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THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, October 29, 2003

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

Prayers.

The task force sought to address these issues by proposing concrete measures. This is an important issue for all Canadians, because the challenge is to ensure that all citizens have an opportunity to contribute and to share in the growth of the economy.

SENATORS' STATEMENTS

PRIME MINISTER'S TASK FORCE ON WOMEN ENTREPRENEURS

Hon. Catherine S. Callbeck: Honourable senators, this morning the Prime Minister's Task Force on Women Entrepreneurs had the pleasure of releasing its final report.

The Prime Minister established the task force in November of last year to examine the unique challenges facing women entrepreneurs. The task force was also asked to make recommendations as to how the federal government could assist businesswomen so that they can fully contribute to the economy.

In preparation for its report, the task force travelled from coast to coast to coast, visiting all the provinces and the Yukon. It held 38 public consultations in 21 different cities. It heard from 21 federal government departments and agencies about the programs they have to support entrepreneurship.

The response to the task force was overwhelmingly positive. As we conducted our consultations across Canada, many women entrepreneurs applauded the fact that, for the first time, they had an important platform from which to voice their concerns.

Women entrepreneurs are already making a vital contribution to the Canadian economy. According to Statistics Canada, there are more than 821,000 women entrepreneurs in Canada. This represents more than one third of the self-employed. These entrepreneurs contribute in excess of \$18 billion to the Canadian economy each year.

However, women entrepreneurs have the potential to play a much greater role. Unfortunately, as the task force learned, many barriers prevent them from realizing this potential. Some of the common barriers include: access to capital; access to maternity benefit and other social programs; access to training programs; lack of mentoring and networking opportunities; and lack of good information about government services and programs.

These were some of the main issues and challenges raised during our consultations with women entrepreneurs across the country.

AGRICULTURE AND AGRI-FOOD

EVALUATION OF PESTICIDES

Hon. Donald H. Oliver: Honourable senators, I rise today to speak about pesticide use in Canada.

Farmers and foresters alike have been using insecticides and pesticides to protect their crops for generations. As they are knowledgeable about the effects of pesticides on animals and humans, farmers and foresters have taken care to minimize the impact of chemicals on those around them.

The agricultural community relies upon the government to provide enough information to use pesticides safely. However, the recently tabled report from the Commissioner of the Environment and Sustainable Development revealed that the federal government is not providing this information.

The Pest Management Regulatory Agency is the branch of Health Canada responsible for evaluating pesticides. The report of the commissioner revealed the agency must update its evaluation methods, ensure the information it has on each pesticide is complete, and investigate its repeated use of temporary and emergency registrations. Only by implementing these recommendations will Canadians be able to safely use chemical sprays on their gardens and lawns.

Honourable senators, pesticide use in Canada has been growing steadily. In 1970, less than 10 million hectares of agricultural land in Canada were treated with pesticides. In 2000, 30.7 million hectares were treated with herbicides, insecticides or fungicides.

Although these numbers are for farmland, pesticide use in forested areas and even on residential ground is similar. In 2000, 199 million hectares of forest were managed for timber production. Of that, .39 million hectares were treated with either a herbicide or insecticide. Thirty-eight per cent of Toronto's household lawns and gardens are sprayed each year.

• (1340)

Pesticide use is routine and commonplace. Unfortunately, not enough is known about the environmental impact or the possible effects on humans. This lack of knowledge was revealed in the commissioner's report which states:

Health Canada has done only limited research on the health effects of pesticides, despite the federal government's stated priority in this area... Efforts to monitor the health and environmental impacts...are hampered by a lack of information about their use and adverse effects, by an incomplete set of national guidelines for water quality monitoring, and by a lack of suitable methods to measure pesticides.

All pesticides re-evaluated by the current set of standards were found to pose significant health or environmental risks. The commissioner's report even suggested it is likely that some pesticides on the market that have not yet been re-evaluated will also fail to meet today's standards. This is not acceptable.

In conclusion, pesticides provide a relatively inexpensive form of protecting crops against infestations, people against things like West Nile virus, our homes against mildew and our lawns against the ever-present dandelion. However, all of those benefits are useless if the very products we use have long-term, sometimes deadly side effects. Farmers, foresters and gardeners alike should be able to extract the maximum benefit from pesticides. At the same time, any risk to the health of Canadians and any environmental impacts should be kept to a minimum. Ensuring that pesticides are regularly evaluated and properly monitored is the only way to ensure pesticides are not a serious threat to Canadians who use them.

OFFICIAL LANGUAGES

TRIP OF COMMITTEE TO WESTERN CANADA

Hon. Wilbert J. Keon: Honourable senators, I rise to congratulate each and every one of the representatives from the francophone minority communities who appeared before the Standing Senate Committee on Official Languages during its western public hearings last week.

Our committee set out to learn all it could about French-language education in minority communities. Our western trip was the first step of our special study. Our committee was most impressed with the calibre of those witnesses who answered all of our questions in Manitoba, Saskatchewan, Alberta and British Columbia. Our committee found these witnesses to be exceedingly well prepared and their testimony to be enlightening and thought-provoking.

French-language minority communities out West do not always have it easy, we found. I was particularly taken with the plight of those communities in Saskatchewan and, to a lesser extent, British Columbia. It was certainly very clear to me that these francophone communities require a great deal of further support.

On the upside, the remarkable successes achieved both by the Collège universitaire de Saint-Boniface and the Faculté Saint-Jean in Edmonton bode well for post-secondary French-language education in the West. Both institutions boast a diversified faculty

and host a vibrant student community. It is my sincere hope that the new French-language program set up at Simon Fraser University, jointly with British Columbia's francophone association, will finally obtain the funding required to get underway.

All in all, our committee's public hearings were very successful as an outreach initiative.

[Translation]

Honourable senators, I thank Honourable Senator Losier-Cool for all her efforts last week. Congratulations!

[English]

I also acknowledge the tremendous respect shown for Senator Gauthier and his efforts over the years. He truly is the hero of the francophones of Western Canada.

ROUTINE PROCEEDINGS

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

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

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

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 3:30 p.m. on Wednesday, November 5, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[Translation]

STUDY ON OPERATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

REQUEST FOR GOVERNMENT RESPONSE— NOTICE OF MOTION

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that on Thursday, October 30, 2003, I will move:

That, pursuant to rule 131(2), the Senate request the government to provide a detailed and comprehensive response to the Fourth Report of the Standing Senate Committee on Official Languages, adopted on October 28, 2003.

[English]

BANKING, TRADE AND COMMERCE

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

Hon. Richard H. Kroft: Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 4 p.m. today, 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: No. Honourable senators, once again, this is a problem. I sit on the Standing Committee on Banking, Trade and Commerce. There are some bills being discussed here that are of the utmost interest to me. What am I to do?

If I refuse leave for this committee, the Senate will be sitting and my committee cannot. The last time, the committee chair consulted me. Today, I learn he will be asking that the committee be authorized to meet during the sitting of the Senate. Senator Robichaud has already asked the same question and I told him that I did not know.

We do not know what Senator Robichaud will do about adjournment. Will he let the Senate continue to sit until 3:30 p.m. or 4 p.m.? We will decide when he lets us know his intentions. For the moment, I will withhold consent for the honourable senator's motion; I can always give it later. However, I will not go to the meeting of the Banking, Trade and Commerce Committee if the Senate is sitting, that is certain.

[English]

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

Senator Prud'homme: At this time.

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

Senator Prud'homme: I say again that the honourable senator could ask again when we arrive at 3:30 so that we may see the intention of Senator Robichaud, and I will probably say yes.

The Hon. the Speaker *pro tempore*: At this moment, leave is not granted.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

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

In anticipation of commentary from some honourable senators, may I say that I do not understand why it is that when committees make this request in the chamber, they take so much flak and so much heat. Senate committees do not set their own standard times for sitting. Asking for permission to sit while the Senate is sitting is generally done to show respect and courtesy to the witnesses we call to our committee meetings. That is the reason we ask — so that witnesses are not sitting on their hands for two hours waiting for us.

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

Hon. Marcel Prud'homme: Honourable senators, on the same point, Senator Furey was gracious enough not to mention the names of "some senators," but I am one who insists every time that the Senate should not sit when committees sit. Some day we may have six or seven committees sitting at once, and even the whip will have a hard time mustering a quorum. Either the proposed legislation we have before us is important or it is not. That is the decision we will have to make some day.

• (1350)

I want Senator Furey and others to understand that I am being as diplomatic and serious as I can be. If the rules are wrong, we should change the rules. However, now we are changing the practice. Why do committee chairs gamble and call important witnesses on Wednesday afternoons, when they know that there may be lengthy Senate sittings? It is for the chairs of committees to get their heads together with the leadership and suggest that we forget this tradition of not having committees sitting at the same time that the house is sitting. It makes no sense.

How many more committees want to sit this afternoon? How can we say no to them? I cannot say no to Senator Furey. I am not a member of his committee, since I have a conflict of interest. However, I am a member of the Banking Committee, and if I do not attend the meeting some will say that I am not interested in the work of the committee. If I do attend the committee, then I cannot be present in the chamber. How can you solve this dilemma?

If the honourable senator requires unanimous consent, then I will stay quiet. However, as for the Banking Committee, I would kindly ask my chairman to again put his question around 3:30 p.m. to assess how Senator Robichaud feels the house is progressing.

Hon. Richard H. Kroft: I will take the suggestion of the honourable senator and put my motion at a later time.

However, I have further commentary on this issue. Senator Prud'homme, obviously, finds himself faced with a dilemma, but there has to be some understanding, as Senator Furey said, of the dilemma that committees face. Committees are scheduled to meet at a certain time to deal with proposed legislation. It is not our intention to have a card game. The attendance and attention of senators is required in the Senate chamber as well as in committees.

It is not unknown in this place — it happens to most of us in the course of our day — for senators to make choices, because we cannot be in two places at one time. Senators are deeply engaged, interested in and committed to dealing with certain issues, and those are sometimes being dealt with simultaneously in this place as well as in committee. A fact of life of this place is that we must make choices.

I regret that the honourable senator faces this dilemma so frequently because we do meet at a particular time. However, it is simply not within the power of the committee to say that we will not deal with legislation in committee because it is not convenient to the senators, or that we will meet at some other time. Those choices are just not available. I would ask all honourable senators to give that fair consideration when making judgments.

Senator Prud'homme: I want to give fair consideration.

Hon. John G. Bryden: Honourable senators, I would just mention one matter, because we often run into this situation when we have many bills before the house, for whatever reason. If we do not have enough people to go around on this side, then I am sure the other side faces the same difficulty.

That leads me to a point for clarification. Is it the case that travelling committees are exempted from the rule that committees shall not sit when the Senate is in session? If it is, then perhaps someone would show me that rule.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I certainly sympathize with any chairman and members of any committee whose schedule calls for their committee to sit at 3:30 p.m., or no earlier than when the Senate rises. On occasion, committees have had to wait until 6:00 or 7 p.m. to convene. I would, however, remind all honourable senators that when it was agreed that the Senate would sit at 1:30 p.m. on Wednesdays and Thursdays, it was to allow

committees scheduled to sit on a Wednesday afternoon a fair assurance that by 4 p.m. this place would adjourn and the committees would be able to sit.

That worked for a while, but it is no longer working. The Senate sometimes sits until 6:00 or 7:00 p.m. Witnesses are asked to wait, or the committee meeting has to be cancelled.

I would suggest — and this should come from the government side, not this side — that we pass a house order of some sort to the effect that, on Wednesdays, we will conclude our sessions here at 4:00 or 4:30 or 5:00 p.m., so that the committees which are scheduled to sit on Wednesday afternoons may have their meeting time confirmed. Otherwise, I am afraid that every Wednesday we will run into the same problem with committees asking to sit as close to 3:30 p.m. as possible. If those requests are agreed to, then half of this chamber will be emptied of many of its members, and issues, such as those Senator Prud'homme would want to discuss, will be discussed in the absence of senators who want to be part of the discussion. We cannot be in both places at once. Surely, we can arrange our schedules to be in both places at different times on a Wednesday.

The Hon. the Speaker *pro tempore*: Is leave granted that the Standing Senate Committee on Legal and Constitutional Affairs have the power to sit at 3:30 p.m. today?

Honourable senators: Agreed.

Motion agreed to.

PRIME MINISTER'S TASK FORCE ON WOMEN ENTREPRENEURS

NOTICE OF INQUIRY

Hon. Catherine S. Callbeck: Honourable senators, pursuant to rule 57(2), I give notice that two days hence I will call the attention of the Senate to the findings contained in the Report of the Prime Minister's Task Force on Women Entrepreneurs.

QUESTION PERIOD

HUMAN RESOURCES DEVELOPMENT

CANADIAN ASSOCIATION OF FOOD BANKS STUDY ON USAGE

Hon. Brenda M. Robertson: Honourable senators, the Canadian Association of Food Banks has recently released a study that found over 778,000 people across Canada use food banks every month. That number is greater than the total combined populations of Prince Edward Island, Newfoundland and Labrador.

Food bank usage is up 5.5 per cent over last year, and up 109 per cent from 1989. Another sad statistic related to this report is that almost 50 per cent of food bank users are families with children. These numbers are shocking and, in the words of the report, should be considered a “national disgrace.”

My question is for the Leader of the Government in the Senate: What is the federal government’s response to this study, and what will it do to reverse this trend regarding food bank use?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator is correct in quoting the statement that it is a national disgrace. I do not think that, in a country as rich as Canada, anyone should have to go to a food bank. With that, I fully concur with her statements.

As to what the federal government will do, it is not a simple problem to solve. Minimum wages, for example, are set by the provinces, and in Canada’s largest province, the minimum wage has not increased in a great number of years. Hopefully, that will change with the new administration in the Province of Ontario.

The reality is that people turn to food banks because they do not have enough income, and the shortfall in their income is a direct result of what they earn in the workplace. With so many Canadians earning the minimum wage, and with that minimum wage being consistently low, having enough money to feed a family becomes a recurring and very difficult problem in our society.

The federal government has limited responsibility in this area. Recently, however, it has been working diligently on the issue of providing affordable, adequate housing because, not only are these people frequently without food, they are also frequently living in inadequate accommodation.

Senator Robertson: Honourable senators, I would remind the honourable senator that it is difficult for provinces to respond adequately when they have endured the cuts in transfer payments that this government has made over the past few years. That action has aggravated the situation. Many of these people are social welfare recipients. Many are older people who find, with the cost of medications, in particular, that it is almost impossible to make ends meet. You cannot just foist it all on the provinces. The federal government has a large role to play in this regard.

I have a supplementary question. Honourable senators, the report condemns the federal government for not living up to its international commitment to fight hunger.

• (1400)

Last year, Canada recommitted to the Rome Declaration on World Food Security, to which Canada originally became a signatory in 1996. One hundred and eighty-one countries are

party to this declaration, which aims to reduce by half the number of hungry people around the world by 2012 and endorses the concepts of food security and the right to food.

How can Canada expect other countries to live up to their commitments to fight hunger when we have not done so ourselves?

Senator Carstairs: The honourable senator raises a number of issues in her questions. She talked about the cost of medications. That is why the provincial health ministers signed an accord with the federal Minister of Health, the Prime Minister and first ministers about catastrophic drug prices and how to get a handle on them in Canada. Unfortunately, some of those deals are not being put into effect as quickly as they could be. For whatever reason, the provinces and the federal government are not able to come to agreement on this and other areas for which the federal government committed some \$34.5 billion.

In terms of our international commitment to fight hunger, our foreign aid budget has consistently increased, and the commitment is for it to continue to do so in the future.

INDUSTRY

BOVINE SPONGIFORM ENCEPHALOPATHY— AID TO BEEF INDUSTRY WORKERS

Hon. Donald H. Oliver: Honourable senators, my question is to the Leader of the Government in the Senate. Today, it is about BSE and the request for more aid.

In recent weeks, several provincial governments, including those in Alberta, Saskatchewan and Quebec, have announced more aid for beef producers hurt by the BSE crisis. In each instance, the provincial governments have called upon the federal government to provide more BSE-related financial assistance. As well, in the middle of October, representatives of Canada’s municipal governments, under the umbrella of the Federation of Canadian Municipalities, called for more immediate financial aid to the beef industry.

Could the Leader of the Government in the Senate please explain where her government currently stands on the issue of providing more BSE-related financial assistance? How much has been given, how much more is to come, and when?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the Minister of Agriculture announced in September that the federal government and provinces who have signed on to the Canadian Agricultural Income Stabilization Program as an interim measure will enter into bilateral agreements to provide immediate relief to producers in need, such as those in the cattle industry. Honourable senators, it is important to note that this is a \$5.5 billion program over five years.

INTERNATIONAL TRADE

BOVINE SPONGIFORM ENCEPHALOPATHY—UNITED STATES TRADE RESTRICTIONS ON LIVE CATTLE

Hon. Donald H. Oliver: Honourable senators, in terms of this government's interactions with the American government, what is the latest information that the honourable leader can give, or that this government has, in terms of anticipating an end to the trade ban on Canadian beef moving south into the United States?

As well, is the leader aware of any plans of the incoming Prime Minister to speed up the process to remove these trade bans between Canada and the United States?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows full well, I will not speak for what the incoming Prime Minister may do. He will be able to speak for himself when he becomes the leader of the party, and when he — or she — becomes the Prime Minister of this country.

As to the honourable senator's other question, the United States has made a commitment to restore trade in live animals through an expedited regulatory process. We are continuing to work closely with them at all levels to keep the process moving. We recognize how critical live animal exports are to the Canadian beef industry.

Senator Oliver: Can the leader of the government give us any dates as to when live animals will start moving across the border?

Senator Carstairs: Honourable senators, I understand that the United States has a regulatory process similar to ours, and that they have an equivalent type of document to the *Canada Gazette*. Their process can be expedited by periods of time of up to 120 days. In this case they have chosen to expedite it in a 30-day period. My understanding is that good news may come as early as December 1.

TRANSPORT

VIA RAIL—ANNOUNCEMENT OF ALLOCATION OF ADDITIONAL FUNDS

Hon. Leonard J. Gustafson: Honourable senators, last week the Transport Minister, David Collenette, made public plans for a new \$700-million passenger rail service. Unfortunately for Mr. Collenette, Paul Martin, Mr. Collenette's future boss, appears to have other ideas. In Saturday's *The Globe and Mail*, Martin spokesman Scott Reid stated:

We're going to have to review this decision in the context of very tight fiscal circumstances and competing important priorities...

Would the Leader of the Government in the Senate care to comment on this situation, since it relates to other initiatives that the government may be announcing in the dying days of

Mr. Chrétien's reign as Prime Minister? Is the government perhaps in a state of policy paralysis because of the competing agendas of the current Prime Minister and the one to come?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, obviously, if we were in a state of paralysis, the Honourable Minister Collenette would not have made the announcement that he did.

Senator Gustafson: In the past, Mr. Martin has been critical of VIA Rail and the level of government support it has received relative to the bus industry, for instance, where he once held significant interests.

Let me read from an article in *The Globe and Mail* on March 10, 1989, quoting Paul Martin:

"VIA Rail is being used to destroy Voyageur," he charged, adding that the federal subsidies to the Crown corporation represent unfair competition.

Would the Leader of the Government in the Senate care to comment on the prospect that these views may be colouring Mr. Martin's response to Mr. Collenette's announcement?

Senator Carstairs: My recommendation to the honourable senator is that he put that in a file, and when and if Paul Martin becomes the Prime Minister of Canada he can re-ask the question.

Senator Gustafson: I have a supplementary question. In making the announcement, Mr. Collenette said that the \$700-million cash infusion will lay the groundwork for VIA Fast, a high-speed train to run between Quebec City and Windsor, Ontario.

Is the Leader of the Government in the Senate aware of whether or not this government is considering the financing of other high-speed train proposals for heavy traffic economic corridors in Canada, such as that between Calgary and Edmonton, and could she explain why the Quebec City-Windsor proposal appears to be taking precedence over other proposals that are out there?

Senator Carstairs: Honourable senators, clearly there are other proposals out there and others must be considered. However, the largest area of traffic in the country, the considerably higher number of passengers, is in the Quebec-Windsor corridor.

NATIONAL DEFENCE

REPLACEMENT OF LEOPARD TANK FLEET

Hon. J. Michael Forrestall: Honourable senators, I have a question with respect to an announcement made by the Minister of National Defence today. Is the minister able to indicate to us whether the announcement by the minister today regarding the purchase of 60 new Stryker mobile gun systems for the Canadian army represents a decision not to replace the heavier tanks?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, my understanding is that the acquisition of the MGS, which is also known as the light armoured vehicle — also known as the Stryker — will allow DND to replace the current fleet of Leopard tanks and continue to maintain direct fire capacity.

ACQUISITION OF STRYKER LIGHT ARMoured VEHICLES

Hon. J. Michael Forrestall: Honourable senators, then that is the end of the heavy track vehicle tank; the Leopard will not be replaced. In light of the tests done on it four or five years ago, that seems to fly in the face of good, sound military judgment.

Can the minister indicate to us when these armoured vehicles, ostensibly now to replace the old system, might be available for transport to the theatre of operations? Could she indicate how we will get them there and when they might arrive?

• (1410)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the decision has just been made. The government has announced that it will purchase some 66 light armoured vehicles. I would assume that, at this point, we have some months down the line before they would actually arrive. If the honourable senator is asking whether they will be sent to Afghanistan, I do not think a decision can be made on that until the vehicles are in our possession, and they are not yet in our possession.

Senator Forrestall: I might ask the minister, notwithstanding the uncertainty of the months that lie ahead, whether or not she could be a little clearer about the general terms. She is fully aware that my understanding of “immediately” could be anything up to 10 years. Could the minister be clearer about that?

Senator Carstairs: Honourable senators, I know where the honourable senator is coming from, but I do not think that one can compare apples and oranges. In this case, the honourable minister has announced that we will purchase some 66 light armoured vehicles as part of the transformation of the Canadian Armed Forces. I will seek to learn when we will receive those vehicles and what use will be made of them in the first instance.

NORTH ATLANTIC TREATY ORGANIZATION RESPONSE FORCE

Hon. Michael A. Meighen: Honourable senators, my question is also to the Leader of the Government in the Senate. Earlier this month, as honourable senators will be aware, NATO launched the first units of what will eventually be a 21,000-member rapid reaction force. Called the NATO Response Force, it is a standing, multinational, combined air, land, sea and special operations force under a single commander. It is expected to be fully operational by 2006. The NATO Response Force has been touted by its commander as a departure for NATO, giving the organization a global reach that will enable it to exert

worldwide influence. The brigade-sized force will be drawn from the member nations' own forces.

Could the Leader of the Government tell us whether Canada was involved in the discussions leading to the creation of this force, and whether we will be contributing troops to it?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as a member of NATO, I presume that we were part of the decision-making process. However, as to whether we are to be a member, or any further details, I do not have that information available at this time.

Senator Meighen: Would the Leader of the Government be good enough to make inquiries as to whether such a decision has been made? At the same time, perhaps she could inquire what implications this new response force has for the NATO Charter — in other words, whether the Charter needs to be modified to accommodate future out-of-area global missions that would otherwise, to my understanding, fall under the jurisdiction of the United Nations?

