass such criminal law. Perhaps this might explain or inform us as to why the Minister of Justice, Martin Cauchon, did not introduce Bill C-250 as a government bill and chose instead to support it as a private member's bill, working towards its passage absent the principles of ministerial responsibility.

Honourable senators, the opposition of those, according to Professor Cohen, with unchallenged credentials in the field included the late, great Frank Scott, former Dean of Law, McGill University, known for his struggles against Quebec Premier Maurice Duplessis' padlock law and the oppression of Jehovah's Witnesses. Frank Scott's testimony before the Standing Senate Committee on Legal and Constitutional Affairs on April 29, 1969, is a must-read. He said:

> There is nothing in the conditions of life in Canada today that warrants this extension of the criminal law. Hateful though this type of thing is, there is such a minimal amount of it that we ought not to tamper with the Criminal Code.

Honourable senators, the opposition of Senator Dan Lang, Senator Lionel Choquette, and former Senate Speaker George White was impressive. In the Commons, John Diefenbaker voted against Bill C-3. Others who opposed it also included Eamon Park, Vice-President of the Canadian Civil Liberties Association; Professor H.W. Arthur, Associate Dean, Osgoode Hall Law School; and Reverend Dr. E.M. Howse, past moderator of the United Church.

Honourable senators, I turn now to the legal definition of "hate crime" and the current social use of the term "hate." My concerns stem from the fact that the term "hate" is not being used as Mr. Cohen conceptualized, but is being used by certain homosexual rights activists to mean anyone or anything that disagrees with them. Political and moral disagreement is immediately branded as hate.

I cite an example on the floor of this chamber. Senator Mobina Jaffer, in this house on November 22, 2001, described senators' support — myself included — of marriage as the union of a man and a woman as hate. About my marriage bill and the senators supporting it, she said:

> When honourable senators rise in this house to speak in favour of Bill S-9, I remind them that they are giving comfort to those who hate.

Senate Debates recorded this under the heading, "Influence on hate crimes of bill to remove certain doubts regarding the meaning of marriage." That was my bill — hate.

Senator Jaffer's insensitive statements reveal the problem. She, like many, has confused hate crime as a legal, criminal construct with crimes that are hateful and odious. In other words, she has confused Criminal Code hate crimes with hateful and odious crimes. Honourable senators, "hate crime" is a legal concept where the crime, the offence, is hate speech, hate propaganda and hate-mongering. It is not killing people. It is speech. It is expression.

Honourable senators, in the Aaron Webster murder, mentioned by Senator Jaffer, the crime was murder. A juvenile assailant has been charged with murder, not hate. By Bill C-250, the Criminal Code sections 318 and 319, if passed, will have no application to the Aaron Webster murder or to like instances, tragic and terrible as they are.

• (2210)

Many of the crimes described dramatically and rhetorically as hate crimes are truly hateful and odious crimes, but they are not hate crimes as per sections 318 and 319; they are assaults, break and enters and other crimes, sometimes even murder, but they are not hate crimes. There is great confusion on this point, and I am hoping that it will get some elucidation.

On September 20, 1994, in the House of Commons, Svend Robinson, the sponsor of this bill, accused Roseanne Skoke of hate. She had a disagreement with him and he accused her of hate and called upon the Prime Minister to put Roseanne Skoke out of the Liberal Party. That is why I say that Bill C-250 is pernicious; it appeals to our good sense of justice and fairness for homosexual persons, but it proposes a scheme for criminal witch hunts.

Honourable senators should be aware of the trends in Canada toward persecution and prosecution of Canadians branded hateful for strategic purposes by certain political activists. I shall mention only three cases of such individuals, being Chris Kempling, a school teacher in British Columbia prosecuted on the strength of a letter he wrote to the editor without any complaint from students, parents or teachers; Scott Brockie, a Toronto printer; and Hugh Owens, a Saskatchewan prison guard, for expressing moral opinions about some homosexual sexual acts.

The Hon. the Speaker *pro tempore***:** Honourable senators, I regret to inform the honourable senator that her time has expired.

Senator Cools, are you asking for leave to continue?

Senator Cools: I would ask for leave to continue.

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

Hon. Senators: Agreed.

Senator Cools: Thank you, honourable senators.

