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OFFICIAL REPORT
(HANSARD)

Tuesday, November 4, 2003

THE HONOURABLE DAN HAYS
SPEAKER

CONTENTS

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THE SENATE

Tuesday, November 4, 2003

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

Prayers.

SENATORS' STATEMENTS

VETERANS' WEEK 2003

Hon. J. Michael Forrestall: Honourable senators, I rise to draw your attention to a ceremony that took place in this chamber this morning, in collaboration with the Department of Veterans Affairs, marking the beginning of Veterans' Week in Canada. The theme this year is "Canada Remembers the Korean War." Most of us may know it as the forgotten war.

I wish to draw the attention of honourable senators to the absolute splendour and dignity that accompanied not only the ceremony this morning — this was the sixth — but also the previous five. The ceremony is an undertaking on the part of the Senate that serves us all well.

Honourable senators, I would like to bring to your attention a tragic railway accident that happened at Canoe River on November 21, some 53 years ago, when 17 lives were lost en route to that conflict across the Pacific. I will list their names so that we might all remember them.

Gunner Arden Joseph Atchison, Loon Lake, Saskatchewan

Gunner Weldon Eugene Barkhouse, Wolfville, Nova Scotia

Gunner Norman William Carroll, Pennant, Saskatchewan

Gunner Frederick William Conway, Grand Falls, Newfoundland and Labrador

Gunner Robert Arthur Craig, Foam Lake, Saskatchewan

Gunner Austin Emery George, Canso, Nova Scotia

Gunner Urbain Joseph Lévesque, Ottawa, Ontario

Gunner Robert William Manley, Niagara Falls, Ontario

Gunner Basil Patrick McKeown, Moscow, Ontario

Gunner Albert Patrick Orr, Calgary, Alberta

Gunner David Owens, Granby, Quebec

Gunner Leslie Albert Snow, St. John's, Newfoundland and Labrador

Gunner Albert George Stroud, Howley, Newfoundland and Labrador

Gunner Joseph Thistle, Conception Bay, Newfoundland and Labrador

Bombardier James Milo Wenkert, Cowansville, Quebec

Gunner James Joseph White, Placentia Bay, Newfoundland and Labrador

Gunner William David Wright, Neepawa, Manitoba

May their souls rest in peace.

REMEMBRANCE DAY 2003

Hon. Gerry St. Germain: Honourable senators, the Right Honourable John Diefenbaker once stated:

> I am a Canadian, free to speak without fear, free to worship in my own way, free to stand for what I think right, free to oppose what I believe wrong, or free to choose those who shall govern my country. This heritage of freedom I pledge to uphold for myself and all mankind.

He was speaking on the Canadian Bill of Rights on July 1, 1960.

Today, in remembrance of the Korean War, and then again next week on Remembrance Day, we honour Canadian veterans for upholding these values and freedoms. Through their commitment and service to this country, veterans demonstrated to all Canadians that freedom must be protected.

On Remembrance Day, I will join with all Canadians to recognize and thank our veterans for the immense sacrifices they and their families have made in service to this great country. Our collective conscience as a nation is coloured by the courageous actions of our soldiers.

All generations of Canadians know all too well the loss experienced by a nation at the death of a soldier. The reality is that freedom entails great responsibility and great sacrifice.

• (1410)

Recognizing this truth, we honour all veterans who serve this nation with distinction, remembering that in World War I, World War II, the Korean War and the Gulf War, 1,500,000 Canadians served overseas and more than 100,000 died, giving their lives so that we may live in peace.

Today we pay special tribute to the veterans of the Korean War, celebrating the 50th anniversary of the Korean War Armistice. On this Remembrance Day we must affirm our collective responsibility to support the members of our military currently working for peace in the former Yugoslavia and in Afghanistan. We are reminded of the courage of our Canadian soldiers who recently lost their lives while serving abroad. To them, we pay the utmost respect, admiration and gratitude.

Above all, we must teach young generations of Canadians that historically this country did not shy away from contributing to the protection of democracy and freedom in the world. Rather, over two world wars, the Korean War and innumerable peacekeeping missions, Canada developed and sent into battle one of the most highly professional, trained and motivated forces in the world. This tradition of excellence must not be abandoned.

Our duty, honourable senators, is to honour our veterans by continuing to support the men and women who now serve and by protecting the legacy of those brave soldiers who paid the ultimate price so that we could live in peace. To serve in armed combat for the sake of freedom and democracy is among the most noble of sacrifices that our fellow Canadians can make.