Senator Carstairs: Honourable senators, I will seek the answers that the honourable senator wishes, and do so with dispatch.

FOREIGN AFFAIRS

SUDAN—PRIORITY OF UNITED NATIONS HUMAN RIGHTS POLICY OVER BUSINESS INTERESTS

Hon. A. Raynell Andreychuk: Honourable senators, several weeks ago, in his final speech to the United Nations, the Prime Minister strongly urged that organization to put the protection of people at the heart of its mandate. He stated at the time, and I quote:

... that in the face of large scale loss of life or ethnic cleansing, the international community has the moral responsibility to protect the vulnerable.

Yet we have learned this week from a book authored by Madeleine Drohan that this government has failed to follow its own prescription for the United Nations by allowing business interests to trump human security, notably in the Sudan conflict. There was a report in the media on the weekend that former Liberal foreign minister Lloyd Axworthy, the architect of the government's human security approach to foreign policy, was constantly thwarted by his own officials in the implementation of that policy. Those officials, the report said, placed business interests above human security and human rights.

The case of Talisman Oil in Sudan is a case in point where Mr. Axworthy was helpless to do anything about the company's links to the civil war. Is it, in fact, the case that in the Sudan situation, the government's officials indicated that it was acceptable for Talisman to continue to work in southern Sudan, did not raise concerns about the human rights situation, and in fact did not take steps to alter their involvement there?

Hon. Sharon Carstairs (Leader of the Government): This is a question that the honourable senator has posed before, and the answer is exactly the same: Talisman was operating in an area of the world where we know there were human rights violations. Of that there is no question. The officials with Foreign Affairs informed Talisman, and made several recommendations about the way Talisman should conduct its activities. However, in reality, we have no control over the activities of that company in a country like Sudan. It operates as an independent corporate entity.

Senator Andreychuk: Supplementary to that, then, is it correct, as the news report and the book that I previously referred to indicate, that senior or other officials in the government thwarted the minister from raising the human security agenda in favour of business interests in Sudan? If so, who were these individuals who would have overruled the minister?

Senator Carstairs: The only person who could answer that question, honourable senators, is Mr. Axworthy. I invite the honourable senator to write to him.

Senator Andreychuk: I do not think it is valid for the government to indicate that I should contact an ex-minister. My question is: Did officials overrule a minister who was raising human rights issues, and support commercial interests? In other words, my concern is not with Mr. Axworthy, although I have sympathy for him if his officials were overruling him. My concern is with who was directing those officials, if it was not the minister?

Senator Carstairs: Honourable senators, that is why I think we can assume that Mr. Axworthy was not overruled.

Senator Andreychuk: Is it correct that the government is saying that no one thwarted Minister Axworthy in his pursuit of the human rights agenda and that therefore this report and this book are wrong?

Senator Carstairs: Honourable senators, as I indicated before, the only person who could give a definitive answer to that question would be Mr. Axworthy.

INDUSTRY

PRIME MINISTER'S TASK FORCE ON WOMEN ENTREPRENEURS—MATERNITY BENEFITS FOR SELF-EMPLOYED BUSINESS WOMEN

Hon. Catherine S. Callbeck: Honourable senators, my question is to the Leader of the Government in the Senate. This morning, the Prime Minister's Task Force on Women Entrepreneurs released its report. The report outlines many challenges faced by businesswomen. It also contains recommendations as to how the federal government could assist self-employed women to reach their full potential.

One of the major barriers that we heard about, time after time, was the lack of maternity benefits for women entrepreneurs. Many women indicated that they would be willing to pay into a fund in order to participate in these benefits. My question is whether the government is willing to find a way to enable self-employed women to receive maternity benefits?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, before I answer the honourable senator's question, let me congratulate her and the other members of the committee who travelled throughout this country to ask women entrepreneurs about their circumstances and their problems in an effort to seek solutions to those problems.

As to the specific question that the honourable senator asks, as I am sure she is aware, Statistics Canada did a survey of self-employment in Canada, which was released in January of 2002. That survey confirmed that the majority of self-employed Canadians were not interested in contributing to an income insurance program. They preferred the status quo. As I am sure the honourable senator understands, voluntary coverage raises a number of complex issues, including how such a program could be financed.

The EI program provisions now are based on the fact that those who receive benefits have agreed to mandatory coverage. This is an issue that I think needs to be re-examined, and the House of Commons Standing Committee on Human Resources Development has been asked by the minister to further examine the issue of coverage for the self-employed.

• (1420)

THE CABINET

CRITERIA ON CONFLICT OF INTEREST—ACCEPTANCE OF INVITATIONS FROM IRVING COMPANY

Hon. Marjory LeBreton: Honourable senators, the Leader of the Government in the Senate said yesterday, at page 2315 of the *Debates of the Senate*, that:

One must carefully separate when one does something with a friend, from when one does something for so-called other reasons...

We now know that Paul Zed, a former Liberal member of Parliament and a well-known lobbyist, has invited the Minister of Industry, the Minister of the Environment, the Minister of Fisheries, and now the Minister of Human Resources Development, to the Irving fishing lodge for vacations.

Can the Leader of the Government in the Senate tell us, when the Prime Minister is warning ministers about conflicts of interest, what criteria is used to separate public business from private business, and will she table these criteria?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the government already did, quite frankly, table the criteria when we tabled all of the conflict of interest materials with the whole ethics package a year and a half ago.

It should also be pointed out that Mr. Zed is a member of the Irving family.

Senator LeBreton: Honourable senators, according to Industry Canada's latest lobbyist registration Web site, Paul Zed was registered as a lobbyist for the following companies:

J.D. Irving Ltd., Charlotte County Ports Ltd., Atcon Construction Inc., SNC Lavalin Inc., Mounted Police Members' Legal Fund, Vancouver Resource Society, CGI Information Systems and Management Consultants Inc., International Fund for Animal Welfare — Canada, Canadian Arctic Resources Committee, Government of Yukon, Co-op Atlantic, Canadian Lung Association, Peace Bridge Duty Free, White Mount Academy of the Arts, Kimberley-Clark Inc., McCain Foods Limited, Janssen-Ortho Inc., Innu Healing Foundation and UNYSIS Canada Inc.

Obviously, he is a very busy man looking after his various clients.

What steps has the government taken to ensure that, in the various ministerial Irving camp vacations, there will be no discussion of any issues which touch on Mr. Zed's lobbying activities, for which he is paid?

Senator Carstairs: Honourable senators, obviously Mr. Zed is not only a very busy but also a very accomplished man. I understand also that he is a very good friend to a great number of people on this side of the chamber and, I suspect, a few on the other side as well.

REGISTRATION OF GIFTS OVER \$200

Hon. Marjory LeBreton: I am sure that honourable senators remember him from the Pearson airport days.

Yesterday, in the other place, ministers of the Crown stated that they had declared all gifts valued over \$200, yet the majority of the Web sites do not list any gifts for at least two years. Indeed, the government leader's own declaration does not include any gifts being received at all. Is it now the policy of the government for ministers to disclose gifts to the ethics counsellor, but not to make the declarations public?

Hon. Sharon Carstairs (Leader of the Government): No, senator. Let me be very clear. It states that we must register gifts over \$200. I have not received a gift over \$200. When I am asked if there is a particular gift I would like, I always suggest that a charitable donation be made to an active charity in the particular community.

FOREIGN AFFAIRS

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION ON NUCLEAR NON-PROLIFERATION

Hon. Douglas Roche: Honourable senators, yesterday the minister kindly agreed to take forward my question concerning Canada's vote on the resolution at the First Committee of the UN General Assembly introduced by the New Agenda Coalition. It is entitled, "Towards A Nuclear-Weapon-Free World: A New Agenda."

I am confident that the minister did take that forward and I thank her.

Can she now indicate whether the government will vote in favour of that resolution. If the minister is not in a position to so state at this moment, will she undertake to inform the office of Minister Graham that this morning a revision of the resolution in question was introduced on the floor of the First Committee? I have examined that revision and it makes it even sweeter, so to speak, for countries like Canada to vote in favour of the resolution.

Will the minister undertake to go back to the office of the Minister of Foreign Affairs to ensure that they understand the gravity and importance of this issue, and in order that Canada may live up to its commitment to nuclear disarmament ensure a yes vote for this important resolution? Because of the time exigencies involved, will she be good enough to say that she will do it this afternoon?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. Of course, I will do just that. In order that the honourable senator knows what is happening, I can tell him that I have my staff listening to Question Period and, as soon as Question Period is over, they inform the ministers of the Crown of the issues of concern to their particular departments.

ORDERS OF THE DAY

PUBLIC SERVICE MODERNIZATION 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, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

And on the motion in amendment of the Honourable Senator Kinsella, seconded by the Honourable Senator Atkins, that the Bill be not now read a third time but that it be amended

(a) in clause 2

(i) on page 8, by replacing lines 27 to 32 with the following:

“include, among other things, harassment in the workplace.”, and

(ii) on page 99, by adding after line 8, the following:

“PART 2.1

PROTECTION OF WHISTLEBLOWERS

Definitions

238.1 The following definitions apply in this Part.

“Commissioner” means the commissioner of the Public Service Commission who has been designated as Public Interest Commissioner under section 238.3.

“employee” has the same meaning as in Part 2.

“law in force in Canada” means a provision of an Act of Parliament or of the legislature of a province or an instrument issued under the authority of such an Act that is in force at the relevant time.

“minister” means a member of the Queen’s Privy Council for Canada who holds office as a minister of the Crown.

“wrongful act or omission” means an act or omission that is:

- (a) an offence against a law in force in Canada;
- (b) likely to cause a significant waste of public money;
- (c) likely to endanger public health or safety or the environment;
- (d) a significant breach of an established public policy or of a directive in the written record of the public service; or
- (e) one of gross mismanagement or an abuse of authority.

Purpose

Purpose

238.2 The purpose of this Part is

(a) to provide for the education of persons working in the public service on ethical practices in the workplace and the promotion of the observance of these practices;

(b) to protect the public interest by providing a means for employees of the public service to make allegations, in confidence, of wrongful acts or omissions in the workplace, to an independent Commissioner who will investigate them and seek to have the situation dealt with, and who will report to Parliament in respect of problems that are confirmed but have not been dealt with; and

(c) to protect employees of the public service from retaliation for having made or for proposing to make, in good faith and on the basis of reasonable belief, allegations of wrongdoing in the workplace.

Public Interest Commissioner

Designation

238.3.(1) The Governor in Council shall designate one of the commissioners of the Public Service Commission to serve as Public Interest Commissioner.

Part of role of Commission

(2) The role of Public Interest Commissioner is a part of the function of the Public Service Commission.

Powers

(3) The Commissioner may exercise the powers of office of a commissioner of the Public Service Commission for the purposes of this Part.

Information made public

238.4 (1) Subject to section 238.9, the Commissioner may make public any information that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner’s duties or powers under this Part if, in the Commissioner’s opinion, it is in the public interest to do so.

Disclosure of necessary information

(2) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information that, in the Commissioner’s opinion, is necessary to

(a) conduct an investigation under this Part; or

(b) establish the grounds for findings or recommendations contained in any report made under this Part.

Disclosure in the course of proceedings

(3) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information necessary to assist

(a) a prosecution for an offence under section 238.20; or

(b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

Disclosure of offence

(4) The Commissioner may disclose to the Attorney General of Canada or of a province, as the case may be, information relating to the commission of an offence against any law in force in Canada that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, there is evidence of an offence.

Not competent witness

238.5 The Commissioner or person acting on behalf or under the direction of the Commissioner is not a competent witness in respect of any matter that comes to their knowledge as a result of the performance or exercise of the Commissioner's duties or powers under this Part in any proceeding other than

(a) a prosecution for an offence under section 238.20; or

(b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

Protection of Commissioner

238.6 (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith as a result of the performance or exercise or purported performance or exercise of the Commissioner's duties or powers under this Part.

Libel or slander

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any record or thing produced in good faith and on the basis of reasonable belief in the course of an investigation carried out by or on behalf of the Commissioner under this Part is privileged; and

(b) any report made in good faith by the Commissioner under this Part and any fair and accurate account of the report made in good faith for the purpose of news reporting is privileged.

Education

Dissemination

238.7 The Commissioner shall promote ethical practices in the public service and a positive environment for giving notice of wrongdoing, by disseminating knowledge of this Part and information about its purposes and processes and by such other means as seem fit to the Commissioner.

Notice of Wrongful Act or Omission

Notice by employee

238.8 (1) An employee who has reasonable grounds to believe that another person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission

(a) may file with the Commissioner a written notice of allegation; and

(b) may request that their identity be kept confidential with respect to the notice.

Form and content

(2) A notice under subsection (1) shall identify

(a) the employee making the allegation, and be signed by that person;

(b) the person against whom the allegation is being made; and

(c) the grounds on which the employee believes that the act or omission is wrongful and has been or will be committed, giving the particulars that are known to the employee and the reasons and the grounds on which the employee believes the particulars to be true.

No breach of oath

(3) A notice by an employee to the Commissioner under subsection (1), given in good faith and on the basis of reasonable belief, is not a breach of any oath of office or loyalty or secrecy taken by the employee and, subject to subsection (4), is not a breach of duty.

Solicitor-client privilege

(4) No employee, in giving notice under subsection (1), may violate any law in force in Canada or rule of law protecting privileged communications as between solicitor and client, unless the employee has reasonable grounds to believe there is a significant threat to public health or safety.

Waiver

(5) An employee who has made a request under paragraph (1)(b) may waive the request or any resulting right to confidentiality, in writing, at any time.

Rejected notice

(6) Where the Commissioner is not able or willing to give an assurance of confidentiality in response to a request made under paragraph (1)(b), the Commissioner may reject the notice and take no further action on it, but shall keep it confidential.

Confidentiality

238.9 Subject to subsection 238.11(5) and any other obligation of the Commissioner under this Part or any law in force in Canada, the Commissioner shall keep confidential the identity of an employee who has filed a notice with the Commissioner under subsection 238.8(1) and to whom the Commissioner has given an assurance that, subject to this Part, their identity will be kept confidential.

Initial review

238.10 On receiving a notice under subsection 238.8(1), the Commissioner shall review it, may ask the employee for further information and may make such further inquiries as, in the opinion of the Commissioner, may be necessary.

Rejected notices

238.11 (1) The Commissioner shall reject and take no further action on a notice given under subsection 238.8(1), if the Commissioner makes a preliminary determination that the notice

(a) is trivial, frivolous or vexatious;

(b) fails to allege or give adequate particulars of a wrongful act or omission;

(c) breaches subsection 238.8(4); or

(d) was not given in good faith or on the basis of reasonable belief.

False statements

(2) The Commissioner may determine that a notice that contains a statement that the employee knew to be false or misleading at the time it was made was not given in good faith.

Mistaken facts

(3) The Commissioner shall not determine that a notice was not given in good faith for the sole reason that it contains mistaken facts unless the Commissioner has grounds to believe that there was adequate opportunity for the employee to discover the mistake.

Report

(4) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Report to official and minister

(5) Where the Commissioner determines under subsection (1) that a notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief, the Commissioner may advise

(a) the person against whom the allegation was made, and

(b) the minister responsible for the employee who gave the notice of the matters alleged and the identity of the employee.

Valid notice

238.12 (1) The Commissioner shall accept a notice given under subsection 238.8(1) where the Commissioner determines that the notice

(a) is not trivial, frivolous or vexatious;

(b) alleges and gives adequate particulars of a wrongful act or omission;

(c) does not breach subsection 238.8(4); and

(d) was given in good faith and on the basis of reasonable belief.

Report to employee

(2) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Investigation and Report

Investigation

238.13 (1) The Commissioner shall investigate a notice accepted under section 238.12, and, subject to subsection (2), shall prepare a written report of the Commissioner's findings and recommendations.

Report not required

(2) The Commissioner is not required to prepare a report if satisfied that

(a) the employee ought to first exhaust other procedures available to the employee;

(b) the matter could more appropriately be dealt with, initially or completely, by means of a procedure provided for under a law in force in Canada other than this Part; or

(c) the length of time that has elapsed between the time the wrongful act or omission that is the subject-matter of the notice occurred and the date when the notice was filed is such that a report would not serve a useful purpose.

Report to employee

(3) Where the Commissioner has made a determination under subsection (2), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Confidential information

(4) Information related to an investigation is confidential and shall not be disclosed, except in accordance with this Part.

Report to minister

(5) The Commissioner shall provide the minister responsible for the employee against whom an allegation has been made, on a timely basis and in no case later than one year after the Commissioner receives the notice, with a copy of the report made under subsection (1).

Minister's response

238.14 (1) A minister who receives a report under subsection 238.13(5) shall consider the matter and respond to the Commissioner.

Content of response

(2) The response of a minister under subsection (1) shall specify the action the minister has taken or proposes to take to deal with the Commissioner's report, or that the minister proposes to take no action.

Further responses

(3) A minister who, for the purposes of this section, specifies action proposed to be taken shall give such further responses as are requested by the Commissioner until such time as the minister advises that the matter has been dealt with.

Emergency public report

238.15 (1) The Commissioner may require the President of the Treasury Board to cause an emergency report prepared by the Commissioner to be laid before both Houses of Parliament on the next day that the House sits if, in the Commissioner's opinion, it is in the public interest to do so.

Content of report

(2) A report prepared by the Commissioner for the purposes of subsection (1) shall describe the substance of a report made to a minister under subsection 238.13(5) and the minister's response or lack thereof under section 238.14.

Annual report

238.16 (1) The Public Service Commission shall include in the annual report to Parliament made pursuant to section 23 of the *Public Service Employment Act* a statement of activity under this Act prepared by the Commissioner that includes

(a) a description of the Commissioner's activities under section 238.7;

(b) the number of notices received pursuant to section 238.8;

(c) the number of notices rejected pursuant to sections 238.8 and 238.11

(d) the number of notices accepted pursuant to section 238.12;

(e) the number of accepted notices that are still under investigation pursuant to subsection 238.13(1);

(f) the number of accepted notices that were reported to ministers pursuant to subsection 238.13(5);

(g) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has been taken;

(h) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has not been taken;

(i) an abstract of the substance of all reports to ministers pursuant to subsection 238.13(5) and the responses of ministers pursuant to section 238.14; and

(j) where the Commissioner is of the opinion that the public interest would be best served, the substance of an individual report made to a minister pursuant to subsection 238.13(5) and the response or lack thereof of a minister pursuant to section 238.14.

Annual report

(2) The Public Service Commission may include in the annual report to Parliament made pursuant to section 23 of the Public Service Employment Act an analysis of the administration and operation of this Part and any recommendations with respect to it.

Prohibitions

False information

238.17 (1) No person shall give false information to the Commissioner or to any person acting on behalf or under the direction of the Commissioner while the Commissioner or person is engaged in the performance or exercise of the Commissioner's duties or powers under this Part.

Bad faith

(2) No employee shall give a notice under subsection 238.8(1) in bad faith.

No disciplinary action

238.18 (1) No person shall take disciplinary action against an employee because

(a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed or stated an intention to disclose to the Commissioner that a person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission;

(b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention to refuse to commit an act or omission the employee believes would be a wrongful act or omission under this Part;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to comply with this Part; or

(d) the person believes that the employee will do anything referred to in paragraph (a), (b) or (c).

Definition

(2) In this section, "disciplinary action" means any action that adversely affects the employee or any term or condition of the employee's employment or adversely affects the employee's opportunity for future employment within or outside the public service, and includes:

(a) harassment;

(b) financial penalty;

(c) affecting seniority;

(d) suspension or dismissal;

(e) denial of meaningful work or demotion;

(f) denial of a benefit of employment;

(g) refusing to give a reference; or

(h) any other action that is disadvantageous to the employee.

Rebuttable presumption

(3) A person who takes disciplinary action against an employee within two years after the employee gives a notice to the Commissioner under subsection 238.8(1) shall be presumed, in the absence of a preponderance of evidence to the contrary, to have taken the disciplinary action against the employee contrary to subsection (1).

Disclosure prohibited

238.19 (1) Except as authorized by this Part or any other law in force in Canada, no person shall disclose to any other person the name of the employee who has given a notice under subsection 238.8(1) and has requested confidentiality under that subsection, or any other information the disclosure of which reveals the employee's identity, which may include the existence or nature of a notice, without the employee's consent.

Exception

(2) Subsection (1) does not apply where the notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief.

Enforcement

Offences and punishment

238.20 A person who contravenes subsection 238.8(4), section 238.17, or subsection 238.18(1) or 238.19(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

Employee Recourse

Recourse available

238.21 (1) An employee against whom disciplinary action is taken contrary to section 238.18 is entitled to use every recourse available to the employee under the law, including grievance proceedings provided for under an Act of Parliament or otherwise.

Recourse not lost

(2) An employee may seek recourse as described in subsection (1) whether or not proceedings based upon the same allegations of fact are or may be brought under section 238.20.

Benefit of presumption

(3) In any proceedings of a recourse referred to in subsection (1), the employee is entitled to the benefit of the presumption established in subsection 238.18(3).

Transitional

(4) Where grievance proceedings are current or pending on the coming into force of this Part, the proceedings shall be dealt with and disposed of as if this Part had not been enacted."; and

(b) in clause 8 on page 108,

(i) by striking out lines 13 to 20, and

(ii) by relettering paragraphs 11.1(1)(i) and 11.1(1)(j) as paragraphs 11.1(1)(h) and 11.1(1)(i) and any cross references thereto accordingly; and

(c) in clause 88 on page 193, by adding after line 17, the following:

"88.1 Schedule II to the Act is amended by adding the following in alphabetical order:

Public Service Labour Relations Act
section 238.9, subsection 238.13(4), section 238.19

Loi sur les relations de travail dans la fonction publique
article 238.9, paragraphe 238.13(4), article 238.19.".

Hon. Gerald J. Comeau: Honourable senators, I am pleased to speak in support of Senator Kinsella's amendments to include whistle-blowing protection in Bill C-25. Honourable senators will recall that, in a previous session of Parliament, the Senate National Finance Committee approved Senator Kinsella's private bill to protect from retribution those who expose wrongdoing in the workplace. His bill did not receive third reading before that session ended, but it does remain on the Senate Order Paper in this session as Order No. 6. Senator Kinsella's amendment would essentially add that same protection to the Public Service Labour Relations Act by incorporating the provisions of his bill into this bill.

Honourable senators, more than 10 years have passed since the then Leader of the Opposition, Jean Chrétien, wrote to the Public Service Alliance on June 11, 1993, to promise whistle-blowing protection. Mr. Chrétien cited the Liberal policy paper entitled, "Public Sector Ethics and Morals," telling the Public Service Alliance that:

...an effective policy to protect public servants who expose waste, corruption graft and similar situations is imperative. Public servants must be able to report about legal or unethical behaviour they encounter on the job without fear of reprisal.

In his letter, Mr. Chrétien went on to state:

A Liberal government would introduce "Whistleblowing" legislation in the next Parliament.