The January 20, 2000, *National Post* reported that Reverend Brent Hawkes of the Toronto Metropolitan Community Church testified before the Saskatchewan Human Rights Tribunal. Ian Hunter's article headlined "The battle of the biblical 'experts'" reported:

> Rev. Hawkes cleared away contrary views by condemning Roman Catholicism and Judaism as "extreme," and fundamentalist interpretations as "satanic."

What is hate? Hate is a subjective thing.

Honourable senators, many individuals in this country are being prosecuted unjustly and unfairly for their moral standards and opinions while their antagonists make the most cruel and outlandish statements.

Honourable senators, the term "hate" is being used recklessly as a defamatory and prosecutorial tool of intimidation and silencing. More importantly, this use and meaning was not intended nor contemplated by Maxwell Cohen's report and his Criminal Code provisions. His backdrop was the Holocaust of the Jewish people. Any time I hear the word "holocaust," I am reminded of Lord Shawcross' description of genocide. Remember his role in Nuremberg. He described it as black-hearted deeds. I say that to honourable senators because it comes to mind and I am a also great admirer of Lord Shawcross.

Mr. Cohen did not intend the term "hatred" to be applied to millions or hundreds of thousands of Canadians because of their moral opinions with which many may disagree. I wonder about lawyers and legal drafters who could intend such judgement on millions of Canadians and to create this proposed crime.

Honourable senators, I will now turn to some statements on human sexuality made in the context of the legal movement to separate human sexuality from moral and social boundaries. First, I shall cite Kathleen Lahey, a law professor and self-described lesbian. In her essay "The Charter and Pornography: Toward a Restricted Theory of Constitutionally Protected Expression" published in the 1986 book *Litigating the Values of a Nation: The Canadian Charter of Rights and Freedoms*, Professor Lahey stated that:

> ...some lesbian feminists have decided not to take political action against heterosexual pornography because they feel obligated to show solidarity with gay men who are experimenting with pornography, sadomasochistic practices, or pedophilia as forms of personal expression.

I note that forms of sex have now become "forms of personal expression."

Next, I quote the Supreme Court of Canada in its December 2000 judgement in the pornography case of *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*. Mr. Justice Ian Binnie stated:

> The appellants, supported by the interveners LEAF and EGALE, contend that homosexual erotica plays an important role in providing a positive self-image to gays and lesbians,... Erotica provides a positive celebration of what it means to be gay or lesbian. As such, it is argued that sexual speech in the context of gay and lesbian culture is a core value.... Erotica, they contend, plays a different role in a gay and lesbian community than it does in a heterosexual community.... Gays and lesbians are defined by their sexuality and are therefore disproportionately vulnerable to sexual censorship.

I would challenge all of this.

Justice Binnie continued:

> The intervener LEAF took the position that sado-masochism performs an emancipatory role in gay and lesbian culture and should therefore be judged by a different standard from that applicable to heterosexual culture.

Honourable senators, I wanted to give you a flavour of what is going on in the community. What we are dealing with here, clearly, is that persons who adopt moral positions about sadomasochism or any form of human sexuality can be in for a difficult time. You can see the tendency.

Honourable senators, I invite you to oppose Bill C-250. It pretends to be preoccupied with human rights and equality issues; it is not. It is about the subjection of millions of Canadians to criminal prosecution because they express moral opinion about human sexuality and human sexual practices in accordance with their long held or shortly held convictions, convictions that everybody does not have to share, but they are theirs.

Honourable senators, I subscribe to you that Bill C-250 is dangerous legislation, which, if passed, will hold an enormous potential for abuse and excess.

I urge honourable senators not to support Bill C-250.

On motion of Senator St. Germain, debate adjourned.

• (2220)

[*Translation*]

HOLOCAUST MEMORIAL DAY BILL

SECOND READING—DEBATE ADJOURNED

Hon. Marie-P. Poulin moved the second reading of Bill C-459, to establish Holocaust Memorial Day.—(*Honourable Senator Robichaud, P.C.*).

She said: Honourable senators, I would like to propose the second reading of this legislation. In addition to Senator Fairbairn, there are a number of colleagues who have asked to second this bill. I refer to Senators Adams, Atkins, Austin, Bacon, Banks, Beaudoin, Biron, Bryden, Callbeck, Chalifoux, Christensen, Cook, Cools, Cordy, Day, De Bané, Di Nino, Downe, Eyton, Ferretti Barth, Finnerty, Fraser, Furey, Gill, Grafstein, Gustafson, Hubley, Johnson, Joyal, Kenny, Kirby, Kolber, Kroft, LaPierre, Léger, Lawson, Lynch-Staunton, Mahovlich, Maheu, Massicotte, Merchant, Milne, Moore, Oliver, Pearson, Plamondon, Pépin, Phalen, Poy, Ringuette, Robertson, Roche, Rompkey, Smith, Sparrow, Spivak, Stratton, Stollery, Tkachuk, Watt and Wiebe.

Your Honour, with your consent and that of the honourable senators, I would propose that we accept these multiple seconders. I have been told that a number of senators were travelling last week, and so not everyone was approached. This list is not complete: if other honourable senators wish to second this motion as well, would they please so indicate?

[*English*]

The Hon. the Speaker *pro tempore*: Is leave granted to have all those senators seconded?

Hon. Eymard G. Corbin: Honourable senators, this is an extremely dangerous practice. I do not know what this all amounts to, but I did not hear my name, which would lead people outside to believe that I do not agree with something. I find that offensive, and I protest.

Hon. Gerry St. Germain: Honourable senators, I also disagree. Senator Corbin has a salient point. When you start mentioning names —

The Hon. the Speaker *pro tempore*: I have recognized Honourable Senator Kinsella.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): The point raised by Senator Corbin is very important. I happen to be the seconder of this bill, and my name was not on that list either. Notwithstanding that, I do not think this is a proper practice. I will be speaking in support of the motion after we hear the substantive argument for it. This practice is out of order and is certainly not in the tradition of this place.

Senator St. Germain: Honourable senators, I think I made my point. I do not know if it has been recorded. I agree with Senator Corbin. When you start mentioning names on issues like this, there is a litany of reasons some individuals could be castigated into a certain segment of society, which is totally unfair by virtue of the approach that was used. I feel that it would be a regressive move for this place if we allow this to continue. It is important that we stand and not allow this type of behaviour to take place here.

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, I find what is going on tonight totally disgusting and even sickening. We are not so naïve as not to have seen Senator Grafstein circulate among senators to try to get signatures for such a noble cause.

The Holocaust was a horrific page in history and some senators were not asked to sign the document. I agree with Senator St. Germain and Senator Corbin. We are told that we could add our names to the list.

[*English*]

This is not the United States Senate where everyone feels obliged to sign something. There are rules. I agree with Senator Kinsella. Let the process take its course. I do not know anyone here or in the House of Commons who would disagree with the horror of the Holocaust, but this is not the way to proceed.

[*Translation*]

What this is doing is downplaying one of the greatest horrors of the 20th century. I hope Senator Poulin gets to make her speech, but she should not feel obliged to name some senators at the risk of forgetting others. I totally agree with Senators Kinsella, Corbin and St. Germain. I want to hear what the honourable senator has to say because I, too, want to take part in this debate.

[*English*]

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

Senator Poulin: The point is well taken.

Hon. Francis William Mahovlich: Will this list of names be wiped from the record? Is that not what the honourable senator is asking?

Senator Cools: The record is the record.

Senator Corbin: On the point of order, perhaps I did not make myself clear. We have one way of affirming our support or non-support to any initiative in this place, and that is by our vote. We do not have to make speeches. All we have to do is vote, and that is sufficient for a motion to carry or to be defeated. What I do not like about this procedure, and it is important for everyone here to understand, is that when Senator Grafstein approached me and asked for my signature, I informed him that I have no problem with the aim he is seeking to achieve. However, I reminded him that on a number of occasions in this place I expressed serious opposition to giving a blank cheque to any proposition to establish holidays, national days and what have you, without having the question examined by a committee. I have also suggested that there ought to be a protocol for the establishment of these observances and commemorations. For that reason, and that reason only, I told Senator Grafstein I did not want him to put my name to his initiative. Is that plain enough?