A couple of months later, in a document called "The Liberal Approach to the Public Service," released by the Liberal Party on September 9, 1993, it was stated that:

Public servants who blow the whistle on illegal or unethical behaviour should be protected. A Liberal government will introduce whistle-blowing legislation in the first session of a new Parliament.

Honourable senators, 10 years later, on the eve of his retirement, the time has come for the Prime Minister to keep his word and protect, in the words of his letter, “those who expose waste, corruption, graft and similar situations.”

A few years ago, the government gave us not whistle-blowing legislation, but the Public Service Integrity Officer. This was a step in the right direction, but it is no substitute for legislated protection.

Further, this bill, as it stands now, will weaken what few standards exist now in two ways. First, employees who are wronged will no longer be able to sue the government. They will have to go through the grievance procedure. Therefore, if your manager decides to get even with you by making your life a living hell, to the point where you quit because you simply could not take it any longer, you will not be able to sue for constructive dismissal.

Second, this bill delegates increased powers to hire and promote down to lower level managers, while gutting the Public Service Commission's ability to police hiring and promotions. Under such conditions, reporting that your manager has his or her hands in the till could very well destroy your career and give you a taste of what it was like to work at the Privacy Commission. Even if your life is not made totally miserable, you can expect that a less qualified co-worker who looks the other way will be promoted long before you.

The clearest example of why we need whistle-blowing legislation comes to us from the Privacy Commission, where public servants lived through what has been described as a reign of terror. The Auditor General made it quite clear in her report that whistle-blowing mechanisms at the Privacy Commission were totally ineffective. Under the heading “Stress and Intimidation in the Workplace,” she said:

• (1430)

Employees we interviewed told of a poisoned work environment at the Office of the Privacy Commissioner in which staff were intimidated by the former Commissioner.

Our interviews consistently revealed instances of authoritarian behaviour amounting to what employees called a “reign of terror” by the former Commissioner or certain executives carrying out his directives.

Although the former Commissioner strongly denied the existence of a “reign of terror,” our interviews repeatedly disclosed instances of his humiliation of staff, inappropriate comments, intolerance, and verbal abuse that were socially unacceptable — in either Canada in general or in the public service in particular.

Later in her report, the Auditor General had this to say under the heading “whistleblowing mechanisms are perceived as ineffective or non-existent”:

A key function of central agencies is to provide a means for public servants to report wrongdoing.

Mechanisms that serve the purpose include section 80 of the Financial Administration Act, which requires that public servants report financial wrongdoing or mismanagement to a superior officer. Another is the government's Policy on the Internal Disclosure of Information Concerning Wrongdoing.

The policy defines wrongdoing as any act or omission concerning a violation of a law or regulation; misuse of public funds or assets; gross mismanagement; or a substantial or specific danger to the life, health, and safety of Canadians or the environment.

The policy requires departments to designate a senior officer to be responsible for the policy and recommends that the employees report wrongdoing internally to this senior officer. At the OPC, the designated officer was the Executive Director.

The Executive Director at the Office of the Privacy Commissioner was allegedly part of the problem.

The Auditor General goes on to say:

If a federal employee believes that an issue cannot be disclosed within his or her department, or if it has been raised but not addressed appropriately, the employee can report it to the Public Service Integrity Officer.

We found that employees at the Office of the Privacy Commissioner perceived the avenues for reporting wrongdoing or financial mismanagement as generally ineffective, offering little or no protection to staff who might notify a superior officer or the Public Service Integrity Officer.

Many employees told us that the Public Service Integrity Officer's role is not working as expected and the position lacks the necessary clout. We also found that many employees of the OPC were unaware that the position of the Public Service Integrity Officer even existed.

The Public Service Integrity Officer himself, Dr. Edward Keyserlingk, stated in his recent annual report that the Public Service Integrity Office should be legislatively based rather than merely policy based, as it is at present. He has also called for legislation to provide a legal framework to enable the disclosure and investigation of wrongdoing and to provide legal protection for disclosures, as is proposed by the amendments brought forward by Senator Kinsella.

Faced with the clear example given by the Privacy Commission of why whistle-blowing legislation is needed, and faced with a report from the Public Service Integrity Officer calling for a legislated framework, the government took the decisive step of ordering yet another study.

In January, perhaps before Mr. Martin replaces Mr. Chrétien, perhaps after, a working group will report on internal disclosure policies.

Honourable senators, let us call a spade a spade. This is a stall tactic designed to put off the matter as long as possible. Once this working group comes out with a report, the President of the Treasury Board will then go on to ponder its meaning. There will no doubt be a press release telling us that the government will now enter into meaningful consultations with stakeholders aimed at developing a multi-year roadmap that will seek to enhance the integrity of the workplace, culture of ethics — blah, blah, blah. In other words, stall, stall, stall.

Honourable senators, on Tuesday, the Public Service Alliance of Canada released a poll on whistle-blowing. Following the Radwanski episode, it found that 89 per cent of Canadians expect the government to bring in legislation so public service sector workers who expose government wrongdoing would be protected against reprisals. Canadians of all ages, both genders, all political affiliations, religions and socio-economic profiles agree on this subject according to the poll conducted by the Environics Research Group.

Honourable senators, I conclude my remarks in support of this amendment by quoting the concluding paragraph of the Public Service Alliance of Canada press release of Tuesday on the broken promise to bring in whistle-blowing legislation.

Ten years later, and on the eve of another federal election, we believe the government should live up to this promise and so do the vast majority of Canadians.

Some Hon. Senators: Hear, hear!

Senator Carstairs: Question!

Hon. Joseph A. Day: Honourable senators, the Honourable Senator Comeau referred to the Public Service Alliance, the Treasury Board and the Auditor General, and I will briefly refer to each of those as well. First, let me tell honourable senators that this amendment was considered at committee and studied thoroughly. The committee decided not to propose it to this house. Therefore, it is not a matter that is new to the members of the committee, certainly.

I would like to thank Senator Kinsella for his work over the years with respect to this very important subject matter. Government officials, while appearing before our committee,

indicated that the government is taking this matter seriously through Madam Robillard.

The first group I will refer to is the Public Service Alliance of Canada. We had before our committee Nycole Turmel, and this is a quote from her appearance on September 2, 2003:

I should like to begin with our position on whistle-blowing. Whistle-blowing should be covered by separate and stand-alone legislation.

Senator Lynch-Staunton: Bring it in!

Senator Day: The second person who appeared before our committee and commented on whistle-blowing was Mr. Bob Emond, President of the Association of Professional Executives of the Public Service of Canada. He had this to say:

The events of this past summer have heightened the interest in enacting whistle-blowing legislation. We understand the concern. However, we do not think it advisable to incorporate provisions on whistle-blowing in Bill C-25.

The third person I would refer to is Mr. Pierre de Blois, Executive Director of the Association of Professional Executives of the Public Service of Canada. He also appeared before our committee and said the same thing: It should be separate legislation.

Finally, following a question in committee from Senator Kinsella on a whistle-blowing mechanism in a modern public service, Sheila Fraser, the Auditor General, replied that she would be coming out with a report on this particular area. She said:

...we have a report coming in November that we will be looking at values and ethics that might discuss whistle-blowing....

I think it is an important area that requires study and reflection.

I would think, too, should it be proposed that there be, it should apply to all public service and not be limited, for instance, as Bill C-25 is, to just the core public service, if you will. I think it is a question that merits study and attention.

Dr. Keyserlingk, who was the Public Service Integrity Officer under the Treasury Board, came before us and gave a history of what had happened. My honourable friend Senator Comeau has related to senators some of what he had to say. Dr. Keyserlingk indicated in his recommendations, after giving us a thorough background of the work he had done, the following:

I am recommending that the legislation be stand-alone, be a statute specifically, exclusively directed to the issue of disclosure of wrongdoing or whistle-blowing, and not attached to any other statute.

The minister, while appearing before our committee, indicated that she was taking his recommendation seriously. In fact, she has appointed a group to look into this matter. Dr. Keyserlingk agreed to serve on that board or group and to report back to the President of the Treasury Board by the end of January. The minister said that if the recommendation was legislation, which we anticipate it will be, that she was inclined to take that to her colleagues in cabinet and move on separate legislation.

• (1440)

Honourable senators, it is my submission that it would be appropriate to vote down this amendment. We are familiar with it. The committee considered the amendment and decided against recommending it. I ask honourable senators to reject this particular amendment.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Would the honourable senator take a question?

Senator Day: I will attempt to answer the honourable senator's question.

Senator Kinsella: Is it not true that, in committee, when the Chair of the committee, Senator Murray, asked the President of the Treasury Board to follow her process and commit to bringing in legislation, that she said "no"?

Senator Day: My understanding is that Madam Robillard said that she was very favourably inclined that way. However, she said that this was a cabinet decision and not her own. Therefore, she would have to take the issue to cabinet, but she was waiting for a report from the group that would come at the end of January.

Senator Kinsella: Is the honourable senator of a similar view with regard to the promise to the Canadian people that the Prime Minister made in writing in 1993 that should a Liberal government be elected, it would bring in legislation in the first session of Parliament after the election? According to the honourable senator's interpretation, did that mean he might take it to cabinet? I suppose a supplementary question would be: Does the honourable senator have any knowledge that the Prime Minister took the matter in question to cabinet?

Senator Day: I will take that as a rhetorical question. I am not in a position to respond.

Senator Lynch-Staunton: Why did he break his word?

[Senator Day]

Senator Comeau: The honourable senator indicated that Madam Robillard said that the only thing to which she would agree was to take the request to cabinet; that she could make no commitment, and that it would be up to her cabinet colleagues.

Given that this is Parliament, why do we not act on this matter? We do not need to have the cabinet come back to us and say, "yes" or "no" to whistle-blowing. We have received representations from people who need this protection right now. We have the example of the Office of the Privacy Commissioner.

Rather than wait for a possible new cabinet — and it is no deep, dark secret that there is a change of government going on, à la Mexico. Let us do it now. As parliamentarians, we have that power. We do not need to have cabinet come back and say, "Oh well we have decided that Mr. Chrétien's promise of 1993 is no longer valid because he is no longer the Prime Minister. This is a new administration."

Pass this amendment and keep the promise that was made all those years ago, and on which people voted. The honourable senator will recall that promise. He was one of the voters at that time, hanging on every word in the Red Book. Let us do it now. We have the power. We do not need to wait for cabinet.

Senator Day: I thank the honourable senator for his question. My answer is that our committee — of which the honourable senator is a member — carefully considered that position. We accepted the wise counsel of Ms. Fraser and many others who indicated that whistle-blowing legislation should be stand-alone legislation and should not be part of Bill C-25. Therefore, we should vote against this amendment.

If the honourable senator wishes to make those same submissions with respect to the Honourable Senator Kinsella's bill, Bill S-6, we will discuss the matter at that time.

Senator Comeau: Honourable senators, I wish to address the impression that the honourable senator left when he said that the committee voted in a certain way. I was a member of that committee, but the committee rejected the amendment as a result of the votes of the majority of the members on the committee.

This amendment is now before this chamber. We also have the power to say "yes" or "no." If the majority of members on that committee on that day can say "no" to the amendment, this group in this chamber can say "yes." Simply because the committee said "no" does not mean that this chamber must say "no."

Senator Day: I understand the honourable senator entirely. I was urging this body to accept the thorough work of the committee where this matter was canvassed extensively.

Senator Kinsella: If the key difficulty is the question of stand-alone legislation, can we take from the comments of the honourable senator that he would join with the former members in the last session of the Standing Senate Committee on National Finance, who supported the stand-alone bill, and that he would support Bill S-6, which is a stand-alone bill?

Senator Day: The honourable senator will appreciate that I cannot provide a commitment of that nature as deputy chair of the committee without thoroughly studying the matter before the committee.

The Hon. the Speaker: Honourable senators, are you ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Kinsella, seconded by the Honourable Senator Atkins, that the bill be not now read a third time, but that it be amended —

Senator Carstairs: Dispense!

Senator Kinsella: Insofar as I expect there to be unanimous support for the amendment, and I would like to hear that unanimous support soon, I think we should dispense with the reading of my amendment.

The Hon. the Speaker: Honourable senators, I will dispense with the reading of the amendment and proceed to the question.

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: In my opinion, the “nays” have it.

Some Hon. Senators: Oh, oh!

And two senators having risen:

The Hon. the Speaker: Call in the senators.

Hon. Terry Stratton: Honourable senators, I would recommend deferring the vote until tomorrow at 3:30 p.m., with a half-hour bell.

Hon. Bill Rompkey: I agree.

The Hon. the Speaker: Honourable senators, the opposition and government whips are both entitled to defer the vote until

tomorrow, under our rules, to 5:30 p.m. However, they have suggested a vote at 3:30 p.m., with a bell at 3 p.m.; is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: The vote will be taken at 3:30 tomorrow with the bells to ring at 3 p.m.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, the arguments against this bill are exactly those which we on this side advanced in 1995, when the government of the day, for strictly partisan reasons, urged an amendment to the Electoral Boundaries Act. The only difference in intent then was that the government wanted redistribution to be delayed long enough so that the 1997 election could be held on boundaries established following the 1981 census, rather than those arising from redistribution based on the 1991 census, the completion of which was well under way.

The official argument put forward was that, after lengthy experience, it was only appropriate, as Senator Carstairs, the sponsor of Bill C-69, said at the time, that after some 30 years the current process was in dire need of a thorough review and update. The real reason, of course, was simply and crudely self-serving.

At the time, I said, as reported in *Debates of the Senate* of May 2, 1995, page 1555:

What sparked what has become Bill C-69? It was a request by certain members of the Liberal Party, particularly from Ontario, who had just been elected in 1993. Having seen the revised maps, which had been published, they were terrified that if the maps were adopted, at the next election they would be running in ridings completely different from the ones in which they were elected, and their chances of being defeated would rise accordingly.

• (1450)

I continued:

I am not making this up. This was admitted by members of the caucus themselves. Let me quote one of them. On May 5, 1994 on a CBC *World at Six* report on the Senate's approach to Bill C-18, the reporter, Jean Carter, said:

Many Liberals won seats for the first time in last October's election. They don't want to fight the next election on new turf. Other MPs like Sarkis Assadourian from Toronto worry about their ridings disappearing altogether.

Then Sarkis Assadourian, the member from Don Valley North, says:

I worked twenty years to get here. Within two months I lost my seat, which is not fair.

Faced with Senate opposition to this self-serving bill, a number of Liberal MPs complained bitterly about what they interpreted as contempt by the Senate because an unelected house, according to them, was interfering in what they brazenly claimed was the exclusive right of elected members to themselves determine how and on what basis their elections should be held.

I suggest that this attitude, shared by too many, showed contempt for the electoral process because it was an abuse of authority that cannot be justified. Indeed, this contempt went against all that was behind the Electoral Boundaries Readjustment Act when it was introduced nearly 40 years ago, to put an end, once and for all, to decades when standards were lower, gerrymandering was the rule rather than the exception, and constituency boundaries were determined in large part to favour the majority party.

The Electoral Boundaries Readjustment Act of 1964 gave this responsibility to non-partisan commissions in each province and the Northwest Territories. Interested parties, including elected and aspiring members, can make representations at various stages, but the commissions make the final determination, which is then proclaimed in the *Canada Gazette* to come into effect one year later.

I cannot mention the redistribution commission's work without highlighting how successful they have been this time in coming well within the 25 per cent tolerance when determining boundaries. While Elections Canada fixes the number of ridings and the number of individuals each riding should ideally have, that figure cannot be applied to all, given the concentration of population in some areas of our country coupled with vast areas with sparse populations elsewhere. Added to this are certain constitutional requirements directly affecting the process, making it impossible to have the same number of voters in each constituency.

The electoral act provides for this by allowing a 25 per cent deviation from the quotient. Many feel that this is too generous. The Lortie commission recommended it be lowered to 15 per cent, and there are some who feel that it could be lowered to 10 per cent, or even 5 per cent, given advance technology that makes it so much easier and faster to determine boundaries.

Now, without going into detail, the commissions have done an excellent job to the point where the vast majority of the 308 ridings are now below the 10 per cent quotients, and some are even below 5 per cent. Let me also add that elected members who complained to the commissions, strictly for electoral advantage with few exceptions, had their complaints dismissed. Honourable senators interested in reading how the commissions dispose of the complaints can find them province-by-province on the Elections Canada Web site. That will do their hearts good.

The new boundaries are official as of last August 25 and will be in effect for any election called on or after August 25, 2004. Contrary to Senator Smith's claim on Monday, an assertion repeatedly heard from the government side to obscure its true intent, that Bill C-49, "creates seven new seats in the House of Commons," Bill C-49 does no such thing. Let me repeat that the additional ridings were confirmed on August 25, 2003, and Parliament has absolutely no authority to make any changes whatsoever to what the proclamation order contains, except for the date, obviously. However, that is not part of the proclamation order but it is in the act.

Today, we are being asked once again to approve amendments to the one act which should be beyond partisanship to favour the government party strictly for partisan reasons. Senator Smith also tried to convince us that it was only natural that a new party leader assuming the prime ministership should want to capitalize on the enthusiasm created by the event by holding an election at the earliest opportunity. He mentioned Messrs. Trudeau and Turner and Ms. Campbell as wanting a mandate on that basis. However, his examples do not at all support this argument. In Mr. Trudeau's case, while he was named leader some two-and-a-half years after Mr. Pearson's election, we must remember that Mr. Pearson was Prime Minister of a minority government and it was only natural that Mr. Trudeau would want to have a majority government. Thus, it made a great deal of sense that he should call an election as soon as possible to capitalize on, as we all remember, the extraordinary enthusiasm for him at the time.

Mr. Trudeau left office in June of 1984 and Mr. Turner called an election for September, four years and seven months into the government's fourth mandate. He did not have much leeway. We all remember that Ms. Campbell began her prime ministership in June of 1993 and the government's mandate ran out in November of that year. She had to call an election soon after taking office because she had no choice.

Those last two examples are unlike what Senator Smith maintains — that the new leaders had no choice but to call an early election and, in the first example, Mr. Trudeau quite rightly used an early election call to achieve a majority government, which of course he did very successfully. In no case did any of the three leaders mentioned ask for an amendment to the Electoral Boundaries Readjustment Act to favour their particular position.

Contrary to eight years ago, when we were being urged to delay because the whole process needed, as Senator Carstairs said, “a thorough review and update,” we are now informed that the one-year delay is no longer necessary and that shortening it by a few months is in order. In fact, in its report of 1991, the Royal Commission on Electoral Reform and Party Financing, better known as the Lortie commission, recommended that the delay be six months. Earlier this year, the Chief Electoral Officer of Canada confirmed that he could have everything in place by the end of March 2004, in a statement reconfirming what he had said many years ago that, in effect, a six-month period is feasible.

Why is it then, as Senator Tkachuk asked earlier this week, that the government did not ask for a change in the delay even before the current redistribution process began on March 12, 2002? Actually, I am incorrect. That is my question. Senator Tkachuk asked why there is only a one-time exception to the one-year delay. Why has the government not proposed an amendment to shorten the delay permanently, rather than have it apply to the next election only? There is only one answer: implementing the new electoral map any time after April 1 is being urged for one reason and one reason only: to allow the new leader of the Liberal Party to call an election soon after being sworn in, rather than have to wait until late summer if his or her intention is to do so only after the additional seats become eligible, which will be in late August of next year.

When the government was arguing the opposite — to delay redistribution until after the 1997 election — Senator Carstairs maintained that the proposed legislation would allow that, when she said at page 1556 of Hansard of May 2, 1995:

...new electoral boundaries based on the 1991 census would be in place by December 1997 at the very latest. That date, honourable senators, represented a government mandate of four years and two months.

During the past 35 years, every majority government has had a life span of at least four years and two months, so this amendment would have gone a long way to ensuring that the next regularly scheduled general election would be held on the basis of the new 1991 census boundaries...

As it turns out, the party conveniently forgot the impression made at the time that no election would be called before December, by calling one in June of 1997. Thanks to Progressive Conservative opposition and its persistence, Bill C-69 was defeated, and the June election was held on boundaries arising from the 1991 census.

• (1500)

The government has also forgotten its endorsements of four-year mandates for majority governments. The 1997 election was held less than three-and-a-half years after the previous one, while the election in 2000 was three-and-a-half years after it, and

changes proposed in Bill C-49 are intended to allow another election after only some three-and-a-half years. Why? It is because the Liberal Party will have a new leader then, and it is convinced that the momentum created by new leadership will work to the advantage of the ruling party if it is followed by a quick election — and there are still many months left in the mandate during which that momentum could be lost.

While it is very well for Elections Canada to say that it can have everything in place by the end of next March, so as to allow an election to be called with a new electoral map in place any time after that, has anyone even considered the tremendous stress this would put on all political parties, as it will add to totally new requirements under the Canada Elections Act, Bill C-24, passed earlier this year?

Much prominence was given during debate to the main purpose of the act, which was, in effect, to eliminate significant non-individual contributions and replace them largely with public funds. What was neglected in the discussion are the obligations imposed on each registered party to register riding associations by January 1, 2004, otherwise, certain benefits under Bill C-24 will not be available.

Applications for the registration of riding associations must include the names of not only their presidents and executives, but also each must have an auditor and a financial agent within six months of registering. An association must provide financial statements, and within five months of the end of the fiscal year, provide an exhaustive list of every financial transaction, as well as a balance sheet.

As reporting requirements become more complex, it is getting more difficult to find volunteers to not only meet these requirements, but also accept to be legally responsible for them. The list of new requirements is endless — and one wonders to what purpose, in many cases. The point is, however, can all registered parties, to maintain their status, fulfil their obligations under Bill C-24 by December 31? I do not exclude the majority party from this question.

What about the two parties whose leaders have agreed to engage in consultations with their respective memberships on merging into one political party? The decision will only be known on December 6. Is it realistic to believe that, if a merger of the recognized parties is approved, then, as opposed to the registering of a new party as such, the new entity can meet the end-of-the-year deadline? If the two leaders' proposal is agreed to, the leader of the new party will be chosen in mid-March of next year. While the two entities, which may be merged, are now doing their utmost to meet separately the end-of-the-year requirements, at all times they are conscious of the fact that they may have to start all over again as one entity by the end of March next year. They are conscious during all this time that Parliament is considering calling an election on the new boundaries any time after April 1.

Until Mr. Martin's public musings last July, all parties were working under the impression that the new boundaries would not be finalized until next August. These musings led the Chief Electoral Officer to write a letter a few days later to the Chairman of the Standing Committee on Procedure and House Affairs — a Liberal — in effect saying — I just read in the paper that your next leader might want to call an election next spring with new boundaries in place by then. You know what? I can do it.

A copy of the letter was sent to the Leader of the Government in the House, a Liberal; the Chairman of our own Standing Senate Committee on Legal and Constitutional Affairs, a Liberal; and to the Chairman of the Subcommittee on Electoral Boundaries Readjustment of the Standing Committee on Procedure and House Affairs, a Liberal. No other party is noted as having received a copy of this letter.