Senator St. Germain: On the same point of order, Madam Speaker, given the exclusion or inclusion in a pattern of behaviour or a process of this nature, partisanship could be a part of the scenario by virtue that I was never approached by Senator Grafstein. The fact remains that this process is similar to taking petitions, and I think it is reprehensible. You can say that there is no partisanship, no intent, but if someone happens to be away, they could be excluded or included, one or the other. I feel that this is detrimental to our democratic process, and I think it is horrific if we allow ourselves to be subjected to actions of this nature.

Senator Poulin: Honourable senators, before starting this speech, I should like to make a point. Counsel was taken, and yes, multiple secondment can be accepted, but as Her Honour said very clearly, only by unanimous consent. There is not unanimous consent. Therefore, I will simply move second reading and go on with my speech.

• (2230)

There was no intention whatsoever to exclude or include anyone in any way on the part of Senator Grafstein or any of the colleagues who approached other colleagues. There was no intent whatsoever. However, I do agree with my colleague Senator Corbin when he said that the move could be misinterpreted, therefore better not to do it.

Senator Prud'homme: And it will be.

Senator Poulin: It could be, and I totally agree that there is a danger and we should not risk it in this chamber.

Senator Prud'homme: Why did you do it, then?

Senator St. Germain: Where do we go from here?

Senator Stratton: She has already told you.

Senator Poulin: I therefore rise today to sponsor and speak on the bill to establish the Holocaust Memorial Day.

[*Translation*]

First, honourable senators, what is in this bill? It would establish Holocaust Memorial Day. The preamble to the bill recognizes:

> That the Holocaust refers to a specific event in history;
>
> That six million Jewish men, women and children perished under this policy of hatred and genocide;
>
> That millions of others were victims of that policy because of their physical or mental disabilities, race, religion or sexual orientation;
>
> That the terrible destruction and pain of the Holocaust must never be forgotten;
>
> That systematic violence, genocide, persecution, racism and hatred continue to occur throughout the world;
>
> That parliamentarians have a responsibility to protect Canadians and to educate them;
>
> That the Day of the Holocaust, as determined in each year by the Jewish lunar calendar, is an opportune day to reflect on and educate about the enduring lessons of the Holocaust and to reaffirm a commitment to uphold human rights.

Second, honourable senators, why is a Roman Catholic, francophone woman from northern Ontario rising today to sponsor this bill? For several reasons, but I will mention three of them: First, it is our responsibility in the Senate to represent minority groups in Canada, whether they are visible, cultural, linguistic or religious minorities; second, it is our responsibility to protect Canadians with appropriate legislation in a world where terrorism could gradually paralyze our personal, professional, economic and sometimes political choices; third, it is our responsibility to teach Canadians, young and old, for example.

[*English*]

Honourable senators, one of the reasons motivating me to sponsor the bill to establish the Holocaust Memorial Day is that we, as senators, have the responsibility to lead by example. Therefore, as we represent minorities, be they visible, cultural, linguistic or religious, we also have the opportunity to champion each other's causes. Individuals, communities and countries of the world are at their most strong when they identify with and remember those who suffer and die needlessly and cruelly at the hands of tormentors, whose sole purpose is the elimination of difference in order to calm their own innate fears and inadequacies.

Empathy and righteousness are born when we share in the pain of those who are left alone to remember. Identifying with the suffering of others is in part a recognition of the true nature of Canada's spirit. It will draw us closer to the inevitable discovery that we are more alike than different.

Yes, a Holocaust Memorial Day would remind us all that, during a most disturbing period in our past, millions of lives were cruelly eliminated, but, more accurately, a Holocaust Memorial Day would bring us all closer to those millions of men, women and children who were mindlessly eliminated from fulfilling their roles in that past, in this our present and, for their children's children, the future.

On every November 1, we remember those soldiers who fought and died for our freedom to be the best that we can be. A Holocaust Memorial Day would remind us of those lives that could have been. Such a day would permit us to reflect on and educate about the enduring lessons of the Holocaust and to reaffirm our commitment to uphold human rights, but much more: The victims were fathers and mothers, and daughters and sons, and grandparents.

Through this process of remembering, all Canadians will discover and identify with a universal truth that this should never happen again; not to Jews, not to any other culture, or religion, or ethnic group, or to any individual person. Forgetting is too often akin to denial, and the refusal to face our darkest hours. Remembering affords us the opportunity to sing the praises of the human spirit, to bless those whose lives were directly affected by atrocities, and to wish upon our children a future devoid of that which taints our past.