Honourable senators, only the Chief Electoral Officer can explain his haste to please. I am sure that all of us look forward to being convinced that he acted with the same impartiality that has marked Elections Canada since its creation.

The letter outlines some of the steps that must be taken by Elections Canada to meet the April 1 date. Nowhere in it is there any suggestion that all registered political parties, including the one urging the change, be canvassed at the outset to ascertain what problems setting an earlier date might cause them — particularly as a shortened delay would accelerate adjusting to 308 ridings at the same time as Bill C-24 requirements are being met for the first time.

In closing, let me say that, whatever is said by Senator Smith and others, this bill has but one goal: to allow a person, whose involvement in the present government has been as nearly pronounced as the retiring Prime Minister's, to call an early election on the phoney basis that, as a brand new leader, completely detached from those he was so closely associated with for nearly 10 years, he requires confirmation from the electorate for a new mandate at the earliest possible date. The Electoral Boundaries Act was never intended to be manipulated to favour a thirst for power. The Senate must not be a party to such unheard of, crass tampering with legislation strictly for partisan purposes.

Honourable senators, one of this place's finest moments was to reject, in 1995, amending the Electoral Boundaries Act strictly for partisan purposes. I trust that the Senate will distinguish itself again when Bill C-49 comes to a final vote.

Hon. David P. Smith: Honourable senators, I should like to ask Senator Lynch-Staunton a question. In spite of his comments here in this chamber, actions speak louder than words. This bill was adopted overwhelmingly by the other place at third reading by a vote of 175 to 30. In fact, all Progressive Conservative members who voted, with the exception of one, Rick Borotsik, voted for it, as did four of the five parties, with the exception being the Bloc.

Could the honourable senator advise the Senate if his caucus is now asking that senators on that side of the chamber oppose this legislation, which their members voted in favour of in the other place?

Senator Lynch-Staunton: Honourable senators, I will not reveal what my caucus colleagues ask me to do or ask me not to do, but I would suggest that Senator Smith look into the history of the disposition of legislation in this place. He will find many occasions where the will of the elected representatives has been seriously altered, if not rejected. I would mention one instance in particular. Members of the House, including opposition members, overwhelmingly approved the Pearson Airport bill because they were given false information on how the contract had been negotiated. It was rejected in this place, and rightly so. Many members of the House of Commons, including some Liberals, still feel that they were bamboozled into voting based on false information.

That is the purpose of this place. It is to look into the actions of the other place, and to consider not only their decisions and on what they were based, but also, if we find any flaws or additional information, to act accordingly. I am sure that with this bill, we will be able to do exactly that.

Senator Smith: Perhaps the honourable senator could tell us if, in fact, there has been any false information? If we set parties aside — four of the five parties voted for it, including his — does the honourable senator believe that, since this is legislation that affects the other place in a most direct way, we know better how they should determine matters affecting them directly than they do themselves?

Senator Lynch-Staunton: The last people who should determine how the electoral process should be devised are those who want to take advantage of it or feel penalized by it. That was the point that was made in 1995. They tried to have the new boundaries delayed out of absolute self-interest. They should stay out of it. To suggest that fellow Canadians who are not in the House of Commons should not be involved in devising the process, is absolutely ludicrous.

Hon. John G. Bryden: Honourable senators, may I be permitted to ask a question? Is the honourable senator taking notes?

Senator Rompkey: He is writing his point of order.

Senator Bryden: Am I to believe from what has been said, that the party in the other place that will be the controlling interest in the new Conservative Party is also in favour of delaying the coming into force — making this effective April 1?

• (1510)

Senator Lynch-Staunton: Honourable senators, I will answer that question directly. I do not feel beholden to decisions taken by my elected colleagues. I feel beholden to my responsibilities of this place to review those decisions. If it happens that I should disagree with them, so be it.

Senator Bryden: Honourable senators, would it not trouble the honourable senator if eight new ridings, many of which are in Western Canada, would be left out of participating if indeed we have an election prior to August 1?

Senator Lynch-Staunton: Honourable senators, the definition of the seven, not eight, electoral boundaries is already in place. They will not come into effect until August 25. It would trouble me even more to change the date those boundaries go into effect to favour one person in particular.

Surely, the new leader can wait a few months if he insists that the next election should be called with the new boundaries in effect. What is the difference between April and August, except self-interest?

Senator Bryden: Honourable senators, with all due respect, I cannot understand why the honourable senator would take that position. We will enter this election with a new leader, and my friends on the other side will enter the election with not only a new leader but also a new party. Think of the momentum that will be created by that. Does the honourable senator not want to take advantage of that momentum as quickly as possible and allow those four seats in the West to be brought into the fold if there were the opportunity?

Hon. Marcel Prud'homme: Honourable senators, I am not rising to adjourn the matter, but to speak to the bill.

I regret Bill C-49. I have been involved for the past 40 years in the electoral process. I was elected under a bad system, and the bad system was corrected over the years. There is a living witness to that present here. Senator Sparrow is the last appointee of Mr. Pearson, a reformer in many ways under a minority government.

I like very much the new system. We took it out of the hands of my predecessors, including my predecessor with the record for longevity as a parliamentarian of 54 years and a few months — the Honourable Senator Azellus Denis. He served for 28 years in the House of Commons. He was always involved with other colleagues on redistribution. He served for 26 years here until he could retire. He died at the age of 84. He served for 54 years and is the only person with over 50 years of service to Canada.

Of course, he disagreed when we changed the system. It was embarrassing for me because I succeeded him. He had clashed with my father in 1935 over a certain issue. My father, being

gentle, supported Mr. Denis all of his life. That made it very difficult for Mr. Azellus Denis to not support me in 1964, even though I was not his choice. I say that very kindly. I was not his choice. He thought I was too young.

I then saw the change to take away from the elected people the ability to gerrymander. I saw the gerrymandering as a student because I participated in it at the University of Ottawa from 1953 to 1958 or 1959, at which time I was expelled because I was too active in political activities. I did not like gerrymandering, but it was enjoyable to be trusted to be present with old timers who were changing streets and villages.

The reform came and it worked. It worked well. I will disagree with the next bill to change the names of the districts.

We give a mandate to commissioners. We give the ability to make an appeal. I appealed personally. I went to court with Senator Nolin, who represented the Conservatives. We were better prepared than everyone else and we won — twice.

We went through the process according to the law. I say that for the new senators. The older senators will remember. We played with the rules according to the law. We went to court and we were heard.

Honourable senators, we got everything we wanted. I will not bore you with the details.

I know there is new technology. I am ready to make a concession to my friends in the Liberal Party. I may join the new party that may be created, or I may return to the fold. I do not know. Perhaps I will remain here. If I am invited to join by Senators Sparrow and Smith, I will consider that much more seriously.

The law should have been amended. I would have had more difficulty opposing an amendment to the Elections Act. Why? It is true that I had discussions with Mr. Kingsley. I will not embarrass him, but I told him that the delay of one year seems to be unreasonable in a modern society with computers.

I do not know how these machines work. I still use the telephone and my pen. I have people who are more modern than I am. If we have a long recess, I assure you that some senators will modernize me. Senators De Bané and Nolin will bring me up to date in the new technology. However, I do know that with the new technology we could get what is being offered permanently.

Senator Smith is a long-time friend, since 1961 as a young Liberal. I was surprised to discover that it is not an amendment for the duration of time. I stand to be corrected, but it is only good for this time.

Surely in the future there will be another census and more maps. They will more accurately represent what is taking place.

I would have preferred an amendment. Senator Smith is the godfather of this bill. I do not like people who play games as I have seen being done last week behind the curtain and almost lying to colleagues and asking for support.

That is not addressed to Senator Smith. I am referring to other events to take place later this afternoon. However, I do want Senator Robichaud to adjourn as soon as possible in order that I can accommodate a fine gentleman, Senator Kroft.

[Translation]

I should speak French. Perhaps I would get more attention.

[English]

I planned to pay a compliment to Senator Kroft because I like to accommodate him. He is a fine gentleman. However, I wish that Mr. Robichaud would accommodate us as well.

I regret that it is not a permanent amendment. It will look better. It will look good. You could have had exactly what you wanted by proceeding, and I stand to be corrected by experts in the last row of this place and on the first row of the other side. I thought it was to be permanent, but it is a temporary adjustment for a temporary series of events.

• (1520)

I do not know if the Senate is of that mood, honourable senators. I will not abuse; I want to keep some strength. I know I will not be able to speak on the last three items on the agenda, but I regret we are being pushed to accept this situation. I do not know why we should wait any longer, and I do not want to accommodate the government, either. I think we have all made our point.

You want to go to committee, then you go to committee. People who have objections will go and when you come back here, you will see what they will do. I do not think we should — not boycott — but go further on this issue, in this sense. Then Senator Robichaud will smile and say, “He is nice at the end. He is accommodating my agenda.” Of course, you have an agenda, you want to do it but at least it must be on the record that some of us are not a — I was going say “moron,” but this is an expression that is not to be used after it was used so well recently in our relationship with the United States by some person for whom I have a great devotion because I know her father. Having said that, I regret, so I will wait for the vote and vote accordingly.

On motion of Senator Stratton, debate adjourned.

[Senator Prud'homme]

AMENDMENTS AND CORRECTIONS BILL, 2003

SPEAKER'S RULING

On the Order:

Second reading of Bill C-41, to amend certain Acts—(*Speaker's Ruling*).

The Hon. the Speaker: Honourable senators, yesterday, Tuesday, October 28, Senator Kinsella raised a point of order to again challenge proceedings on Bill C-41. That followed my ruling addressing a point of order that had been raised in connection with the rule of anticipation. This new point of order invokes the same question rule which prohibits the consideration of substantially the same question a second time once the Senate has pronounced itself. In substantiating his position, the Deputy Leader of the Opposition cited rule 63(1) of the *Rules of the Senate* which provides that:

A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded...

[Translation]

In this case, the senator is claiming that since clause 30 of Bill C-41 is identical to an amendment that had been proposed and negatived to Bill C-25 at third reading, it is no longer possible to proceed with the consideration of Bill C-41 because of the same question rule. Various authorities and precedents were cited to bolster this position. References were made to *Erskine May*, the British parliamentary authority, as well as to *Beauchesne*, the standard Canadian text, and to a ruling of Speaker Francis from the other place.

[English]

Senator Robichaud challenged this point of order and expressed doubt about Senator Kinsella's interpretation of the same question rule. The Deputy Leader of the Government also took note of the fact that this is the fourth point of order with respect to Bill C-41. Points of order have been raised continually and have thus far kept the Senate from considering the second reading motion. Senator Robichaud raised some concern about possible obstruction.

[Translation]

Other senators participated in the debate including Senator Prud'homme, Senator Bryden, Senator Lynch-Staunton, Senator Rompkey, and Senator Nolin. After their interventions, Senator Kinsella reiterated his basic position and stated that “the rule is clear: You cannot bring the same question before us again.”

[English]

I wish to thank all honourable senators for their contribution to my understanding of this point of order. I have considered the arguments that were made and I have reviewed the relevant authorities. I am now ready to make my ruling.

The same question rule, as Senator Kinsella explained, is an established part of parliamentary practice. In fact, I believe the same question rule is observed in many parliaments and legislatures patterned on the British model. In the Senate, as was pointed out, it is also an explicit part of our rules. The purpose of the same question rule is to avoid the wastage of time and effort in reconsidering a question that is already a decision of the house. To do otherwise, to ignore the integrity of the decision, would lead to an abuse of process.

Within this context, the same question rule applies only to questions that are moved and decided in the Senate. It cannot apply to questions that are received from the other place. The rule is not intended to thwart the ability of the Senate to properly pursue its work, particularly in the consideration of legislation, including bills that come to the Senate from the other place.

[Translation]

Essentially, I am being asked to rule Bill C-41, or a part of it, out of order because it contains a provision, clause 30, that is identical to a third reading amendment to Bill C-25 that was moved and defeated. To accede to this request, I must be satisfied that the question before the Senate is one that has been previously moved in the Senate and that it is the same in substance.

[English]

Is this in fact the case? There is little doubt that the defeated amendment to Bill C-25 is identical to clause 30. This fact alone does not fully meet the requirements of the same question rule. It is not sufficient in itself to oblige me to rule all or part of Bill C-41 out of order.

Bill C-41 comes to the Senate from the House of Commons. It is a legislative measure that proposes to amend or correct a number of laws, including Bill C-25. Clause 30 is only one element of this bill. According to my reading, Bill C-41 seeks to change more than 10 acts. Clause 30 is not the only question that is being placed before the Senate for resolution through this bill.

To accept the point of order, it would be necessary to sacrifice the consideration of all the other elements of Bill C-41 that are obviously different questions. Such a proposition is clearly unacceptable. Alternatively, I am being asked to suppress clause 30, but this, too, is unacceptable because it would impose what is, in effect, an amendment by the Speaker. I do not believe that I have the authority to take such action, even if it were appropriate.

The same question rule has been invoked to prevent consideration of Bill C-41 in its present form because one element of it is identical to a defeated amendment to Bill C-25. The same question rule cannot be used in this way. It would be too restrictive and would prevent the Senate from properly carrying out its work. Rule 63(1) states that:

A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative...

Clause 30 is not a discrete question; it is part of Bill C-41. Unlike the defeated amendment to Bill C-25, clause 30 has not been proposed in the Senate either as a motion or an amendment; it is part of a bill from the House of Commons. Moreover, there is no doubt that Bill C-41 is not the same "in substance" to Bill C-25 or to the defeated amendment. Bill C-41 has been duly passed by the House of Commons and has been placed before the Senate for its consideration. The task of the Senate is to review this bill in accordance with established practices and procedures.

It is my ruling that there is no point of order in this case, and that the Senate should now proceed to second reading of Bill C-41.

• (1530)

SECOND READING—DEBATE SUSPENDED

Hon. John G. Bryden moved second reading of Bill C-41, to amend certain acts.

He said: Honourable senators, I am pleased to move this today. Although it has taken a long time for me to get to my feet, I do so with the reassurance that I received yesterday from Senator Lynch-Staunton, the Leader of the Opposition, that he and his side are in support, basically, of the substance of this bill. Nevertheless, I think it is useful to mention the things covered herein, and I will do that as quickly as possible.

The bill proposes minor corrections to a number of statutes to ensure that our laws are accurate and up to date. This is the second technical corrections bill that the government has introduced. Last year, Parliament passed Bill C-43, which we have discussed, making corrective amendments to a variety of statutes.

Although the purpose of Bill C-41 is to make technical corrections to our statutes, it is not designed to replace the miscellaneous statute law amendment program. Several of the amendments of Bill C-41 require the expenditure of funds and would not fit the strict requirements of the MSLA program. I will briefly highlight the amendments in Bill C-41.

The first amendment relates to lieutenant-governors. I do not think it relates to former lieutenant-governors, of whom we have two in this place. Several provisions of the bill update the disability provisions for lieutenant-governors, consistent with the recent changes made in parliamentary compensation. Honourable senators will recall that in 2001, the disability provisions for parliamentarians were updated. The 2001 changes provided disability benefits for parliamentarians aged 65 or over. Prior to that, a parliamentarian could not be covered for a disability. Parliamentarians are now able to continue to contribute to their pensions while they receive their disability benefits. For example, senators who become disabled are able to receive disability benefits until age 75, and this period of time is included in the senator's pensionable service.

Bill C-41 would update the disability benefits for lieutenant-governors on a similar basis. Disability benefits would be available for lieutenant-governors aged 65 years of age or over for a period of up to five years. Currently, disability benefits are only paid to those under 65 years of age. Lieutenant-governors would be able to contribute to their pensions while they receive their disability benefits.

A number of the proposed amendments relate to appointments. Several amendments clarify the provisions for certain appointments. For example, the French title for the Deputy Commissioner of the Canada Customs and Revenue Agency would be changed from "commissaire adjoint" to "commissaire délégué," which is a more correct term. The title for the Executive Director of the National Round Table on the Environment and the Economy would be changed from "Executive Director" to "President," which is a more up-to-date title. The bill would clarify the definition of "officer-directors" in the Financial Administration Act.

Bill C-41 makes corrections in relation to customs. The Customs Act would be amended to provide the correct references to the Canada-Costa Rica Free Trade Agreement in the French version of the text. The Importation of Intoxicating Liquors Act would make direct reference to the list of tariff provisions set out in the schedule to the Customs Tariff consistent with other provisions.

There are some retroactive corrections as well. First, Bill C-41 would make an administrative correction to ensure the authority for consular service fees collected for the period from April 1998 to January 2003. An administrative correction is necessary due to a procedural error that took place when these fees were enacted in 1998.

Second, the bill would provide for the retroactive payment of compensation to chairs and deputy chairs of special committees. Earlier this year, parliamentary compensation was updated to provide chairs and deputy chairs of special committees with the same compensation as that for chairs and deputy chairs of standing committees. However, this change was not made retroactive, and previous chairs of special committees cannot qualify for additional compensation. Bill C-41 would correct this situation by making these payments retroactive to January 1, 2001, the same date that chairs and deputy chairs of standing committees began receiving additional compensation. Although this issue has been the subject of more interest in the other place, a parallel provision for special Senate committees was added to ensure parallel treatment for both chambers.

In conclusion, honourable senators, these amendments are technical in nature and do not make any major policy changes. I hope that honourable senators will support the passage of this bill, but in particular I hope we can soon move this bill into the committee stage where it can be examined in detail on behalf of the Senate.

Debate suspended.

[Senator Bryden]

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Richard H. Kroft: In accordance with earlier discussions, honourable senators, I rise now to move, with leave of the Senate and notwithstanding rule 58(1):

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 4 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. John Lynch-Staunton (Leader of the Opposition): As an ex officio member of the committee, I intend to attend because this bill has a clause in it which interests me in particular, more for academic reasons than for anything else. If I am a few minutes late, I hope you will understand.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I hope that I am enough of a gentleman not to refuse the joint invitation from both Senator Kroft, my distinguished and very effective Chair of the Committee on Banking, Trade and Commerce, and the Leader of the Opposition, who is going to honour the committee with his presence. I will say yes, but I will remain in the Senate chamber until we adjourn. I do not know if the Speaker could find a way to indicate my presence. I would not like to read in the *Ottawa Citizen*, in two or three months, that Senator Prud'homme was present 100 per cent of the time in this chamber and present almost 100 per cent of the time in committee and, therefore, that he is not interested in his committee because he missed three sittings. The truth is that I sit in the Senate. No, I do not take any of the 21 days of sick leave, nor any others, as I should.

I hope that the committee will sit long enough. I would like it if Senator Robichaud could organize our schedule so that I could dash over to the Standing Committee on Banking, Trade and Commerce to hear Senator Lynch-Staunton. I say yes to the honourable senator's motion.

[English]

The Hon. the Speaker: The question of leave is not conditional. I take it leave is granted?

Hon Senators: Agreed.

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

Motion agreed to.

AMENDMENTS AND CORRECTIONS BILL, 2003

SECOND READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Bryden, seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-41, An Act to amend certain Acts.

Hon. John Lynch-Staunton (Leader of the Opposition): As Senator Bryden reminded us, I said yesterday that we had no objection to this bill. We have not engaged in obstructionism. We were and are still convinced, despite the respect we have for the Speaker's rulings, that the long and short titles of this bill are flawed, that there is an argument for anticipation, and certainly while procedurally it seems proper to have the same clauses in two different bills, it is something which we find difficult to accept, but so be it: That is the way it is.

Before making a suggestion, I want to tell both Senator Bryden and Senator Rompkey that yesterday they expressed annoyance at points of order not being raised at the earliest opportunity. I would like to bring to their attention that there is no support for the argument that points of order be brought up at the earliest opportunity. In Beauchesne's 6th Edition, page 97, paragraph 321 states:

• (1540)

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

Paragraph 317, from the same authority, states:

Points of orders are questions raised with a view of calling attention to any departure from the Standing Orders or the customary modes of proceeding in debate or in the conduct of legislative business and may be raised at virtually any time by any Member, whether that Member has previously spoken or not.

Therefore, the point of order brought forward yesterday was in fact raised at the first possible opportunity, but the only requirement is that it be raised before the matter had been rendered moot by subsequent events. I wanted to clear that up.

As for the bill itself, I have no objection to it going to committee right now. I would even suggest that we ask our Standing Committee on Rules, Procedures and the Rights of Parliament to set aside all business before it. We could then present the bill to them immediately so that they could dispose of it as expeditiously as possible.

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

Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Bryden —

Hon. John G. Bryden: I just want to know what we are voting on.

An. Hon. Senator: Second reading.

Senator Lynch-Staunton: Are you raising a point of order?

The Hon. the Speaker: I will answer the honourable senator's question.

Senator Bryden: If we agree to this motion, do we agree with sending this matter to the Rules Committee?

Senator Lynch-Staunton: There was some sarcasm in that statement.

The Hon. the Speaker: Honourable senators, I think I should start over. I will put the question.

It was moved by the Honourable Senator Bryden, seconded by the Honourable Senator Poy, that this bill be read the second time now.

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

Some Hon. Senators: Agreed.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I would like my abstention to be recorded, since, under rule 65(4), I have a pecuniary interest in this bill, relating to clause 24.1 of the bill.

[English]

The Hon. the Speaker: To be certain that the honourable senator's abstention is recorded, I will say "on division."

Motion agreed to and bill read second time, on division.

REFERRED TO COMMITTEE

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

On motion of Senator Bryden, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

CHILDREN OF DECEASED VETERANS
EDUCATION ASSISTANCE BILL

SECOND READING

Hon. Jane Cordy moved the second reading of Bill C-50, to amend the statute law in respect of benefits for veterans and the children of deceased veterans.

She said: Honourable senators, I am pleased to rise to speak on government Bill C-50. I know all of us in this place have always been committed to pass any legislation that improves benefits for veterans and their families. It is a terrible coincidence of timing that we are considering the merits of this bill within mere weeks of the tragic loss of life of two of our soldiers in Afghanistan. It reminds us once again about the risks asked of and the risks taken by our men and women in uniform. Perhaps we can take a little consolation that once passed these amendments will take care of the educational needs of the children of these fallen soldiers. I will return to that aspect of the proposed legislation, but a little history is in order first.

Last May the Minister of Veterans Affairs announced a package of proposals, the majority of which were aimed at meeting the urgent needs of our war-era veterans. Most will be effected by means of regulatory change and other changes aimed at other wartime veterans, or the children of veterans who die as a result of their service, are covered off in this bill.

I hope that honourable senators will indulge me if I discuss these proposals as a package, since they are all part of a continuum that seeks to improve the lot of our veterans and their families.

The change that has attracted the most recent attention, the one that has been in the news lately, concerned the extension of the grounds maintenance and housekeeping components of the Veterans Independence Program, or the VIP, to survivors of deceased veterans. For some years now, upon the death of a veteran recipient of VIP, the grounds maintenance and housekeeping components have been extended to the survivor for one year to allow them a period of adjustment and to make alternative arrangements in the community. When the minister made his announcement in May, he proposed lifetime continuation of housekeeping and grounds maintenance services that the veteran was receiving at the time of death. Because the funding was provided through a reallocation of departmental funds, Veterans Affairs Canada was only able to grant lifetime continuation to survivors from June 2003 onward.