It is therefore an honour for me to ask honourable senators to support this important bill.

Senator Prud'homme: Would the Honourable Senator Poulin allow a question?

Senator Poulin: Yes.

[*Translation*]

Senator Prud'homme: Honourable senators, how did this bill come to be before the Senate? I was expecting you to tell me what exactly happened in the House of Commons. I have a very detailed record of proceedings here. How did this Bill C-459 get to us so quickly from the House of Commons?

This reminds me of other times. I have been sitting in this place for 40 years, and I have seen a thing or two. I would like you to fill us in. We all had a glimpse of Senator Grafstein doing his rounds. Could you elaborate on this debate that took place in the House of Commons?

I repeat: The Holocaust is one of the worst crimes against humanity committed in the 20th century. Tomorrow, you will hear other senators talk about what the Ukrainians suffered. I want to give you my support for the right reasons, and not for obscure reasons.

Senator Poulin: Honourable senators, I thank Senator Prud'homme for supporting so generously the intent of this bill. Since he has in front of him the *Hansard* of that day in the other place, I am sure he will gladly do so.

Senator Prud'homme: I rise on a point of order. The honourable senator is assuming that I have the actual documents in front of me. What I have here is a copy of last Saturday's *The Globe and Mail,* in which there was a report on the Ukrainian tragedy.

• (2240)

If Senator Poulin wants to see my documents, she will notice that this concerns all the bills to come. I implore you, because you are too intelligent; when you do not know, do not presume. Whether you are right or not, you cannot presume my intentions, since I still do not know what they are.

Senator Poulin: Honourable senators, I must have misunderstood Senator Prud'homme when he said he had in front of him a summary of the debate that was held in the House of Commons. I know that, at the other place, there was unanimous consent by all the political parties for this legislation to be referred to the Senate. I am therefore following up on their request.

[*English*]

Senator Kinsella: Honourable senators, I rise to support the bill at second reading. In doing so, I wish to call the attention of all honourable senators to the fact that each and every one of the legislative assemblies of the provinces of Canada, all 10, have passed this resolution. It has also been passed, as we now just learned — we know because the bill came from the other place — in the other chamber as well. If we have now 11 of the 12 assemblies making up the provinces and the Parliament of Canada and they have all adopted it, then we should look carefully to this bill.

When I asked myself why Parliament should also wish to join those other legislatures in recognizing an observance of the Holocaust, the simple answer to the question is that we must remember in order that we never forget. As Pope John Paul II affirmed, as you will recall during his visit to Jerusalem and his address at the Yashem:

> We wish to remember but we wish to remember for a purpose, namely, to ensure that never again will evil prevail as it did for the millions of innocent victims of Naziism.

Also, it seems to me upon reflection, honourable senators, that we cannot escape the realization that the Holocaust was engineered and instigated not by an uninformed society but, rather, by educated members of a modern and contemporary society of the era. The attendees at the conference that was tasked by Hitler with finding "the final solution to the Jewish question" were not uneducated people. Believe it or not, most of the participants at that meeting were lawyers. Also, one notes — and my students of philosophy reflect upon this — that the great philosopher Martin Heidegger joined the Nazi Party and wore the Nazi uniform to keep his job at Hamburg University.

Honourable senators, on the lessons to be learned and why we should remember, out of the ashes of Auschwitz, out of the ashes of Dachau, our global communities have risen with new knowledge and power, although new knowledge and power earned at a great cost. We learned of humanity and brotherhood and the importance of intervention; of survival and the value of understanding. We gained an international body, the United Nations. By its Charter, we have determined, as the Charter says, to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind; to reaffirm our faith in fundamental human rights and the dignity and worth of the human person, and the equal rights of men and women and of nations large and small; to practise

tolerance and live together in peace with one another as good neighbours, and to unite our strengths to maintain international peace and security; to ensure, by the acceptance of the principles and the institutions of methods, that armed force shall not be used save in the common interests; and to employ international machinery for the promotion of economic and social achievement and advancement for all peoples.

Honourable senators, the world was shattered by the tragedy of the Holocaust and all citizens were touched by the stories of suffering and also those stories of survival. In my own city of Fredericton, there lives an extraordinary woman, an author, historian, a teacher. Her name is Eta Fuchs Berk. She experienced the Holocaust firsthand, as a survivor who came through one of the most dreaded of the concentration camps: Auschwitz. Her story is incredible and she tells it in her book, *Chosen: A Holocaust Memoir*. She speaks eloquently to people across our province and country about the atrocities she faced and the relief she felt with the implausible freedom that she fortunately regained.

Honourable senators, we must remember, because the Holocaust is a record of man's inhumanity to man, a policy of extermination directed at a people just because of their physical or mental disabilities, their race, their religion, their sexual orientation. It is not merely a part of Jewish history to be remembered by Jews; it is part of world history to be remembered by all.

Honourable senators, I support this bill at second reading.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to support this bill, but I am not prepared tonight. I intended to speak at another time.

I am very concerned that my name was not on that list. With my background, it is very offensive for the record to be read tomorrow and the world to think that I was not supportive of this bill. The reason for this bill is to unite us, not to divide us; to create harmony in society, not to divide us.

I leave next week to work in Israel with Muslim and Jewish women. I have been working this whole year across this country with Muslim and Jewish women to bring about harmony so that we do not have another Holocaust. I believe the method that has been used tonight is dividing us. When I grew up, my grandmother taught me to look at history and then see how we build harmony; then look at ways in which we can work together so that we can never have another Holocaust.

I am also a survivor of torture. It so happens that my husband is sitting in the gallery. Speak to him. He will tell you what torture is. He has suffered torture.

Let us not divide ourselves today by saying that some are on the list and someone like me, from a minority background, is not on the list. I was never even asked to be on the list. When I was growing up, my grandmother taught me that harmony means that you bring people together. Harmony means that you bring black and white together. She taught me how to play the piano. Unfortunately, I do not play it well, but she always told me, "Mobina, remember you have to play on the black keys and on the white keys."

Honourable senators, we cannot afford to divide ourselves. We must include everyone here if we are to have lists. Just as there is no piano to create harmony, and we must play on both black and white keys to create harmony in society, we cannot exclude some to make a point.

Some Hon. Senators: Hear, hear!

Senator Corbin: Honourable senators, I apologize to the house for the degree of heat expressed in what I had to say earlier. However, I do not intend to withdraw one word of what I said.

Let me be clear about that.

• (2250)

Once again, honourable senators, we have a bill before us, which, for all practical purposes, does not recognize the Senate, the work of the Senate and the contribution of senators. If you read attentively the preamble of the bill —

[*Translation*]

You will read:

> ...the House of Commons is committed to using legislation, education and example to protect Canadians from violence, racism and hatred and to stopping those who foster or commit crimes of violence, racism and hatred.

The Senate is not invited in this bill to join the House of Commons. The Senate has been excluded, deliberately or otherwise, I do not know. However, it seems clear that what words we should read in this clause is not the House of Commons only, but the Senate and the House of Commons — that is, the Parliament of Canada!

We all feel strongly about condemning the Holocaust, this horrible crime, so that it will never be repeated; although contemporary history shows us that this same type of crime continues to be committed in various places around the world. It is important that the Senate be included in this bill.

Second, and for the reasons I set out at the very beginning of this debate, I think that the bill should be referred to a specific senatorial committee, namely, the Standing Senate Committee on Legal and Constitutional Affairs, which has looked into the whole issue of designating memorial days a few times already. I am not against this initiative or its objectives. Like anyone else, I, too, deplore the Holocaust.

I was born in 1934. I grew up during World War II. Soon after, I saw the shocking movies showing what happened in these concentration camps. I saw the mass graves, the ovens. I took my three young daughters to Europe, to visit these concentration camps, these death camps, so that they could absorb the horrific capacity for hate that the human heart can generate and never forget what they saw that day.

I think the bill should be referred to committee for a quick review, and appropriate debate. While I have no intention of opposing the bill, we need further clarification regarding clause 2 of the bill:

> **"2.** Yom ha-Shoah or the Day of the Holocaust, as determined in each year by the Jewish lunar calendar, is proclaimed as "Holocaust Memorial Day — Yom ha-Shoah".