Since that time, the Prime Minister has responded to the concerns of survivors, veterans organizations and other concerned Canadians by agreeing to study this issue further. The minister has indicated that his department is actively engaged in this study.

The other regulatory changes, which are coming on stream later this month or early November, are also aimed at the most senior of the department's clients. One extends health care programs to war veterans with a pensioned disability of 48 per cent or greater. It recognizes that many are now in their eighties. With the passage of time, the infirmities of old age begin to visit these veterans more frequently. As a result, it is now getting much more difficult to distinguish between a health care need that is related to a pensioned disability and one that is simply due to old age. With

the change to the regulation, those with a pensioned disability of 48 per cent or greater will get the department's health care benefits regardless of the cause of ailment requiring treatment.

Another change to the regulations involves those overseas service veterans who are on a wait list for a priority access bed. Historically, overseas service veterans have been able to access long-term care through Veterans Affairs priority access beds, or PAB. A pilot project enabled Veterans Affairs to provide VIP and health care benefits to overseas service veterans who were living at home while waiting for a priority access bed to become available. The pilot was expanded nationally in November 2001. Changes to the regulations formalize the pilot and allow Veterans Affairs to continue to provide VIP and, as a consequence, health care benefits to overseas service veterans living at home while on a wait list for a priority access bed.

In a similar fashion, veterans who are in receipt of prisoner-of-war compensation and who are totally disabled are eligible for VIP services and, as a consequence, treatment benefits. Allied veterans, those with 10 years post-war residence in Canada, through the upcoming change in regulations, will have access to long-term care and, once admitted, be eligible for any associated health care treatment benefits.

We can see a theme here, honourable senators: providing benefits in the form of health care, long-term care or VIP to the broadest spectrum possible for wartime veterans. I believe this is what Canadians would want.

Let me turn to the other announcements that the minister made last May, which have found themselves in the bill before us.

• (1550)

As I mentioned at the outset, we were all seized with the horrific tragedy in Afghanistan in early October that took the lives of two of our own. We do not think about it often, but the fact is that our men and women in uniform put their lives on the line almost daily.

As we speak, over 3,600 Canadian soldiers, sailors and air force personnel are deployed overseas on operational missions. On any given day, about 8,000 Canadian Forces members, one third of our deployable forces, are preparing for, engaged in, or returning from an overseas mission. Every step of the way they put their lives at potential risk.

On the home front, our forces assist in fighting forest fires, in cleaning up the aftermath of hurricanes and in search and rescue missions. We owe them peace of mind so that they know that, if they should be killed in service, their children's educational needs will be taken care of. Bill C-50 does exactly that.

In 1995, a decision was made to discontinue the department's Education Assistance Program, which provided post-secondary education for children of veterans who died as a result of their service in uniform or who were pensioned at 48 per cent or more at the time of death. At the time, it was thought that their educational needs could best be met through other sources. This bill reverses that decision. The program is being reinstated and its provisions are better than ever. Once this bill is passed, eligible children will receive up to \$4,000 per academic year of post-secondary education. That will apply to current and future students. They will also receive an allowance of \$300 per month. Both amounts will be indexed to the consumer price index. I believe these amounts are reflective of the costs of post-secondary education today.

Education assistance at former rates will also be given to former students who completed their education after the program was discontinued in 1995. This will be of particular importance to any children of Canadian Armed Forces members who were killed in the line of duty between the date of cancellation and the date of reinstatement of the program.

In addition, children who did not attend a post-secondary institution after the program's discontinuance and who now choose to do so are eligible until their thirtieth birthday to receive benefits at the new rates established with the passage of this bill.

The next provision calls for broader and more extensive compensation for former prisoners of war. The proposed legislation will enhance the current prisoner of war compensation scale to benefit those who were imprisoned for shorter or longer periods of time. The end result will be more appropriate recognition of these veterans who suffered so much because of their wartime incarceration, including Dieppe and Merchant Navy prisoners of war who experienced some of the longest periods of incarceration.

The final item is small in substance, but large in symbolism. It clarifies the service requirements for the War Veterans Allowance Program. The pressure to make this change came as a result of a WVA applicant who had not actually served. The case was complicated and wound its way through a series of appeals and court rulings. The veteran community was upset and understandably so, I believe, at the prospect of someone receiving the War Veterans Allowance in such a circumstance. The problem stemmed from an ambiguity in the legislation that Bill C-50 now fixes. This amendment clarifies that a member of the forces, with respect to the First or Second World War, must have enlisted, served, and been discharged from that service to be eligible for the WVA or War Veterans Allowance benefits.

The funding of these changes, legislative or regulatory, will come from internal departmental resources, specifically, through a reallocation of the current attendance allowance program. No

one currently on attendance allowance will be taken off. For the future, these reallocations will result in a better targeting of departmental funds to meet the precise needs of these elderly and deserving veterans.

Honourable senators, given the sobering news we have heard out of Afghanistan, I hope that all honourable senators will support, without reservation, the reinstatement of the Education Assistance Program.

The prisoner of war population would also benefit by their latter years being made just a little easier with the changes provided for in this bill.

For these reasons, I urge swift passage of Bill C-50.

[Translation]

Hon. Michael A. Meighen: Honourable senators, it is a pleasure for me to speak at second reading in support of Bill C-50, to amend the statute law in respect of benefits for veterans and the children of deceased veterans.

I want to congratulate my colleague, the Honourable Senator Cordy, for her speech, and I echo her sentiments.

Honourable senators, I believe that the Minister of National Defence and the Minister of Veterans Affairs, the Honourable Rey Pagtakhan, should be congratulated for their efforts on behalf of veterans over the past few months.

Just prior to the summer recess, I had spoken on Bill C-44, introduced by the government to rectify certain discrepancies identified by Major Henwood of the Canadian Forces regarding the payment of disability benefits. Coverage for the upper ranks exceeded coverage for the lower ranks. Earlier this week, we dealt, at second reading, with Bill C-37, which considerably improves pensions and pension eligibility for Canadian Forces personnel.

[English]

The bill before us today, Bill C-50, amends three acts: The Children of Deceased Veterans Education Assistance Act, as it re-establishes the Education Assistance Program; the Pension Act, as it modifies prisoner of war compensation benefits; and the War Veterans Allowance Act, clarifying who qualifies as a veteran of either world war.

I am also pleased that the government took time to consult widely with veterans associations, so that the most urgent needs of veterans could be addressed.

This bill, in amending the Children of Deceased Veterans Education Assistance Act, re-establishes the Education Assistance Program, which provides post-secondary education assistance to children of Canadian Armed Forces personnel who died as a result of military service. Those children will be eligible for tuition to a maximum of \$4,000 annually and a monthly living allowance.

Bill C-50 also amends the Pension Act to broaden the eligibility criteria for prisoner of war compensation. In some cases, the benefits are increased. With this bill, all veterans who were incarcerated for at least 30 days will now be able to get some compensation.

The bill also clarifies the definition, at long last, of "World War Veteran" as contained in the War Veterans Allowance Act. It ensures that only those who actually enlisted will be able to claim benefits.

These amendments, as I understand them, are good ones as far as they go. They are supported by the major veterans' organizations. However, speaking to Bill C-50 this afternoon also gives me the opportunity to speak to veterans' issues that have not yet been addressed and these are very briefly: First, regulating changes regarding the provision of health care benefits to overseas service veterans who are currently on a waiting list for a priority access bed; second, the provision of long-term care and treatment benefits for allied veterans with 10-year post-war residence in Canada; third, the provision, as Senator Cordy discussed, of VIP services and health care benefits to totally disabled veterans who are only in receipt of prisoner of war compensation. I believe all members of the Veterans Affairs Subcommittee will want to know when these matters will be addressed.

• (1600)

Honourable senators, I would also be remiss if I did not mention the inequity brought about by a change made in June this year to the regulation dealing with the extension of lifetime VIP benefits to war veterans' widows. As honourable senators know, and Senator Cordy touched on this, when this change was announced, it left those without such benefits and those whose benefits had expired without eligibility for lifetime compensation.

This matter was raised a number of times in debate in the other place. The evidence seems to be that there are approximately 23,000 widows who would benefit if the measure were extended to everyone. At present, some 10,000 widows would be eligible for this allowance for the rest of their lives. I am pleased to tell honourable senators that, at the hearings of our Subcommittee on Veterans Affairs today, the minister told us that he was optimistic that these benefits would be extended to all widows and not just to a certain class of widows. With the minister's optimism and the Prime Minister's personal involvement, I am sure that we will follow this file closely and will look forward to the desired result.

When Bill C-50 is referred to committee, I believe we must inquire of the minister how he will meet the challenge of making this proposed legislation applicable to all surviving spouses whose one-year extension of VIP benefits had already ended. That would apply to any committee to which this bill is referred. I look forward to the discussion of Bill C-50, directly or indirectly, in committee.

Hon. Marcel Prud'homme: Honourable senators, any good parliamentarian should know how to sense the atmosphere, and I

sense that there will be a disposition to terminate now. However, I did not want to remain seated and have someone think that I am disinterested in this item.

Having served in the Armed Forces, I understand Senator Meighen's comments and what Senator Day is putting forward. Therefore, I am ready to vote on the item and I will not unduly delay referring the bill to committee. I wanted to state my interest in Bill C-50 because I was a member of the Canadian Provost Corps in Shilo, Manitoba. I know a little about the military and discipline.

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

Hon. Senators: Question!

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

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

BUSINESS OF THE SENATE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a small point of order. Honourable senators realize that the Senate Committee of Selection goes through a process at the beginning of a session and/or a new Parliament and adopts motions that certain senators be appointed to certain committees. As honourable senators are aware, those nominations are made keeping in mind the schedule of times set aside for meetings of the various committees. An honourable senator who attends a meeting of a committee that meets on Mondays, Wednesdays and Fridays at nine o'clock would not be assigned to another committee that sits Mondays, Wednesdays and Fridays at nine o'clock. The selection process is carefully completed and adopted by the Senate.

The Rules Committee is proposing to meet tomorrow at 10 a.m. and honourable senators know that at 10:45 a.m. tomorrow, the Standing Senate Committee on Legal and Constitutional Affairs is meeting. Senators from both sides, certainly from this side, who sit on both committees know that those committees are not scheduled to sit at the same time. I am further advised that the decision for the Rules Committee to meet tomorrow morning at 10 a.m. was made after the meeting of the Rules Committee had concluded today and the gavel had been brought down to end the meeting.

[Senator Meighen]

Members of the Rules Committee from this side were not present to say that they could not attend tomorrow's meeting because of a prior obligation to attend a meeting of the Standing Senate Committee on Legal and Constitutional Affairs.

I raise this issue now only because our whip advised the government side immediately upon receipt of this information. At 12:03 p.m. today, Senator Stratton sent a notice to the committee advising of the unacceptability of this change in schedule. I raise the matter in the house to inform honourable senators that it is unfair and truly breaches a decision that the house made when it accepted the report of the Selection Committee. Senators cannot be in two places at the same time. The Rules Committee is not scheduled to meet tomorrow because that is not its time slot. There are good reasons for honourable senators opposite, particularly the government whip, to make inquiries to try to obviate the problem.

Hon. Bill Rompkey: Honourable senators, I would be glad to make inquiries on that.

However, I have two points to make. First, the honourable senator is correct in that the Selection Committee does attempt to appoint senators to committees where there are no scheduling conflicts, but certain conflicts do arise. A number of senators on this side sit on committees that have conflicting schedules. We are not absolutely conflict-free. I wanted to make that point to the house.

Second, it is my understanding, and I will check this with the Chair of the Rules Committee, that the gavel had gone down but the decision was taken at a steering committee meeting. I will double-check that information. I will be glad to make inquiries because I am aware of the strain under which the opposition is working.

Hon. Anne C. Cools: Honourable senators, I should like to add to this debate. It is not simply a question that concerns the opposition. All honourable senators who are members of committees make their plans in accordance with the schedules which are set at the outset. For the most part, committees meet at predictable times. I attended the Rules Committee today and was planning to attend the next Rules Committee meetings. However, when a committee meeting is suddenly assigned a new time it throws a wrench into any plans that one may have. I have a conflict tomorrow because I, too, am a member of the Standing Senate Committee on Legal and Constitutional Affairs.

It behooves the Rules Committee to be especially sensitive to the fact that other senators want to attend their committee meetings. The Rules Committee replaced the Committee of Privileges, which was a committee of the whole house. The Rules Committee, more than any other, has obligations to accommodate most senators. I would encourage the Honourable Senator Rompkey to do a little more than make inquiries. Perhaps he could look at keeping the Rules Committee on the ground where it should be — upholding the ability of all senators to participate.

• (1610)

Failing that, honourable senators, maybe it is time for this chamber to consider the reconstitution of the committee of privileges as a committee of the whole house. Our very first rule or second rule — one of the early ones — says the upholding of the privileges of the Senate belong to the Senate as a whole. I would encourage Senator Rompkey to do a little more than make inquiries; I would encourage him to set the matter right.

Senator Rompkey: I hear Senator Cools' encouragement. Certainly, we would like to have as many senators as there are who want to attend. All committee meetings are open to all senators.

For the record, the situation that the Standing Senate Committee on Rules, Procedures and the Rights of Parliament finds itself in now is one of trying to find witnesses so that members may question them. We heard, this morning, a recitation of witnesses that we have attempted to find. Not all of them are available and not all are available at the same time. The point I am making is that in order for senators to study this issue in some depth and to hear from the proper witnesses, those we all want and have all asked to hear from, we must accommodate those witnesses too. An accommodation must be made, so we try to strike a balance between witnesses who can appear and senators who are available.

Senator Cools: I quite respect that fact and I understand the importance of accommodating witnesses. I was just saying that the first duty of the committee is to accommodate senators. I was not attempting to preclude the accommodation of witnesses.

I put forward the following serious proposition: Perhaps it is time for this chamber to look at reconstituting the committee of privileges. It is just in a dormant stage right now

CRIMINAL CODE

BILL TO AMEND—SECOND READING

Hon. Wilfred P. Moore moved the second reading of Bill C-45, to amend the Criminal Code (criminal liability of organizations).

He said: Honourable senators, I am privileged to speak at the second reading of Bill C-45. The bill received all-party support in the House of Commons, and I believe it deserves the support of this chamber as well.

Bill C-45 is part of the response of the Government of Canada to the Westray mine tragedy, which occurred at Plymouth, Pictou County, Nova Scotia, on Saturday, May 9, 1992 and, as senators will recall, took the lives of 26 miners.

The subsequent inquiry under Mr. Justice K. Peter Richard was highly critical of Curragh Resources Incorporated, the operator of the mine, and its managers for failure to ensure safe working conditions. The four-volume report, entitled "The Westray Story, A Predictable Path to Disaster," contains the following recommendation, number 73:

The Government of Canada, through the Department of Justice, should institute a study of the accountability of corporate executives and directors for the wrongful or negligent acts of the corporation and should introduce in the Parliament of Canada such amendments to legislation as are necessary to ensure that corporate executives and directors are held properly accountable for workplace safety.

Senators should be reminded that the government's primary response to the Westray disaster was to ensure that workers in federally regulated industries are protected. It did so through extensive amendments to Part 2 of the Canada Labour Code — Bill C-12, now statute of Canada 2000, chapter 20 — which mandated significant new rights for workers, including the right to be informed about hazards in the workplace, the right to participate in correcting those hazards and the right to refuse dangerous work. As well, the roles of such committees as the Workplace Health and Safety Committee and the Policy Health and Safety Committee were strengthened, and fines of up to \$1 million have been provided for a breach of the Canada Labour Code.

Recommendation 73 prompted a private member's motion and a private member's bill in the last Parliament, seeking a new codified provision covering corporate criminal liability. In the first session of the current Parliament, debate on private member's Bill C-284 led to the question of corporate criminal liability being referred to the House of Commons Standing Committee on Justice and Human Rights for its consideration.

That standing committee, in May 2002, heard from some 30 witnesses, including witnesses from the Department of Justice who tabled with the committee a discussion paper that reviewed the main issues respecting the criminal liability of corporations. In June 2002, the standing committee issued a report which recommended that:

...the Government table in the House legislation to deal with the criminal liability of corporations, directors, and officers.

I will not review for honourable senators the issues of legal theory that are thoroughly canvassed in the department's discussion paper. I would, however, like to bring to your attention two documents that are essential for understanding Bill C-45.

The first is the government's response to the standing committee report, which was tabled last November. The second document that I believe will assist honourable senators is entitled "A Plain Language Guide: Bill C-45," which the department made public two weeks ago. Both documents are on the department's Web site.

The government chose to provide a detailed response that reviews the evidence heard by the standing committee, discusses Bill C-284 and draws conclusions regarding the principles that

would guide the drafting of legislation. In the response, the government considers various models of corporate criminal liability, including the American vicarious liability model, the Australian corporate culture approach and the proposal of the Government of the United Kingdom to create a special offence of corporate killing. It also considered the personal criminal liability of officers and directors and the sentencing regime for corporations.

Most importantly, the government set out its conclusion that Canadian criminal law should be reformed to expand the class of persons capable of engaging the liability of the corporation; to provide rules in the Criminal Code regarding the liability of corporations for crimes of subjective intent and for crimes of negligence; and to provide more guidance to the courts when imposing sentences on corporations.

The government concluded that there is no need for any change in the criminal law dealing with the responsibility of directors and officers. As individuals, they are already liable for their personal actions. They can now also be charged as parties, along with the corporation, for aiding or abetting the commission of an offence, or as accessories to an offence committed by the corporation.

With respect to workplace safety, the government concluded that the criminal law should clearly impose on every person who employs or directs another person to perform work a legal duty to take reasonable care to avoid foreseeable harm to the person or to the public. Wanton or reckless disregard of this duty, leading to death or bodily harm, could be the basis of a charge of criminal negligence.

Bill C-45 transforms these conclusions of the government into the necessary amendments to the Criminal Code. The bill is not necessarily easy to understand at first blush. The plain language guide explains the provisions of the bill using concrete examples. I understand such a guide is unusual, but it was the Minister of Justice's view that Bill C-45 could have an impact on virtually every Canadian because it fundamentally changes the way our criminal law will approach the criminal liability of all organizations. I believe the minister should be commended for this initiative.

The guide provides background to current Canadian law and then answers a series of questions, including: Why does Bill C-45 refer to an organization rather than a corporation? Who are the directing minds of the organization? For whose physical acts is an organization responsible? How does an organization become a party to a crime of negligence? How does an organization become a party to an offence where intent or knowledge has to be proven? How are organizations punished for committing a crime? A perusal of the response and the plain language guide will, I believe, make clear the intentions of the government for proposing the reforms in Bill C-45.

• (1620)

Indeed, the first thing that honourable senators will note about the bill is the scope of the definition of “organization.” It means “a public body, body corporate, society, company, firm, partnership, trade union or municipality, or an association of persons that is created for a common purpose, has an operational structure, and holds itself out to the public as an association of persons.”

Clearly, Bill C-45 will live by the same rules for attributing criminal liability to political parties, charities, professional associations, community associations and other groups of individuals that come together to accomplish a task and, in so doing, establish some kind of structure to let the public know, perhaps through something as simple as opening a bank account under the association’s name, that they exist as an association.

Honourable senators should note as well the proposed expansion of the “directing mind” basis of liability. As the government stated in its response, the fundamental question is how high up the corporate ladder must individuals be before their actions and intentions can be said to be those of the corporation. One major problem with the Canadian approach to corporate liability is the restrictive interpretation placed on directing minds under their case. The only persons considered to be directing minds under this approach are those individuals who exercise decision-making authority on matters of corporate policy.

Determining whether an individual should be considered the mind of the corporation with respect to the commission of a specific criminal offence solely on the basis that the individual can set policy is very narrow, and quite artificial. In a large corporation, the board of directors and the principal executive officers who set policy can only do so in broad, general terms and are incapable of overseeing the day-to-day operations of the corporation. They must give managers a great deal of latitude to implement the policies in the workplace.

The class of persons capable of engaging the liability of the corporation should be expanded to include individuals who exercise delegated operational authority. This change is effected through the definition of senior officer, which includes, in addition to their work as the directors and the most senior officers, persons who play an important role in the establishment of an organizational policy or are responsible for managing an important aspect of the organization’s activities.

Clearly, the definition does not make the organization responsible for every person who has “manager” in his title. The key is the importance of the person’s role in the organization either in contributing to making policy — for example, as a person responsible for recommending to the CEO or board of directors policy with respect to a workplace safety — or in managing one of the organization’s important activities — for example, a factory.

Honourable senators will note that Bill C-45 does not make a director or any person in an organization directly and personally criminally liable. Bill C-45 deals only with making the

organization responsible for the actions and omissions of the senior officers. This is probably a disappointment to some who, in the wake of Westray, called for imposing on directors specific obligations with respect to workplace safety under the Criminal Code, with heavy penalty for failure to comply. That was the approach of Bill C-284.

The government considered this approach and rejected it in its response. It concluded that officers and directors should be singled out and have liability imposed on them, either generally or with respect to safety, simply because of the way the business is structured. They should be held criminally liable for the way they carry out their responsibilities and not be subject to criminal liability in the absence of personal fault simply because of their position in the corporation.

Honourable senators are well aware of the many obligations already imposed on officers and directors of corporations under various statutes. For example, the Canadian Environmental Protection Act provides in section 280 the following:

Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

There are similar provisions in occupational health and safety legislation.

The proposals for imposing criminal liability all require that there be a physical act or omission by a representative of the organization and fault by a senior officer. In cases based on negligence, there must first have been negligence by the representatives of the organization when their acts and omissions, taken as a whole, are negligent. A plain language guide provides an interesting example of how this would work. In a factory, an employee who turned off three separate safety systems would probably be prosecuted for causing death by criminal negligence if employees were killed as a result of an accident that the safety systems would have prevented. The employee acted negligently.

On the other hand, if three employees each turned off one of the safety systems, each thinking that it was not a problem because the other two systems were still in place, they would probably not be subject to criminal prosecution because each one alone might not have shown reckless disregard for the lives of other employees. However, the fact that the individual employees might escape prosecution should not mean that their employer necessarily would not be prosecuted. After all, the organization, through its three employees, turned off the three systems. A manager or supervisor of those three individuals should have given prior direction to them as to the significance of all three safety systems being turned off.

The next step to determine whether the senior officer responsible for that aspect of the organization's activities departed markedly from the standard of care that in circumstances could reasonably be expected. I would submit that this is fair to the organization. It maintains the essential difference between civil negligence and the kind of reckless disregard that is the proper basis for invoking the full weight of criminal law.

Similarly, in offences based on knowledge or intent, the senior officer must have been an active participant either by doing the crime personally or by directing the affairs of the organization so that others do the act, or by failing to take responsible measures to stop crimes being committed by lower level employees upon becoming aware of their criminal intent. In all of these cases, the senior officer must, however, intend to benefit the organization in some way.