If I have properly understood Senator Grafstein's explanation, this memorial day is a moveable date in the Jewish calendar. This has never been the case for any memorial day approved by Parliament until now. I am not opposed in principle, but this does certainly have practical implications, since the date will change from year to year because the Jewish calendar is based on the lunar calendar, if I have understood this correctly. We are entitled to explanations and will make a final decision once the bill comes back from committee. That is all I wanted to say. I hope that what I said at the beginning of Senator Poulin's speech has not been misinterpreted. I was wholly justified, moreover, and was backed up, moreover, by the comments made by our colleague with experience of the horrors under Idi Amin in Uganda. It is with all the goodwill in the world that I make this suggestion, and it is my intention after the second reading stage to move that the bill be referred to committee.

[*English*]

Senator St. Germain: Briefly, honourable senators, I, too, support this bill 1,000 per cent. There is no question of where my intentions are. The only fear I have, and I am still not completely satisfied, is similar to what it was like in the 1950s in the United States when lists were developed against people. That is a dangerous practice.

I listened to Senator Jaffer carefully. I can empathize, I believe, with her inner feelings in regard to how this affects her. As a Metis in this country, I experience discrimination. However, I am concerned about this very institution, how people conduct themselves in it and how they go about bringing forward issues in a manner that could be detrimental to fellow colleagues. I do not believe that what was done was done with malice or with any intent to hurt, but the very method that was used is hurtful, could be damaging and could be interpreted by those who wish to in the wrong way against individuals. I believe this is a horrific standard to set, and my understanding is that the senator who presented this withdrew. However, once it is on the record, it is on the record. I do not believe that you can withdraw anything that is on the record. The record will speak for itself. I hope that this will be the only time that this place will witness this kind of incident for as long as it continues to exist.

Hon. Richard H. Kroft: Honourable senators, I had no intention of speaking. However, let me say, I have a great deal of attachment and caring about this issue, and I have the greatest of appreciation for those who have spoken so warmly and compassionately tonight.

I was not the originator of what happened here in the process of bringing this from the other side. I saw it early on as it arrived from the other place. I had no idea that it was happening. It arrived here, it was shown to me and my advice was sought as to what to do with it. I was preoccupied with something else, and it went to someone else.

Within a few hours, I was told that this bill was coming forward and asked if I could speak to anyone in order to broaden the base of support for it, would I do so. The intention was, and I can say this certainly to the extent of my own limited involvement, to have every single senator in this chamber on that list. If names are missing, it is because of the forces of time and the busyness of what we were doing. People ran out of time in making their calls and doing their checking.

• (2300)

We sometimes face the faults of unintended consequences and I think this is an example here tonight. The intention was to bring everyone in this chamber, who so chose, of course, under one umbrella on this bill. It took a terribly unfortunate turn, and I fully appreciate and accept some of the things that have been said. Senator Grafstein and anyone else can, and I am sure will, speak for themselves. The record will show, perhaps inadvertently, what it did. However, I think the record should equally show that it was both the intent and the expectation of myself and everyone else who was involved in gathering support for this initiative that it meant to represent the thoughts and feelings of this entire chamber.

Even though my involvement was partial, I take full responsibility to that extent. I hope that anyone who was hurt in the process will understand that it was through inadvertence, and that the greater meaning of what we have done here will rise to the fore. Perhaps we have all learned a lesson in terms of process and thoughtfulness that might bear us well in other circumstances.

[*Translation*]

Senator Prud'homme: Honourable senators, on a point of order. I would like to know how such a decision can be taken. I do not understand how the seconder of a motion, whether it be Senator Chaput or Senator Robichaud, can be chosen so easily. Anyway, I would also have moved the adjournment, since I have a speech I would like to make. But I would like to find out eventually how the seconder of a motion is chosen, without his or her knowledge. I do not object, on the contrary.

[*English*]

Hon. Terry Stratton: Could this not be expunged from the record? Can that happen with consent of this chamber? Why could it not?

Senator Poulin: I agree with my colleague here. Since unanimous consent was not agreed to, the advice that I was given is that if the unanimous consent is not given, Madam Speaker, that the names would not appear in the record. That is the advice that I was given. Therefore, it was not the intent of anyone here to include and exclude. I would like to thank my colleague Senator Jaffer for her courage in explaining extremely well the danger that was done here. To tell you the truth, there was a mistake that was done and I am really sorry.

Senator Stratton: Honourable senators, I move that all references to names with respect to this be removed from the record.

Senator Poulin: I object.

Senator Prud'homme: No, I object, what has been said has been said.

Senator Cools: I associate expunging records with Nazis.

Some Hon. Senators: Order, order!

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

Senator Cools: Burning records, burning books — everybody can talk about racism —

The Hon. the Speaker *pro tempore***:** Order. I believe leave is not granted.

On motion of Senator Cools, debate adjourned.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, if there is unanimous consent, I move that all remaining items on the Order Paper be allowed to stand in their place on the Order Paper until the next sitting.

The Hon. the Speaker *pro tempore***:** It was moved by Senator Robichaud, seconded by Senator Rompkey, that the Senate do now adjourn.

Hon. Marcel Prud'homme: On a point of order. I just want to indicate that if we had proceeded as was suggested last Thursday, tonight's unfortunate sitting would never have occurred. We were supposed to adjourn at 6 p.m. That is what we were told last Thursday. In fact, I warned Senator Robichaud that the item should not have been debated tonight, because I was negotiating something with members of Parliament and senators on which we would all have agreed. They chose not to listen to us.

The Hon. the Speaker *pro tempore***:** Is it your pleasure, honourable senators, to have all remaining items on the Order Paper be allowed to stand in their place on the Order Paper until the next sitting?

Some Hon. members: Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, October 28, 2003, at 2 p.m.

Appendix

CANADA

PRIME MINISTER · PREMIER MINISTRE

September 26, 2003

Dear Senator Gauthier:

Thank you for your letter of September 4, 2003, enquiring about language training and development under Bill C-25 *An Act 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*.

I share your views on the importance of language training and development to ensure a representative federal Public Service that can serve Canadians in the language of their choice. Today, language training and development falls within the responsibility of the Treasury Board. The Public Service Commission currently provides the service of language training on behalf of the Board.

Under Bill C-25, each Deputy Head will be responsible for all learning, training and development – which includes language training and development – within his or her organization. However, the Deputy Heads will be subject to Treasury Board's policies in this regard, to ensure consistency throughout the public service.

The Honourable Jean-Robert Gauthier
Room 174-F
Parliament Buildings
Wellington Street
Ottawa, Ontario
K1A 0A4

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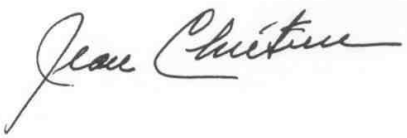
Finally, you have raised the question of who will deliver language training and development under the new regime. Since your letter, the President of the Treasury Board has appeared before the Senate National Finance Committee and announced that the new Canada School of Public Service would provide these services. As noted in your letter, the mandate of the school, as set out in Bill C-25, is sufficiently broad to include language training and development without requiring an amendment to the Bill.

Yours sincerely,



PRIME MINISTER

September 26, 2003

The Honourable Jean-Robert Gauthier
Room 174-F
The Senate of Canada
Wellington Street
Ottawa
K1A 0A4Code

Dear Senator Gauthier,

Thank you for your letter of September 18, 2003, discussing Bill C-25 -- *An Act 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.*

Bill C-25 reiterates the government's commitment to official languages. The Preamble to the *Public Service Employment Act* in the Bill deals with service to Canadians in the official language of their choice and with a public service that embodies our country's linguistic duality. Moreover, it is expressly stipulated in clause 77 of the Bill that a failure to assess a candidate in the official language of his or her choice constitutes grounds for grievance to the new Public Service Staffing Tribunal.

You ask how the Public Service Staffing Tribunal will assure public servants that they can use the official language of their choice in the grievance process. Section 16 of the *Official Languages Act*, which is quasi-constitutional in nature, already requires federal courts such as the Public Service Staffing Tribunal to ensure that they can understand proceedings in either official language without the assistance of an interpreter. It is therefore unnecessary to amend Bill C-25 in order to guarantee such services.

However, I would like to reassure you as to the responsibility incumbent upon both the Privy Council in advising on appointments and the Governor in Council in making appointments to the Public Service Staffing Tribunal: they must ensure that the members of the Tribunal, as a group, have the bilingual capability that will allow them to serve both language groups well in the official language of their choice.

Thank you again for sharing your concerns with me.

Yours sincerely,
[sgd]
Jean Chrétien

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