Bill C-45 also contains some innovative proposals with respect to sentencing an organization. First, it proposes 10 factors that a court should consider in determining what level of fine to impose. It is noteworthy that the factors include the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees. We do not want corporations crippled by huge fines so they go bankrupt, with innocent employees thrown on the street.

Second, the bill would make provision for a probation order to be imposed on an organization. There are probably many cases where the court is more interested in the corporation changing its practices and procedures to avoid committing more crimes in the future, perhaps by overhauling its safety practices or instituting more stringent audits, than it is in collecting a fine.

Third, the bill provides for a court to order an organization to inform the public of the offence of which it has been convicted, the sentence imposed and any measures that the organization is taking to reduce the likelihood of it committing a subsequent offence.

• (1630)

I wish to conclude by drawing the attention of honourable senators to the one provision in Bill C-45 that is not directly aimed at organizations. The bill proposes that a new section 217.1 be added to the Criminal Code, and I quote:

Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

This section is a signal to all of us that we must take very seriously our responsibility to protect workers and the public when we are directing the way in which others do their work, or we have the authority to do so. If there is a breach of the duty that shows a wanton and reckless disregard for the safety of others and someone is injured or killed, a charge of criminal negligence causing death can be laid, which carries life imprisonment as the maximum penalty, or a charge of criminal negligence causing bodily harm can be laid, which has a maximum penalty of 10 years.

What is reasonable will vary with the nature of the work and the experience of the workers. Quite different precautions may be required when the job is inherently dangerous, like felling trees or deep-rock mining, than when the job is routine, like cutting grass. Moreover, the extent of supervision will vary depending on whether the person who is to do the work is inexperienced or is an old hand who has performed the job safely hundreds of times before.

Senators should remember that this duty is imposed on organizations as a whole because they are persons under the law. It is imposed individually on everyone in the organization who is directing work or has the authority to do so. The board of directors and the CEO have ultimate authority to set safety policy and standards. They can decide, for example, whether to install a backup safety system or not to incur the expense. Further down the line, the manager must have discretion in whether to close down operations because of a suspected safety problem with the machinery, or to keep the assembly line moving. A shop foreman may also have the authority to make decisions on how work is to be performed. All of them have a personal duty.

Similarly, every individual has his duty. It would be reckless to simply hand a power saw to a 14-year-old, tell him you will give him \$100 to cut down a tree and then walk away from him. If the youth is injured or killed, that homeowner could face potential criminal charges because of this new duty if the reckless disregard of the duty amounted to criminal negligence.

Ultimately, it would be a question of fact in each case whether the duty was breached and whether the breach was so reckless that a criminal conviction is appropriate. The courts are well equipped to consider the evidence and decide these questions on the proven facts.

The question of corporate criminal liability has been under study in Canada for more than 25 years, beginning with a discussion paper by the Law Reform Commission of Canada in 1976, followed by a report of the commission in 1987, a study by a subcommittee of the House of Commons Standing Committee on Justice and the Solicitor General in 1993, and a white paper issued by the Department of Justice in 1993.

In this Parliament there was Bill C-284, tabled in response to the Westray disaster, the Department of Justice's paper, the hearings of the Standing Committee on Justice and Human Rights, the government's response and this bill. Surely, it is time to stop discussing and studying the issue and make the balanced reforms proposed in this bill. I therefore urge honourable senators to give this bill expeditious consideration, given the long period of time that the bill's subject has been before us and its importance.

Hon. Senators: Hear, hear!

Hon. J. Michael Forrestall: Honourable senators, it is with some degree of humility — a great deal indeed — that I speak to this long-overdue bill, Bill C-45, as both a Nova Scotian and as someone who has been active in the labour movement in my province and in other parts of Canada.

At 5:18, May 9, 1992, the foundations of New Glasgow, Westville, Stellarton and Trenton rattled as though there was an earthquake. Sadly, it was something much worse — the old mining towns of Pictou County, in the blink of an eye, lost 26 miners; some who were very young and some who were old. Sons, brothers, husbands, fathers, uncles, cousins and friends lost their lives deep in the earth of Nova Scotia, in a flash explosion that probably could have been avoided.

Most people who were not at the mine that day were awakened, but went back to bed and to sleep. It was only later in the morning that the full horror of what had happened touched everyone in the county, and particularly in those four towns. It was as though our whole province had ground to a halt and went into mourning, both for and with the people of Pictou County.

Remember, honourable senators, Nova Scotia is not a stranger to mining disasters. We have only to look back to Springhill in 1958, where I attended as a young reporter for the old British United Press — Senator Graham will remember that — together with Charles Arnold Patterson of Dosco, whom I had the great pleasure of defeating in federal politics twice.

Something very serious went wrong at Westray on that early May morning. There were great breaches in workplace safety that contributed to the disaster and the loss of 26 souls. We can all lay blame, that is easy, but hindsight is 20/20. What is important today is that we take legislative steps, through Bill C-45 — and I hope it is to be known as the Westray bill — to make it as certain as we can that if this type of tragedy occurs again, there will be recourse for those affected, and guidance for the courts.

There is a man in the gallery today — actually there are three of them up there — Vernon Theriault, who was on the rescue team at Westray, and who is a recipient of the Medal of Bravery.

Hon. Senators: Hear, hear!

Senator Forrestall: The three of them have laboured for a long time, together with many others, to be here this afternoon to sit in this place but, if I may use the words of my colleagues, more to watch us expeditiously deal with this matter. It is my hope that the matter can be dealt with today at all stages so that these people can go home to their families, their surviving colleagues, with news that is good. Most important is that they go home with good news for the families.

• (1640)

I want to do something that I think is important. I want to name them: John Thomas Bates, Larry Arthur Bell, Bennie Joseph Benoit, Wayne Michael Conway, Ferris Todd Dewan, Adonis Joseph Dollimont, Robert Steven Doyle, Remi Joseph Drolet, Roy Edward Feltmate, Charles Robert Fraser, Myles Daniel Gillis, John Philip Halloran, Randolph Brian House, Trevor Martin Jahn, Laurence Elwyn James, Eugene William Johnson, Stephen Paul Lilley, Michael Frederick MacKay, Angus Joseph MacNeil, Glenn David Martin, Harry Alliston McCallum, Eric Earl McIsaac, George James Munroe, Danny James Poplar, Romeo Andrew Short, and Peter Francis Vickers.

Honourable senators, I hope we will pass this bill. No piece of legislation is ever perfect. Bill C-45, however, is long overdue and not only in my opinion. As suggested by Senator Moore and others, the shortfalls of the bill can and should be corrected as time goes by.

The bill, whose genesis was the Westray mine disaster, amends the Criminal Code to establish rules for attributing to organizations — including corporations — criminal liability for the acts of their representatives. It establishes a legal duty for all persons directing work to be done to take reasonable steps to ensure the safety of workers and the public, sets out factors for courts to consider when sentencing an organization, and provides optional conditions of probation that a court may impose on an organization.

Proposed section 217(1) of the bill states:

Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

This bill has its greatest impact on the liability of corporations and other associations of persons as they relate to criminal offences. The bill uses the term “organizations” which is an all-inclusive term, broadly defined to include all major participants in the economy and all associations of persons, created for a common purpose.

An organization would be responsible for crimes based on negligence where the acts of omission of its representatives, taken as a whole, are negligent and where senior officers showed a marked departure from the standard normally expected in the circumstances. I suppose that is a reasonable test for a corporation.

In regard to other crimes, those not based on negligence, the organization would be criminally liable whenever a senior officer with intent to benefit the organization commits the prohibited act or uses representatives lower down in the organization or outsiders to commit the act, or fails to act on knowledge of criminal activity by its representatives.

The corporation can be fined for these criminal acts and the bill sets out sentencing guidelines, such as: Did the company profit by this criminal act?

Under this bill, a corporation may also be put on probation to ensure that it does not commit similar acts in the future and to encourage the corporation to establish policies to change the corporate structure.

Under Bill C-45, organizations may now be charged with criminal offences if they operate an unsafe workplace. Those in the position to direct the work of others are under a legal duty to take reasonable steps to prevent bodily harm arising from that work.

Senior officers of an organization may be found at fault for reasons other than negligence, such as being party to an offence while acting within the scope of their authority, or by knowing that an organization is about to be party to an offence but doing nothing to prevent it.

This bill already had all-party support in the other place. Peter MacKay, my leader and the Member of Parliament for Pictou—Antigonish—Guysborough, introduced a motion some years ago calling on the government to bring in just such a bill. There is a weakness in Bill C-45 in that it does not deal with the situation where the culpable organization no longer exists when sentencing is pronounced. Additionally, nothing in the bill makes it easier for those who have suffered at the hands of a corporation to receive timely and direct compensation.

Having said that, I reiterate that I am in support of this bill, as are all on this side.

Honourable senators, let us get this bill through today. Let us send home three very distinguished representatives of their community, their unions and, above all, of their friends and neighbours who have suffered these many years.

Hon. John G. Bryden: Honourable senators, I wish to speak in support of this bill. I will not speak for very long. I have been associated with the mining industry and the workers of that industry during my legal career for a long time. The United Steelworkers of America have been clients of mine for a long time. I have been at mine heads when it was not very pleasant because

there were wildcat strikes going on. I was in Wabush, Labrador, when nine steelworkers had been fired. We did all right. I got people back to work. As I also admitted, I also made a significant amount of money off them in doing that.

The reason I rise, though, and I thought I would do it because of my past association representing a very valued client, I will suggest, with all due respect to Senator Forrestall, that we do send this bill to the Standing Senate Committee on Legal and Constitutional Affairs. The committee is prepared and ready to deal with this matter tomorrow, at their next session.

This bill has a number of significant clauses. We want to be sure that this bill does what it purports to do so that after all this time we do not find that someone left a sentence out or made a mistake that may nullify significant provisions.

I am not interfering with the sponsor of the bill, but it would be my position that we should follow our normal course as expeditiously as possible. I know that our friends will be here until next Friday. Certainly, it looks like we will be here, too.

I believe we should follow our normal procedure. This bill will be a priority. It is not a big bill to deal with, but it needs to be studied. That would be my recommendation.

Senator Forrestall: Might I ask the honourable senator a brief question?

Senator Bryden: Yes.

Senator Forrestall: I take it from the remarks and comments of Senator Bryden that we can deal with this matter expeditiously. However, I am a little shaken up when I hear him say that we will be here until next Friday. We thought we were here until Christmas. I cannot quite figure it all out. Will the honourable senator give us his undertaking to work towards getting the bill out of committee tomorrow?

• (1650)

Senator Bryden: I cannot give that undertaking. I have received, though, information from the leadership of this side that this is a priority bill that will take priority over anything else once it gets to committee, and it will be moved as quickly as possible. We would hope that it could be done in one session. If not, it would be a matter, perhaps, of having a second brief session at another time, but either the same day or this week, or the beginning of next week. My point is that it is just too important to rush at this stage. The honourable senator has the commitment of this side that this is a priority bill at this time.

Senator Moore: Honourable senators, might I ask a question of the Honourable Senator Bryden?

Senator Bryden: Yes.

Senator Moore: I heard the remarks of my colleague Senator Forrestall, and know that long debate has gone on with respect to the subject matter of this bill. I see our friends in the gallery and know that they have been here for a week now, to see this matter brought to its rightful conclusion by parliamentarians. Since we are the final step in that path, I would like to know whether our friends opposite would be in agreement with having this bill read a third time now. Would you agree with that?

Senator Bryden: I would prefer not. It is standard procedure, which has been required in many instances, that bills in this place be referred to the appropriate committee for that appropriate committee to make the judgment that this bill can now come back here in report for third reading. It is a legal bill, and it is amending the Criminal Code. That means the provisions of this bill will be interpreted by the courts, and the sort of interpretation that is normally given to Criminal Code provisions will be applied to it. I would hate to be part of a chamber that, by rushing this bill through, gives to the party most concerned a right, and then when they go to use that right, they find that they do not really have a remedy. That is my point.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, let me make it perfectly clear that the Official Opposition in the Senate supports the adoption of this bill in the most expeditious of ways possible. This adds to the importance of our Standing Senate Committee on Legal and Constitutional Affairs being free to sit at its appointed time, which is at 10:45 tomorrow morning. It is my expectation, and it will be the position of the opposition, not only now at second reading but also in committee tomorrow morning, that the matter be dealt with in committee expeditiously. I would hope that we would have a report back from the committee expeditiously and that, indeed, the house will be adopting this bill unanimously.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I want to speak of my strong support for this bill. Those of us who were not there with respect to Westray but were certainly there with respect to Springhill know how important this bill is. A few members of the Standing Senate Committee on Legal and Constitutional Affairs are in the chamber, and I know that it has been their normal practice to not do clause-by-clause examination the same day they study a bill. I would hope that in this case they would feel comfortable that, if all of their legal concerns were met, they would then be able to move to clause-by-clause consideration on the same day that they had heard witnesses. I am seeing a nod from Senator Nolin, a distinguished member of the committee, and I see the same from Senator Bryden. I think that would do what Senator Kinsella has indicated: We send it to committee but deal with it as expeditiously as we possibly can.

The Hon. the Speaker: Honourable senators, I think the way for us is clear. It would require leave for us to proceed now to third reading, and our normal procedure is the one we are all familiar with.

Hon. Senators: Question!

The Hon. the Speaker: The question has been put. It was moved by the Honourable Senator Moore, seconded by the Honourable Senator Losier-Cool, that this bill be read the second time? 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: Honourable senators, when shall this bill be read the third time?

On motion of Senator Moore, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

BUSINESS OF THE SENATE

Hon. Marcel Prud'homme: Honourable senators, I just want to be on record that I totally support this motion, but would point out that we have a perfect example of what I was trying to prove all the time. One of the most prominent and knowledgeable members of the Banking Committee could not attend an important meeting because his other very important duties required him to be here this afternoon. I am only reflecting for the future. I thank him for being here. I told him that I would support him, including third reading if need be. This proves that we will have to reassess how we function in the future. I am not saying immediately. This is the best example I can find. A prominent member of the Banking Committee has had to sit here all afternoon, waiting for his bill to be dealt with.

[Translation]

BILL TO CHANGE THE NAMES OF CERTAIN ELECTORAL DISTRICTS

SECOND READING

Hon. David P. Smith moved second reading of Bill C-53, to change the name of certain electoral districts.

He said: Honourable senators, it is a pleasure to be able to discuss Bill C-53, to change the name of certain electoral districts.

[English]

As honourable senators are aware, the ridings represented by members of the other place have been updated by electoral boundary commissions established under the Electoral Boundaries Readjustment Act. Through the work of the electoral boundary commissions, a new representation order was proclaimed on August 25, 2003. As a result of the discussion of these procedures and debate on Bill C-49, I think members are familiar with how that works.

However, some members of the other place from all parties have expressed concern over the new names that were chosen for their ridings. Based on the suggestions of the members concerned, this bill would change the names of electoral districts affected by the new representation order in order to better reflect the geographical names of these electoral districts.

This bill is not the first of its kind. Parliament has intervened to change the names of electoral districts several times in the past. In fact, 57 electoral district name changes have been carried out by four separate acts since the 1996 representation order.

• (1700)

By way of background, Bill C-53 arose over discussions that occurred on Bill C-49, the Electoral Procedures Acceleration Act. Many members from four parties raised concerns; and I can give the breakdown. This bill proposes adjustments to the names of 38 ridings, 11 of which are held by Bloc members, nine by Liberal members, nine by Progressive Conservative members and nine by Canadian Alliance members. Minister Boudria agreed with representatives of the other parties to bring in a bill as long as all parties unanimously supported it, rather than have up to 38 different private members' bills, which has occurred in the past. This is a much more efficient way to deal with the matter when there is total unanimity.

The bill was introduced on Wednesday, October 22, and on October 23, the next day, a motion was carried unanimously to pass all stages of the bill. This is an example of harmony and solidarity that is truly inspiring. There was no recorded vote. I cannot recall any other recent instances of total unanimity.

I trust honourable senators will respect the unanimous request of members of these four parties in the other place. I am hopeful that the bill will be dealt with expeditiously and in a non-partisan manner.

Hon. Jeremiah S. Grafstein: Honourable senators, would the honourable senator allow one question? Did the sitting members in the other place agree to the changes to the ridings that they currently represent in respect of the riding names?

Senator Smith: Yes, there was unanimity. As a matter of fact, I moved a motion on behalf of the Alliance member for Kelowna, B.C., Werner Schmidt. There are no partisan issues.

Hon. John Lynch-Staunton (Leader of the Opposition): I have a question for Senator Smith. In the history of name changes, were any approved while the proclamation order was still unfolding in respect of the 12-month waiting period before going into effect?

Senator Smith: I am not 100 per cent certain of that. I will try to obtain that information for the honourable senator. I like to give honest answers.

[Senator Smith]

Senator Lynch-Staunton: Could the honourable senator look into that?

The proclamation order does not come into effect until August 25, 2004. Why are we doing this now? Other changes may be contemplated early next year that could be added as late as June, before we adjourn for the summer, rather than start the process over again.

Senator Smith: That is one way of looking at it. However, I am inspired because I am a member of the Boy Scouts Council for Ontario, and I cannot help but think of their motto: "Be Prepared." There was unanimity in the other place to proceed now, and I would be inspired if the same solidarity would occur in this chamber in a non-partisan way. That was the case over there.

Senator Lynch-Staunton: We can assume that this is your good deed for the day.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, in the spirit of solidarity, I will commence my remarks by quoting from a distinguished former member who was once referred to as a "national treasure." Of course, I speak of the Honourable Allan MacEachen who, in 1964, was quoted by the Royal Commission on Electoral Reform. He stated: "The task of assigning names to the constituencies is for the provincial commissions. It is possible for MPs to make representations to the commissions at hearings, but government members will have to take their chances along with opposition members as to the names of their constituencies."

Honourable senators, I concur with the Honourable Senator Smith that this is not partisan. However, it is somewhat odd that this bill seems to reject the work of the commissions appointed by the government and paid for by the government, meaning the taxpayers of Canada. It is true that bills brought forward by MPs to change the names of their electoral districts have usually sailed through Parliament with little or no opposition. Whilst it is not true that nine members of the Progressive Conservative Party have asked for name changes, it is true that eight did. However, it is an open question as to how much public input or participation there is in the renaming process.

It is not my intention to quarrel with the specific name changes proposed in the bill, but it is my intent to point out for the committee that will examine this bill that they look carefully at the recommendations of the Lortie commission. The commission was quite specific in its views. It is quite clear that if the commission were to examine this bill, it might have some problems with it. Indeed, let me quote recommendation 1.4.11 of the Lortie commission:

We recommend that:

(a) electoral boundaries commissions be encouraged to use other than geographic names to designate constituencies particularly where this would avoid the use of multiple hyphenations;

(b) the legislation specify that the name of a constituency not be changed other than during the boundaries readjustment process.

I will restate that the Lortie commission recommended that the legislation specify that the name of a constituency not be changed other than during the boundaries readjustment process.

(c) the commissions ask the Canadian Permanent Committee on Geographical Names to suggest names for constituencies where changes are required or contemplated, and that the designations of these constituencies and the rationale for the choice be presented in the commission's preliminary reports.

As the Lortie commission noted, name changes generally involve changes in geographic designations. Furthermore, these changes are almost invariably to lengthen the name, often through the use of hyphenated words being strung together. I would suggest that committee members look carefully at the names, where they will see many hyphens. Bill C-53 contains a number of examples of that concern. Other changes involve a reordering of the names, and the committee will want to look at that as well.

Honourable senators, I agree with the principle of the bill, but I think that the committee to which the bill will be referred should take a careful look at it.

Hon. Marcel Prud'homme: Honourable senators, that is the problem. I do not have the research staff that caucus members may have, but I do have something prepared on each major piece of proposed legislation. It is difficult to decide which one to spend time and effort on.

• (1710)

I have always opposed the change, and I am not surprised that my very good friend Senator Smith says that there was a beautiful unanimity. Of course — we are back to square one in the days of Azellus Denis, where they used to change streets among themselves to accommodate each other — we are back to gerrymandering. It is a kind of return to the past, where a member should be the last to be involved. That is why we have commissions; that is the point that was touched brilliantly by the Leader of the Opposition.

They have a vested interest. Let us not be kidding each other. First, Senator Lynch-Staunton was very right when he said that we do not even know if that bill will see the light of day. However, we still change names on a possible map that will be given Royal Assent eventually. That is number one. He is absolutely right.

Second, it is a bad principle to allow members to tamper with decisions that have been given to a series of commissions. The commission listened to everyone and then they rendered a decision. Then the House of Commons was given a few more days to beg the commission again to change for all kinds of reasons; and then the commission finally terminated its work by saying, "Here is our conclusion." — and that should be it. It is unbelievable.

I will not read you my speech; it is too long. I was taken by the eloquence of Senator Joyal on this issue when it went the last time to the Justice Committee. If I remember well, he opposed it vigorously, with much better arguments than I can put forward for your reflection.

What he said then still applies today. Imagine, when you have a district that is known as Bonavista—Exploits, changed to Bonavista—Gander—Grand Falls—Windsor — I feel I am in a train station, because everyone wants their village to be included. You have districts such as Matapédia changed to Haute-Gaspésie—La Mitis—Matane—Matapédia — I could go on. You would not believe what you see. At least one is for simplicity. Mr. Shepherd has one that is clear Clarington—Scugog—Uxbridge — I had better go to that region to find out exactly what that is. In any event, he wants to change all that back to the old traditional name, Durham. I am in favour of that because I remember the member who sat for Durham — he was a Conservative.

The principle is wrong, the principle that we should support that once the commission has rendered its decision — and I am surprised. Senator Kinsella usually has much stronger arguments than he did today, probably for brevity or helping the government to pass this bill, I will not say further. I will tell you probably that no one else will speak. The bill will go on through second reading, and again we will make our representations at the committee. We all know politics.

In my pocket, I have notes of six calls that I just got from people saying, "The bill is coming. You know it will be very good for my re-election if you were to let it go." I was elected nine times, and I refused to change the name of my district. It was St. Denis when I got it; it was St. Denis when I left. They changed it after I left because there was a section that wanted to have its name in there. Of course, it was good for a political point; but again, I repeat, that is our job — to reflect and let it go. We are going back to square one of the old days when Mr. Pearson said that it is enough to have gerrymandering.

Maybe I should speak French, but I am afraid that many people may not follow me, because you need to be connected to understand. So that is it. I regret — the principle is wrong — but we all want to be accommodating, so I will finish there. I see you are encouraging me so much, madam. How can I turn down your encouragement to sit down?

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

Hon. Senators: Question!

The Hon. the Speaker *pro tempore*: Is it the pleasure of honourable senators to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Smith, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

NATIONAL ANTHEM ACT

BILL TO AMEND—THIRD READING— DEBATE ADJOURNED

Hon. Vivienne Poy moved third reading of Bill S-3, to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Poy*).

She said: Honourable senators, it is my pleasure to speak at third reading debate on Bill S-3, to amend the National Anthem Act to include all Canadians. Bill S-3 proposes that the English lyrics of the anthem be amended by replacing the words “all thy sons command” with the words “all of us command.” No change to the French lyrics is proposed. The bill is co-sponsored by Senator Tommy Banks, and most of you know that he is a noted musician from Alberta.

I would like to thank the Standing Senate Committee on Social Affairs, Science and Technology for their unanimous support of this bill. I would also like to thank the witnesses who appeared before the committee for the time and effort that they devoted to this issue.

As many of you know, Bill S-3, An Act to amend the National Anthem Act to include all Canadians, has a long history in this chamber. It began as an inquiry in February 2001, which resulted in unprecedented media attention and an outpouring of support for the amendment of the national anthem to include women and girls with words that would be more inclusive. I would like to note that many senators, organizations and individuals also expressed their support to me, personally.

Despite this unprecedented level of support for an initiative, and all the people encouraging me to go forward with legislation, I might not have felt compelled to sponsor a bill in the Senate if it had not been for the following reasons: First, Bill S-3 fulfils the commitment of the federal government in 1980 to consider amendments to the National Anthem Act in recognition of the fact that “sons” was not reflective of Canadian society.

• (1720)

At the time the national anthem was being debated in the other place and in the Senate on June 27, 1980, all three House leaders

agreed to facilitate the adoption of the bill by limiting the debate during second reading to one speaker for each party and not proposing any amendments to the English version of the national anthem.

Through this expedited process, the National Anthem Act passed through the other place and the Senate in one day. Some of my honourable colleagues may remember this event. This sense of urgency around the passage of the National Anthem Act stemmed from the collective unease about the state of the country’s unity as a result of the referendum in Quebec in May of the same year. As such, the federal government felt it was necessary to shore up national symbols that would bind the country together. Therefore, the act was passed with little input from Canadians.

Nevertheless, the House leaders in the other place recognized that amendments were necessary in the English text and agreed to have them dealt with by way of private members’ bills, which would be referred to a special committee at the following session of Parliament.

I will quote the Honourable Secretary of State and Minister of Communications, Francis Fox, who brought the bill forward. He said:

Many would like to see the words “sons” and “native land” replaced to better reflect the reality of Canada. I believe all members are sympathetic to these concerns. I would, therefore, like to assure honourable members that in the course of the next session the government would be willing to see the subject matter of a private members’ bill on this question.

In response, Ed Broadbent, then Leader of the NDP stated:

I want to say that in this context that part of the understanding expressed by the minister in introducing the subject today is that a committee will be struck during the next session to deal with some important changes to the wording.

In particular, Mr. Broadbent referred to an amendment to the word “sons.”

That same day, Senator Florence Bird, best known for chairing the Royal Commission on the Status of Women, declared that she was “nobody’s son” and was assured that minor amendments would be considered in the next session of Parliament.

The National Anthem Act only passed under the assumption that a special committee would be struck to consider amendments to make it more reflective of our population. However, I regret to inform honourable senators that this procedure was never put in place.

Here we are today, 23 years later. Now is the time to ensure that the commitment made on June 27, 1980, to make the anthem more reflective of Canadian society is fulfilled.

Second, in 1982, the Canadian Charter of Rights and Freedoms came into effect. As Senator Beaudoin has so ardently argued in this chamber, this amendment would ensure that the national anthem is in keeping with the principle of equality of rights between the sexes as guaranteed in section 28 of the Charter.

Third, I discovered that contrary to most available sources, including Canadian Heritage, the original wording of *O Canada* in 1908, from the National Archives, did not contain the words “true patriot love in all thy sons command.” Instead, in 1908, the words of *O Canada* read as “true patriot love thou dost in us command.” I note that Canadian Heritage has now corrected the information on its Web site. This amendment returns *O Canada* to its original meaning and intent.

The wording “in all of us command” is merely a modern wording of “thou dost in us command.” Linguists and music historians have declared that its wording is linguistically and musically sound.

Fourth, there was a precedent for changing a national song to make it inclusive of women. In Australia, a country similar to Canada, *Advance Australia Fair* was changed to make it more inclusive. The committee that examined the words of their national song in the early 1980s replaced “Australian sons let us rejoice” by “Australians all let us rejoice” before it was proclaimed officially as a national anthem in 1984.

For the above reasons, I introduced legislation to amend the National Anthem Act in February 2002. Unfortunately, that bill died as a result of prorogation. When the present session of Parliament began, I reintroduced it in its present form as Bill S-3 in October 2002.

I wish to thank all senators who have spoken on Bill S-39 and Bill S-3, both for and against this amendment. It is very important to have a debate about the symbols of our country.

Obviously, there have been concerns about this amendment, some of which my honourable colleagues have raised in this chamber. We all have an attachment to our national anthem and strong feelings about it. I hope that I can address some of the concerns that have been expressed today.

The first concern that I heard raised is that it is not possible to amend the anthem because it is our tradition. However, Sir Robert Stanley Weir amended the song *O Canada* a number of times. There were at least 25 different versions of *O Canada* in circulation throughout the 20th century. The committee that met to examine the national anthem in 1967 also altered nine words of the anthem.

Therefore, the tradition of the national anthem, such as it is, dates back to 1980. Indeed, if one wants to stay with tradition,

one should go back to the original 1908 version of *O Canada*, which included the word “us” instead of “sons” and best reflects the intent of the author.

The next concern expressed is that this bill is about political correctness. It is not. Many words commonly used are no longer acceptable in Canadian society. The *Canadian Press Style Guide* dictates inclusive language and even *Star Trek* has changed its opening to “where no one has gone before.”

Many churches offer alternative versions in their hymnals that are inclusive of women. The United Church declares in its guidelines that inclusive language is important because “language both reflects and shapes our world...the use of inclusive language is thus a justice issue and cannot be dismissed as a passing fashion or the concern of a radical few.”

Indeed, if Sir Robert Stanley Weir used inclusive language in the original wording of *O Canada*, why should we deem the proposed amendments as politically correct? The inclusive wording dates back to 1908.

Another concern is that this amendment shows disrespect for men who fought in wars. The national anthem is heard every day in schools and at social events, so going to war is not the only way to show patriotism. This amendment does not take away any recognition from our veterans. It would if it were to read as “all thy daughters command.”

An amendment to the word “us” merely includes all the women who were also involved in the war efforts in innumerable ways in the past. Think about all the women who helped on the home front in the factories, the women pilots who delivered the planes to the men in the air force, and those who worked as nurses serving in the front lines.

We all know how important the contributions of women have been during wartime. For example, in World War I, 2,504 nurses served in the overseas military forces of Canada, and 39 of them died in action. Are these sacrifices not worthy of inclusion?

In fact, one of the most passionate advocates of this amendment is a World War II veteran from Alberta, Stuart Lindop. He has argued that:

• (1730)

As a veteran, a volunteer, wounded in action liberating Holland, I am very well aware of the tremendous contribution made by women to Canada's war effort in the Armed Forces, in industry, and on the home front. The women who are members of our Canadian Armed Forces must find a certain irony when they sing our national anthem, especially the fourth sentence, true patriot love in all thy sons command. Women are implicitly excluded from recognition.

A mother, Lorraine Williams, wrote:

I always sing my own version and replace "in all thy sons command" with "in all of us command." It is really that simple... I have a daughter who is a Major and a pilot in the RCAF, which makes the wording "sons" even more ludicrous.

Finally, there is the concern that this amendment may open the anthem to endless changes. It will not. This legislation does not propose changes to the French version of the national anthem, nor to the word "native" nor to the reference to "God." Aside from the word "sons," these are the only two words that have ever been raised with respect to amending the English version of the national anthem.

The word "native" in the dictionary refers to indigenous peoples or descendants of immigrants who were born in a certain country or locality. As an immigrant, Canada is my home and it is the native land of my children and grandchildren because they were born here. In fact, the words "home and native land" include all Canadians.

As for the reference to "God," this is in keeping with the preamble to the Charter, and the word "God" in the dictionary refers to a superior spiritual being — it is not necessarily Christian in designation. The majority of Canadians, whether we practice a religion or not, believe in some higher spiritual being.

Clearly, the word "sons" is the issue meriting the most concern. Since 1984, all six private members bills that have been introduced in the other place called for amendment to the word that makes it more inclusive of women. All the bills, sponsored by three members of Parliament, were the result of petitions from constituents. This amendment is of the greatest concern to Canadians. Therefore, the intent of this bill is simply to update the anthem so that it is more reflective of our society today, as well as inclusive of more than 50 per cent of our population.

I would like to assure all honourable senators that this is a positive amendment. As the Honourable Mitchell Sharp, who has a long history in the Government of Canada, wrote:

I write to congratulate you for your decision to introduce legislation that will replace the word "sons" appearing in the national anthem in the phrase "true patriot love in all thy sons command" by a word that has the effect of including both sexes.

Dr. Lorna Marsden, whom some of you may remember from her days in the Senate, now president of York University, wrote:

Congratulations on your Bill introduced to change the wording of the national anthem back to its original non-sexist form — your arguments based on the original 1908 version of the wording are indisputable.

Dr. Robert Birgeneau, President of the University of Toronto, also wrote:

I congratulate you on taking the initiative in this very important matter of equity in one of the most powerful expressions of our Canadian identity — our national anthem.

Mr. Peter Trueman, well-known from his days as a news anchor on Global Television, wrote:

In my view, the words "true patriot love in all thy sons command" should be replaced by the words "true patriot love in all of us command."

Ms. Stephanie MacKendrick, president of Canadian Women in Communications, also wrote:

I think it's a very important, yet simple, request to make the language of the national anthem inclusive.

Women's organizations and women's studies groups also endorse this amendment. The United Church, in keeping with its policy of inclusive language in its hymnals, also passed a motion that supported this amendment.

I would like to stress the importance of this amendment for future generations, for girls and boys who are studying in school today. It represents a real commitment to equality in the words of our most important song. The YWCA of Canada has written to say that they see a need for change in the anthem to reflect the aspirations of girls.

Consider the schoolchildren who sing this anthem. A number of teachers have also taken up the cause. In 1993, Judith Olson, a music teacher in Ontario, launched the *O Canada* Fairness Committee, after having numerous students wonder about the implicit exclusion in the words "in all thy sons command."

Another community leader, Frances Brogan, wrote:

While volunteering as a pathfinder leader a number of years ago, I was struck by the inappropriateness of the words "in all thy sons command." One evening as I sang those words, I realized that I was standing in the midst of a group of young women. From that day, I began to use, "in all of us command."

Now consider the recent women university graduates who now often outnumber their male counterparts. As Ruth Rees, a professor at Queen's University, wrote:

I was at a convocation at Queen's University...where I read for the umpteenth time our national anthem. As we were honouring a woman as our honorary doctorate, I realized just how archaic the anthem is.

I have received numerous letters from fathers and husbands who feel uncomfortable with the wording of the anthem and asked that it be changed. The numerous letters of support from organizations and individuals, and the thousands of signatures on a petition for this amendment mean that I represent many Canadian voices in speaking today.

Honourable senators, we have an anthem that excludes half of our schoolchildren sitting in their classrooms. Its wording contradicts the message that teachers everywhere are delivering: that girls and boys are equal in ability, capacity, and in service to their country. We need to correct this situation for the future of Canada.

Consider the women in our military today who stand proudly ready to fight for Canada, and consider the women who supported the war effort so ably in the past. Think of the women athletes who have gained great acclaim at the Olympics, and think of the immigrant women who thought they had arrived in a country of equal opportunities.

Honourable senators, when *O Canada* is played to proud acclaim, it is meant to inspire. Let it inspire all Canadians.

Hon. Jeremiah S. Grafstein: I wish to commend Senator Poy for her stupendous efforts in changing public opinion and also changing the opinion in intellectual fora. I agree with all her objectives and I must say, coming from a family of three generations of very strong women, that they are urging me at every level to support this bill without any question. Having said that, I am always curious about words, and I just want to raise a very simple question to the honourable senator. I do not want to deter her, and I will support this bill wholeheartedly.

However, when the honourable senator raised some comments about the text being all-inclusive and that we have cleansed the text of its exclusionary implications, I thought about the word "patriot," as in "true patriot's love," when you raised it, so I went to the Oxford dictionary and examined it carefully. I am wondering whether or not your cleansing went far enough and whether you might think about this for your next round.

• (1740)

Turning to the dictionary, the word "patriot" is a noun, a person who is devoted to and ready to support or defend his or her country. The word "patriot," according to the Oxford dictionary, is neutral when it comes to gender. However, when you go further, when you look at the root of the word "patriot" you come to the word "patriotism," which is based on the French word "patriote," and the Latin *patriota* from the Greek *patriotes* via *patrios*, which is defined as "of one's fathers" or "fatherland." The root word of the word "patriot" is father. If you go down the dictionary on the same page, you will see reference to patron saint, which really refers to the masculine and not the feminine.

While the honourable senator was avidly searching the root words to leave no false impression, as our former colleague Senator Marsden says, that we should have a non-sexist anthem, to which I agree wholeheartedly, she might consider the next step of changing the word "patriot" to a word such as "loyal," or even a more robust word.

I leave the honourable senator with the connotation that her work is not completed. Would the honourable senator give us her response?

Senator Poy: The honourable senator mentioned that one of the definitions in the dictionary for the word "patriot" includes both sexes. That is the more modern definition. If you go back, there are many words that would originate with a masculine ancestry.

If you look at religion, many people think of God as masculine. However, if you really go back far enough in all native communities, God was a woman. We should remember that.

Hon. Anne C. Cools: I have been listening to the honourable senator with some care. According to the honourable senator, she has made these proposals with an eye to bringing the anthem into harmony with the Charter of Rights and Freedoms, and modernity.

There is an aspect of modernity in which I am very interested. Recently, I have been doing a fair amount of reading on what we call the law of allegiance. As honourable senators should know, the law of allegiance was very much related to what used to be called the phenomenon of the defence of the realm. As these laws developed over the years, according to individuals status in the community, they had to be prepared to be called upon to defend the realm. If a person of high status were called upon — I am talking of hundreds of years ago — that person had to be ready to supply as many arms and fighters to the lord. I believe the law at the time also said that every able-bodied young man, 15 years of age and older, had to be ready to be pressed into service or commissioned into action to fight.

I am wondering if, during the research of the honourable senator in respect of equality, in today's community, for example, we were to find ourselves, unfortunately, in a state of war and the state of human resources was such that we had to resort to conscription, en passant historically, women could not be conscripted because, contrary to what the honourable senator has said, women, as a great privilege, were viewed as being exempt from those burdens of responsibility. Could the senator tell us if according to the Charter, legally, would we be compelled to conscript women?

Senator Poy: I believe in equality. Therefore, what is good enough for men would be good enough for women. Equality means equality. It also means responsibility. I believe that if we should have conscription in this country, both men and women should be conscripted.

Senator Cools: My understanding is that all that law of the Charter has not touched any of those old laws. The thing about this sort of law is that it remains archaic and unknown until there is a moment of crisis. Our party, our side and Mackenzie King had such a terrible time on the subject of conscription. I am understanding Senator Poy to say that women should be subjected to conscription, if conscription is necessary. My question is whether the women of this country know that, though.

Senator Poy: Actually, I believe that women do know that today. Women are doing exactly what men do in really every aspect of life. Women work and fight alongside men. There will always be a difference between men and women. Women give birth to children and men do not. There would be times when men would do certain things and women would do other things, but when it comes to responsibility, we are equally responsible.

Senator Cools: I accept that. I am not disputing some of that. I was making a distinction between voluntary service in the Armed Forces and conscripted service or compelled service; that is all. I believe that conscription is a different sort of thing from voluntary service in the Armed Forces.

On motion of Senator Cools, debate adjourned.

[Translation]

ROYAL CANADIAN MOUNTED POLICE ACT

BILL TO AMEND—SECOND READING— DEBATE SUSPENDED

Senator Pierre Claude Nolin moved second reading of Bill S-24, to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations).

He said: Honourable senators, I am pleased and honoured to speak today at second reading stage of Bill S-24, which further modernizes the Royal Canadian Mounted Police Act with respect to labour relations.

The RCMP was created in 1873. For 130 years, its traditions, the professionalism of its members, and its excellent international reputation have been a major source of national pride for Canadians and a symbol of Canada.

Since the early 1970s, however, several RCMP members have harshly and strongly criticized provisions in their labour relations system.

• (1750)

For instance, they rightly criticize their high cost to Canadian taxpayers and their lack of transparency, independence, equity, and impartiality.

Through the research and consultations that preceded the introduction of Bill S-24, I realized that this sorry state of affairs underlies the way the employer treats its employees, and the low

morale and low personal and professional self-esteem of the employees. It is also responsible for the frustration and cynicism RCMP members feel with respect to the current procedure for determining working conditions, on the one hand, and the outdated and highly controversial mechanisms for settling grievances and dealing with disciplinary action, on the other.

Honourable senators, we must devote some of our time to resolving these serious problems that might, incidentally, work against one of the primary objectives of our national police force, which is to protect Canadians. The members of the RCMP deserve no less.

I believe most strongly that the safety of our fellow citizens depends on the quality of labour relations within the RCMP.

The main purpose of Bill S-24 is quite simply to improve labour relations so that the RCMP can carry out its mandate effectively.

Honourable senators, I am proud to say that this bill constitutes the first major reform of employer-employee relations in the RCMP since Bill C-65 was passed in 1986.

The purpose of that bill was to implement a series of recommendations set out in 1976 in the report of the important Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedures within the Royal Canadian Mounted Police, better known as the Marin report.

Honourable senators, my speech will be in two parts. The first will address the fact that this is the first time in history that there has been recognition of the right of members of the RCMP to speak out democratically and freely on the possibility of unionizing.

The second will analyze the provisions in the bill to modernize the procedures set out in the Royal Canadian Mounted Police Act relating to grievances and discipline, in order to make these more effective, fairer, more impartial and, above all, more independent.

Before going further, I would like to provide a brief explanation of what constitutes a “member of the RCMP” in order to clearly set out the limitations of application of the provisions of this bill.

At the present time, there are two types of members of the RCMP, regular and civilian members. The first group comprises RCMP constables, sergeants and senior ranks. The second refers to forensic laboratory technicians or wiretapping specialists. All are subject to the labour relations framework set out in the RCMP Act.

According to the official figures, setting aside the senior ranks, the provisions of Bill S-24 will apply to approximately 15,000 members of the RCMP.

Federal public servants who work primarily within administrative units of the RCMP would be excluded from the provisions of Bill S-24 because their working conditions and their internal grievance or disciplinary procedures are already governed by the Public Service Staff Relations Act.

Because of the historic nature of the reform I am proposing today, Bill S-24 includes a preamble, which sets out the principles on which implementation and interpretation of the provisions of this bill are founded.

Thus, it first recognizes that the right to certification and the right to collective bargaining are basic principles on which the workplace is organized, in the private and public sectors in Canada.

Next, it points out that the members of the RCMP, unlike members of most civilian police forces in Canada, do not have these rights, and that this situation is a source of injustice and continuing frustration and may even threaten the safety and security of Canadians.

Third, it states that the establishment of good staff relations within the Royal Canadian Mounted Police will enhance protection of the public, since the peace officers will spend more of their time carrying out their duties to the public, as they will be aware that the representatives of an accredited police association will be defending their interests with respect to working conditions and internal grievance and disciplinary procedures.

Finally, the preamble states that the RCMP, in order to enjoy the trust and respect of the public, must be accountable to Canadians, not only through the Royal Canadian Mounted Police Public Complaints Commission, but also through an internal discipline and grievance procedure that is consistent with the principles governing due process of law.

Debate suspended.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I regret having to interrupt the Honourable Senator Nolin. I was not signalling to draw the attention of the Senate to the clock. I am prepared to grant him the time he needs to finish his speech.

Senator Stollery, the chair of the Standing Committee on Foreign Affairs, seeks leave for his committee to meet during the sitting of the Senate.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted? The Honourable Senator Robichaud is seeking leave for the Standing Committee on Foreign Affairs to meet.

Hon. Marcel Prud'homme: Honourable senators, please do not be impatient with me, for that makes things worse. I just had enough time to leave the Senate to see some ill members of my family who came to visit me. They have priority over the Senate. However, I want to do my job. Leave is being sought so that another committee may meet: That will leave very few senators.

If the Senate grants leave to continue debate, might the Leader of the Government inform us of what else they have planned, so we know what we are doing. This makes no sense whatsoever. It is easy for those senators who are absent. Senator Robichaud will note that I have more support than he realizes, even among those senators who are currently in the chamber. Some are beginning to be totally fed up, but do not dare say so. We are being treated like children! I thought this was the Senate of Canada.

Senator Robichaud is in a difficult position, as we know. We are not children. We feel and see it. Everyone is pushing him around. I want to talk about my national anthem and other things. We are not children! But some take the Senate seriously! Look, it is easily seen: The most faithful senators are here. But where are the others? I am not here in the Senate to act as the police or the whip. Senator Robichaud does not know that I am speaking on behalf of more senators than he realizes. What are his intentions for this evening, so we can lead intelligent and functional lives?

The Hon. the Speaker *pro tempore*: Honourable senators, I am sorry to interrupt but it is six o'clock. Is there consent not to see the clock?

Hon. Senators: Agreed.

Senator Prud'homme: Honourable senators, I said pretty well what I had to say. I gave consent. I imagine you are seeking leave for Senator Nolin to continue. You have my consent. I would like to know what Senator Robichaud has planned for this evening. This makes no sense whatsoever.

• (1800)

Senator Robichaud: The Honourable Senator Prud'homme often makes remarks like that. I do not believe we are children. Some senators and some committees want to meet. Senator Stollery has delayed the meeting of his committee. This committee was scheduled to meet earlier today. I am only asking for leave to authorize this committee to meet. Other committees have met, then their members came back here. I am trying to accommodate as many honourable senators as possible while we carry on in this place.

What is left? Speeches are longer, more time is given to the honourable senators to complete their speeches, and then they take questions. Under these circumstances, it is very difficult for me to assess the time required.

With leave of the honourable senators, I will call the next two items on the Orders of the Day and then seek leave to have the other items stand until the next sitting of the Senate.

One item is in your name, Senator Prud'homme. You intend to speak tomorrow. The other item stands in the name of Senator St. Germain. He is not here, and Senator Tkachuk told me he wanted to speak. It would seem that we will not be addressing Item No. 2 either.

I am sorry I rudely interrupted Senator Nolin. I am prepared to give him time to continue his speech.

Senator Prud'homme: If only you had spoken to us before the way you just did.

[English]

The Honourable Senator Grafstein will not disagree with what I have to say.

[Translation]

That is how we wish to be treated. You explained what the problem was. Noticing that it was six o'clock, Senator Nolin sat down, and you did your duty. You called us to order, saying that it was six o'clock and asked whether we would give Senator Nolin leave to continue.

The problem is not knowing. There are kindergartens in my riding that are run better. You get all the blame, and you are the one stones are being thrown at. I can understand your situation! I know we have to interrupt proceedings, and then resume them. In this instance, you spoke to us in a way that we appreciate.

[English]

The Honourable Senator Stollery will be able to attend his meeting of the Foreign Affairs Committee.

Hon. Jeremiah S. Grafstein: Honourable senators, I have a short question for the Deputy Leader of the Government. I noticed that he mentioned not only something that I am interested in but also an undertaking from Senator Prud'homme to speak tomorrow. I have received a number of representations from members on the other side to proceed with No. 2 of the Commons public bills. Perhaps I might ask when the Honourable Senator St. Germain intends to speak to this order, so that we may address that important subject as well?

Senator Prud'homme: That is a good question.

Hon Peter A. Stollery: Honourable senators, I understand that the Standing Senate Committee on Foreign Affairs will have leave to sit, and I apologize to Senator Nolin for interrupting him.

[Senator Robichaud]

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

Hon. Senators: Agreed.

[Translation]

ROYAL CANADIAN MOUNTED POLICE ACT

BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., for the second reading of Bill S-24, An Act to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations).—(*Honourable Senator Nolin*).

Hon. Pierre Claude Nolin: Honourable senators, I will resume reading from the paragraph where I left off. I was listing the important elements of the preamble.

The preamble stipulates that the RCMP, to enjoy the trust and respect of the public, must be accountable to Canadians not only through the Royal Canadian Mounted Police Public Complaints Commission, but also through an internal discipline and grievance procedure that is consistent with the principles governing due process of law, notably fairness, impartiality, independence and expeditiousness.

That said, let us now move on to the first part of the bill. Since 1873, the federal government has always denied members of the RCMP the right to certification and collective negotiation.

In order to better understand the reasons behind the Governor in Council's decision and reasons, which I will discuss later to refute the government's arguments in favour of such a policy, I will briefly describe the evolution and the history of the RCMP.

Originally known as the North West Mounted Police, the RCMP was formed to patrol and maintain order in the Northwest Territories, which the Government of Canada had acquired in 1870, therefore recently at that time, from the Hudson's Bay Company.

Its mandate has evolved over the years to respond to the new problems of public and national security and the evolving needs of the federal government and certain provinces.

After the Metis rebellion in 1885 and the completion of the Canadian Pacific Railway, the RCMP took energetic and highly controversial action in a series of violent labour conflicts in Western Canada early in the 20th century, particularly the Winnipeg General Strike of 1919 — a conflict that led to the disbanding of that city's municipal police force. These disturbing events convinced the federal government to create a permanent national police force.

And so the Royal Canadian Mounted Police was born in 1920 from the merger of the North West Mounted Police and the Dominion Police.

Beginning in the late 1920s, this new police force signed a series of agreements with the Provinces of Saskatchewan, Alberta, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island to act as the provincial police force in each.

At the same time that it was developing its law enforcement and peacekeeping activities on both the federal and provincial levels, the RCMP was also taking on a larger role in protecting Canada's national security, beginning during World War II, but it partially withdrew from this sector of activity in the early 1980s, when CSIS was created.

Essentially a paramilitary force when it began, today the RCMP has become a national civilian police force offering virtually the same services as other police forces in Canada.

Most of its activities are directed to its contracted police services, or Contract Policing, in eight of Canada's provinces — Quebec and Ontario are the exceptions — more than 200 municipalities, 65 Native communities and three airports. At present, over 60 per cent of the members of the RCMP are assigned to keeping order in these locations.

Members of the RCMP have been denied rights that have been long enjoyed by most private sector workers, public servants, and peace officers in other civilian police forces in Canada, the United Kingdom, New Zealand and Australia.

Specifically, this exclusion dates from a 1918 federal Order-in-Council, which forbade participation by members of the force in trade union activity on penalty of summary dismissal.

In order to justify this policy, the federal government of the day stressed, as its modern counterpart still does today, the need to protect the public by maintaining a stable national police force, the specific tasks of the members of the RCMP, the need to subject them to a paramilitary type code of discipline, and the existence of possible conflicting loyalties, with some members of the RCMP showing more loyalty to their police association than to those in command, should there be a labour dispute.

• (1810)

In 1967, federal public servants gained the right to accreditation and collective bargaining, with the enactment of the Public Service Staff Relations Act by the federal government.

In accordance with the Order-in-Council of 1918, this legislative text contains a provision expressly excluding members of the RCMP from application of this staff relations system. In 1974, in order to counter the efforts of certain members of the RCMP to

obtain the same rights as other federal public servants, the federal government abrogated that Order-in-Council and that same year established the Division Staff Relations Representative Program.

The organizational structure of this program would appear at first to be similar to that of an association accredited under the Public Service Staff Relations Act. It is composed of members of the RCMP who have been selected as DSRRs in order to represent their colleagues before the employer, on the one hand, and to advise the hierarchy on staff relations, on the other.

However, further analysis of the way the program operates shows that it is quite different from the system for the federal public service. First, the staff relations representatives cannot be compared to union representatives, since they are part of the RCMP hierarchy.

Furthermore, the program is entirely funded by the employer. According to documents obtained under the Access to Information Act, this initiative is costing taxpayers at least \$3.2 million dollars annually. Finally, there is no independent mechanism to resolve disputes between staff relations representatives and the employer.

Consequently, the administrative authorities and the RCMP high command have, to their employees' detriment, great latitude not only with respect to working conditions, but also with respect to dispute resolution mechanisms or disciplinary actions. In order to rectify these serious issues, some members of the RCMP decided to contest in court the prohibition preventing the creation of employee associations.

As a result, in 1985, 10 years after the Staff Relations Representative Program was established, members of RCMP's C Division — the detachment comprising the Province of Quebec — created the RCMP Association, prompted by action taken by Staff Sergeant Gaétan Delisle.

However, after the association failed in 1987 to receive union accreditation under the provisions of the Canada Labour Code, Mr. Delisle began a long legal battle to strike down exclusion of RCMP personnel from the provisions of the Public Service Staff Relations Act.

In support of his case, Mr Delisle stated that this violated paragraph 2(d) of the Canadian Charter of Rights and Freedoms, which guarantees all Canadians the freedom of association.

Mr. Delisle and the members of his association have never demanded the right to strike, since they are aware of the importance of their profession, the need to protect the public and the practices of other Canadian police forces.

I have always been surprised that, despite the considerable difficulties they faced during the 1970s, members of the RCMP have always used peaceful and legitimate means to promote their cause.

In comparison, in the United Kingdom, police in Britain and Wales obtained the right to accreditation and collective bargaining in 1919, some 84 years ago, following an illegal strike and pressure using civil disobedience.

In September 1999, in *Delisle v. Canada (Deputy Attorney General)*, a majority of judges of the Supreme Court of Canada categorically dismissed the argument that the right to organize protected under the Charter specifically guarantees the right of members of the RCMP to form a certified employee organization under the Public Service Staff Relations Act and, thus, gives them access to collective bargaining.

In the opinion of the majority, this kind of recognition would unduly limit the ability of Parliament or a provincial legislature to regulate staff relations in the public service. In addition, it would be contrary to the jurisprudence in this respect since the 1987 Reference re Public Service Employee Relations Act.

Given that Quebec members of the RCMP were able to freely form an independent employee organization, the majority found that their right to organize had not been interfered with, and that it was up to the Parliament of Canada, and Parliament alone, to recognize the right, as demanded by Mr. Delisle, through legislative amendments. The court clearly stated that it was not up to it but to Parliament to legislate in that respect.

It is important to point out that two judges gave dissenting opinion in this case, and I would like to share with you the arguments of the minority judges. In a detailed, documented decision, Justices Cory and Iacobucci found the provisions challenged by Mr. Delisle to be unconstitutional since they did interfere with his right to freedom of association.

In their opinion, s. 2(d) of the Charter guarantees the right of members of the RCMP to form a union. Moreover, this protection is also provided by a series of international conventions to which Canada is a signatory, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize.

In the opinion of the minority, the government could not use section 1 of the Charter to restrict the right of members of the RCMP to organize.

To begin with, there was no rational link between the objective of maintaining a stable national police force to protect the public, and the prohibition in the Public Service Staff Relations Act. Moreover, the minority was of the opinion that the minimal impairment test had not been met because the exclusion of 15,000 members of the RCMP from the staff relations system under the Act did not strike a balance between the employees and the employer, quite the opposite.

Finally, according to the minority, the federal government could have elected to limit the right to strike and negotiate a collective agreement in good faith rather than prohibit a union from being formed. Such an alternative would have been more acceptable within the meaning of section 1 and less restrictive and, consequently, would not have constituted a violation of subsection 2(d) of the Charter. The exclusion under the Public Service Staff Relations Act could not have been upheld under the section 1 of the Charter.

Therefore, the minority proposed a stay of action for one year so that the Parliament of Canada could correct the situation. Of course, since this was the opinion of a minority, it never had force of law. Rather surprisingly, in December 2001, a little more than two years later, a majority of judges in the Supreme Court of Canada, in *Dunmore v. Ontario (Attorney General)*, contradicted their own majority opinion in the *Delisle* case.

• (1820)

They ruled that recognizing freedom of association for the agriculture workers of Ontario called expressly for the creation of a union!

Honourable senators, the majority opinion of the Supreme Court in the *Delisle* case is such that modifying the staff relations regime for members of the RCMP became the prerogative of Parliament and led to the introduction of Bill S-24. Nonetheless, other factors, in addition to those that I mentioned at the beginning of my speech, also prompted me to move ahead on this issue.

While the legal proceedings in the *Delisle* case were underway, two other associations of members of the RCMP were created in Canada, one in Ontario in 1990, and the other in British Columbia in 1992, illustrating the flaws in the Staff Relations Representative Program and the desire to change the staff relations regime within the RCMP.

On September 22, 1989, former RCMP Commissioner Norman Inkster made a surprising statement in connection with the *Delisle* case before the Quebec Superior Court. According to him, the federal Parliament was ultimately responsible for the staff relations framework to be applied to the RCMP. If the law were amended as Mr. Delisle wanted it to be, this would not affect the administration of the RCMP inordinately.

In 1995, the important task force report on revision of the Canada Labour Code, Part I — better known as the Sims Report, “Seeking a Balance”— recommended unionization for the RCMP, under some other legislation than the Canada Labour Code. The task force felt that adoption of such a policy would not have any negative impact on operational control of the RCMP or protection of the public interest.

Honourable senators, taking all these factors into consideration, Bill S-24 gives the right to accreditation and negotiation by creating, within the RCMP Act, a system that is distinct from the one set out in the Public Service Staff Relations Act. In order to foster the implementation of harmonious staff relations within the RCMP and to ensure credibility, transparency, independence and smooth operation for this initiative, it will be administered by the PSSRB, the Public Service Staff Relations Board, referred to subsequently as the board.

This bill sets out a complete and transparent procedure that will, as I have said, make it possible for members of the RCMP to speak out democratically and freely, without hindrance, on the creation of a police association. The bill does not impose its formation. If the majority of members are in favour, the association will act as the bargaining agent accredited by the commission to negotiate with the employer on improved working conditions for members of the RCMP. The association will also be involved in defending employees during grievance procedures or when disciplinary action is taken.

Given the particular way the work is organized within the RCMP, the duties performed by its employees, along with practices observed in other jurisdictions, in Canada, the United Kingdom and Australia, this association will be comprised only of members of the RCMP and will also not be able to be affiliated with the larger unions to which most federal public servants belong. Protection against intimidation or any other dubious tactics by the employer for the purpose of preventing members of the RCMP from joining an association are also included in the bill.

Once the accreditation process has been duly completed, Bill S-24 establishes a procedure similar to that which currently exists in the federal public service, to begin bargaining in good faith to establish the initial collective agreement for members of the RCMP and the terms for its renewal. The bill also provides for conciliation or binding arbitration in the case of an impasse in the bargaining. Application of these two distinct processes will be under the supervision of the board. The board may appoint a conciliator to assist the two parties in reaching an agreement, or, under certain circumstances, appoint an independent arbitrator in order to settle disputes. Decisions made in the arbitration process are binding and not open to review.

Honourable senators, the collective bargaining procedure proposed in Bill S-24 has two objectives: not only to encourage the positive settlement of labour disputes within the RCMP but also to ensure better protection of the public. In fact, implementing a binding arbitration procedure means that — as is the practice in most other civilian police forces in Canada, the United Kingdom, Australia and New Zealand — if bargaining with their employer breaks down, the members of the RCMP will

not have the right to strike. This ban includes working to rule or any other collective action taken by employees with the intent of reducing productivity.

In this respect the bill is very clear and provides for severe criminal sanctions in the case of an illegal strike. If members of the RCMP commit acts of vandalism or mischief or disturb the peace during collective bargaining, they will be subject to disciplinary action under the Royal Canadian Mounted Police Act or to criminal charges.

Honourable senators, previously I cited a series of arguments that have been used to support the government's continuing refusal to propose a reform similar to Bill S-24. In 2003, such a refusal and the government arguments behind it are no longer justified, have no reason to exist, and in fact, are detrimental to public safety.

In my opinion, the professionalism and restraint demonstrated by certain members of the RCMP on this difficult issue, the minority opinion in the *Delisle* case, the statements I have already quoted by former Commissioner Inkster, the recommendations of the Sims commission, the evolution of the RCMP, and the strike ban provided in the bill, all demonstrate beyond all doubt that the creation of an accredited police association would have no negative impact on protection of the public, administration of the RCMP or discipline in the force.

What is more, the federal government is trailing not only the provinces and the municipalities, but also other Commonwealth countries when it comes to current practices. In addition to England and Wales, which I have already mentioned, New Zealand recognized the right to accreditation and collective bargaining of its police in 1935. Australia did the same in 1942.

Regarding the presumed conflict in loyalty and the chaos that would result from the creation of an accredited police association within the RCMP, this argument is unfounded since the practice of other jurisdictions proves that this has never really materialized. As a responsible parliamentarian who cares about public safety, I am more concerned by the fact that police officers must currently fight for their basic rights to be recognized during a disciplinary hearing or a grievance, too often to the detriment of public safety.

Some 60 per cent of RCMP officers are assigned to contract policing, which provides basically the same services as civilian, municipal and provincial police forces, which do have the right to accreditation and collective bargaining.

That said, I want to talk now about the second half of the bill dealing with the grievance and discipline procedures under the Royal Canadian Mounted Police Act.

Honourable senators, I want to give a brief history of how things work currently, to allow comparison with what I am proposing in this bill.

• (1830)

Honourable senators, the debate on the unionization of RCMP officers has frequently been linked with ineffectiveness and a lack of impartiality, speed and transparency, and above all, independence with regard to the very complex process with respect to grievances and disciplinary action.

Currently, the internal system is swamped by over 1,100 grievances from civilian members concerned about the unilateral decision by the RCMP high command to amend their employee category.

According to a series of reports published in recent years by the RCMP External Review Committee, the time it takes to resolve grievances or impose sanctions all too often exceeds the statutory time limit and can even take several years.

The committee also reports that, besides the significant costs to the RCMP, this worrisome situation is a source of considerable tension for members, their families and colleagues, especially in the case of disciplinary action resulting in suspension without pay or even dismissal.

I want to stress that this can also affect the confidence of Canadians in an effective and professional national civilian police force. At present, members of the RCMP may file grievances concerning the working conditions enforced by the employer. The legislation states that the RCMP Commissioner is the final level of appeal for decisions made by a lower level with respect to grievances.

Before making a decision, the commissioner must refer certain categories of grievances to the RCMP External Review Committee. While they are appointed by the Governor in Council, the members of this committee are only authorized to review cases referred by the commissioner.

Moreover, the review committee only has the authority to recommend to the commissioner, and thus, has no means of making its advice binding.

To correct this situation, the bill eliminates the External Review Committee and replaces it with an independent, external adjudication process similar to the one in the federal public service.

In this system, a grievance that has gone through the entire internal grievance process may be referred to a board of adjudication, where the employer and the police association are represented and costs are shared on an equal basis by both parties.

The operation of this new process will be overseen by the Public Service Staff Relations Board, and the decisions made as part of this process will be binding.

With respect to severe disciplinary action for offences under the code of conduct, the Royal Canadian Mounted Police Act provides that, following the presentation of a complaint by the employer, a board of arbitration composed of three RCMP officers shall be established. This board shall determine the appropriate penalty to prevent any repeat offence. The member may appeal the board's decision to the commissioner.

As in the case of a grievance, the review committee may make recommendations to the commissioner before the latter makes a decision. In a case of discharge or demotion, the decision is made by a discharge and demotion board, also consisting of three RCMP officers. As in the case of serious disciplinary action, the member may appeal to the commissioner.

Honourable senators, these quasi-judicial decisions can have extremely negative effects on the quality of life and the work of members of the RCMP who must face this complex process, noted for its lack of independence, alone and with few resources.

Without interfering with disciplinary or discharge procedures, and while protecting public safety, Bill S-24 abolishes the arbitration committee and the discharge and demotion board on the one hand, and the process of appealing to the Commissioner of the RCMP on the other. Henceforth, the sanctions will be determined by the employer and will follow an internal review process.

Nonetheless, for reasons of effectiveness, impartiality and especially independence, this decision could be subject to the new independent and external arbitration procedure for grievances.

Finally, in the interests of transparency for the members of the RCMP and Canadians, Bill S-24 states that the Public Service Staff Relations Board would be required to present an annual report to Parliament on the administration of various provisions in the bill, as it currently does for the administration of the Public Service Staff Relations Act.

Before I finish, I would like to give a heartfelt thanks to my staff. They have worked hard on this bill for the past 15 months. I would also like to thank — because we do not do this often enough — the employees of the Senate, who helped me in this work. Among others, I am referring to Michel Patrice and the staff at the Office of the Law Clerk and Parliamentary Counsel, and James R. K. Dugan, a lawyer from Montreal, for the countless hours they spent writing and revising this bill. I would also like to thank Philip Rosen, David Goetz and Robin Mackay from the Parliamentary Research Branch and the Library of Parliament for the excellent study they prepared with respect to the various challenges associated with unionizing the RCMP.

I would also like to acknowledge the significant contribution of Staff Sergeant Gaétan Delisle, and Sergeant André Girard, who enlightened me on the harsh realities that members of the RCMP are faced with daily with respect to staff relations. Without their unfailing support and invaluable contribution, this legislative initiative would not have been possible.

[Senator Nolin]

Honourable senators, in conclusion, Parliament must act quickly in this case. We have demonstrated non-partisan politics and expeditiousness in our parliamentary work when it came to improving legislative tools available to members of the RCMP, so that they can fight crime in our communities, organized crime or terrorism effectively.

In that sense, I strongly believe that this same spirit must prevail as we proceed through Bill S-24. This legislative initiative will foster harmonious staff relations built on trust, dialogue and mutual respect. This is as important as increasing the RCMP's budget or changing the Criminal Code to allow this police force to carry out its mandate effectively.

The bottom line is that Bill S-24 will be not only to the advantage of the RCMP, it will also be of particular advantage to Canadians, who deserve a top-notch federal police service.

I want to remind you of one fact: you will rarely hear RCMP personnel discuss their problems in public. That is why I found it so useful to have contact with police officers who put me in touch with others, anonymously of course, because their code of conduct prevents them from talking outside the family about family secrets. Their assistance is what has enabled us to draft this bill, a most imposing one, I will admit, but one that was extremely necessary.

• (1840)

[English]

Hon. John G. Bryden: Honourable senators, I will move the adjournment of the debate. However, before doing that I would like to make some quick comments.

Senator Nolin indicated that we are people who act expeditiously. This is a bill that we can undertake expeditiously. However, in my opinion, we need to be very cautious and careful. I had an opportunity to review the bill quickly. It is primarily lifted from the Public Service Staff Relations Act, and amended to try to fit a police force.

There are very considerable concerns. It is absolutely the case that the right to organize grants the power to strike. It does not grant the right to strike, but it grants the power to strike. We need to keep in mind the sort of things that happened in situations where public service unions, including firefighters and police forces, have no right to strike. However, they do have that right if they are pushed — the word used on the union side, on which I often was — or if their demands are not met, particularly in large municipalities.

In 2003, we now are in a position to be able to improve the working conditions of our national police force. That is true. There are many things that we can do to correct some of the things that have been identified, if indeed they need to be corrected, without going to full unionization.

In 2003, and post-September 11, we need to be cautious that we are not strengthening but weakening our policing powers. We do

not need a situation of co-management in our national police force, which occurs now in many of our larger cities in Canada, including Toronto, Calgary, Saskatoon — all kinds of places.

It is nice to think, at least at this stage, that our national police officers, when directed to take action, do so and then check with their superior. They do not check with their union steward.

We need to be extremely cautious in this process. I will not say much more. I will have an opportunity to reply later.

This is not a slam dunk. There is a reason. If we have a situation which the local police force in a city or a province will not handle without a quasi-military discipline and the approach of a national police force, such as the Royal Canadian Mounted Police, then our recourse is the army. The argument that applies to our national police force is almost, if not totally, directly applicable to the army.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, before Senator Bryden moves the adjournment of the debate, I would like to make a few comments and ask a question.

[Translation]

I would like to begin with my congratulations to Senator Nolin for this incredibly well-researched presentation.

The Hon. the Speaker *pro tempore*: Honourable senators, I regret to inform Senator Nolin that his allotted time is up.

Senator Nolin: I am asking for two more minutes.

The Hon. the Speaker *pro tempore*: Honourable senators, does he have leave?

Hon. Senators: Yes.

Senator Kinsella: Honourable senators, Senator Nolin has said that the Universal Declaration of Human Rights includes the right of association. He also referred to international pacts. There is also a whole series of International Labour Office conventions that are more specific. I wonder if you are aware of these conventions.

Senator Nolin: Definitely, dear colleague; listing all the internationally recognized rights of workers would have been too tedious. I must also say that my assistants and myself are keenly aware of the particularities of the function members of the RCMP perform, especially the fact that theirs is the national police force. I share some of the concerns expressed by Senator Bryden; it goes without saying that a national force cannot be treated like a municipal force, bearing in mind that, if the municipal force does not do a good job, as it happened in Winnipeg in 1919, there will always be a senior police force to take over law enforcement.

That having been said, noting these particularities is not enough; we must also recognize the rights of these workers. It is up to us, in Parliament, to do so, and that is what I have sought to do through Bill S-24, by combining and striking a balance between the rights and responsibilities for workers performing specialized functions and the rights recognized for all workers, via a staff relations regime which recognizes the right to certification and collective bargaining as a fundamental value which, incidentally, is set out in the preamble of the Canada Labour Code.

On motion of Senator Bryden, debate adjourned.

[English]

CLERK OF THE SENATE

2003 ANNUAL ACCOUNTS REFERRED TO INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE

Leave having been given to proceed to Order No. 165:

Hon. Lise Bacon, pursuant to notice of October 28, 2003, moved:

That the Clerk's Accounts, tabled on October 27, 2003, be referred to the Standing Committee on Internal Economy, Budgets and Administration.

Motion agreed to.

[Translation]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe that there is agreement to have all items on the Order Paper that have not been reached stand in their place until the next sitting of the Senate.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to have all items on the Order Paper that have not been reached stand in their place?

Hon. Senators: Agreed.

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

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