VISITORS IN THE GALLERY

The Hon. the Speaker: I wish to draw the attention of honourable senators to the presence in the gallery of the Honourable Zharmakhan Tuyakbai, Chairman of the Mazhilis of the Parliament of the Republic of Kazakhstan. Mr. Tuyakbai is accompanied by Mr. Valeryan Zemlyanov, Member of the Committee on Legislation and Legal Reform; Mr. Serik Konakbaev, Member of the Committee on International Affairs, Defence and Security; Mr. Rakhmet Mukashev, Member of the Committee on Legislation and Legal Reform; Mr. Amalbek Tshanov, Member of the Committee on International Affairs, Defence and Security; from the Embassy of the Republic of Kazakhstan, His Excellency Kanat Saudabayev, Ambassador to Canada, who is accredited from Washington; and from the Kazakhstan Consulate in Toronto, our former colleague in the other place, the Honourable Robert Kaplan, Honorary Consul General.

Welcome to the Senate of Canada.

[*Translation*]

ROUTINE PROCEEDINGS

OFFICIAL LANGUAGES ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Rose-Marie Losier-Cool, the Chair of the Standing Senate Committee on Official Languages, presented the following report:

Tuesday, November 4, 2003

The Standing Senate Committee on Official Languages has the honour to present its

FIFTH REPORT

Your Committee, to which was referred Bill S-11, *An Act to amend the Official Languages Act (promotion of English and French)*, has, in obedience to the Order of Reference of Wednesday, May 7, 2003, examined the said bill and now reports the same without amendment.

Respectfully submitted,

ROSE-MARIE LOSIER-COOL
Chair

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

On motion of Senator Losier-Cool, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[*English*]

HUMAN RIGHTS

FACT-FINDING TRIP—OCTOBER 10-17, 2003—
REPORT TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to table the seventh report of the Standing Senate Committee on Human Rights entitled: "Report of the Delegation of the Standing Senate Committee on Human Rights on its Fact-Finding Mission to Geneva, Switzerland and Strasbourg, France, October 10 to 17, 2003."

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

STUDY ON LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP

INTERIM REPORT OF HUMAN RIGHTS
COMMITTEE TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to table the eighth report of the Standing Senate Committee on Human Rights entitled: "A Hard Bed to Lie in: Matrimonial Real Property on Reserve."

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

STUDY ON THE ADMINISTRATION AND OPERATION OF THE BANKRUPTCY AND INSOLVENCY ACT AND THE COMPANIES' CREDITORS ARRANGEMENT ACT

REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE TABLED

Hon. Richard H. Kroft: Honourable senators, I have the honour to table the 15th report of the Standing Senate Committee on Banking, Trade and Commerce concerning its examination on the administration and operation of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act entitled: "Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act."

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

[*Translation*]

STUDY ON VETERANS' SERVICES AND BENEFITS, COMMEMORATIVE ACTIVITIES AND CHARTER

INTERIM REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE TABLED

Hon. Michael A. Meighen: Honourable senators, I have the honour to table the eighteenth report of the Standing Senate Committee on National Security and Defence on the study of the services and benefits provided to veterans, commemorative activities, and the Veterans Charter.

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

• (1420)

[*English*]

FOREIGN AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF TRADE RELATIONSHIPS WITH UNITED STATES AND MEXICO

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

> That, notwithstanding the Order of the Senate adopted November 21, 2002, the date for the final report of the Standing Senate Committee on Foreign Affairs regarding its study of the Canada-United States of America trade relationship and the Canada-Mexico trade relationship be extended from December 19, 2003 to March 31, 2004.

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

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

> That the Standing Senate Committee on Foreign Affairs be permitted, notwithstanding usual practices, to deposit its reports with the Clerk of the Senate, if the Senate is then not sitting; and that the reports be deemed to have been tabled in the Senate.

NATIONAL SECURITY AND DEFENCE

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

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday next, November 5, 2003, I will move:

> That the Standing Senate Committee on National Security and Defence be empowered, in accordance with rule 95(3)(a) to sit on November 17, 2003 and November 24, 2003, even though the Senate may then be adjourned for a period exceeding one week.

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

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday next, November 5, 2003, I will move:

> That the Standing Senate Committee on National Security and Defence have power to sit at any time on Monday, November 17, 2003 and Monday, November 24, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday next, November 5, 2003, I will move:

> That the Standing Senate Committee on National Security and Defence be permitted, in the event of an adjournment and not withstanding the usual practices, to deposit with the Clerk of the Senate an interim report on first responders, and that the report be deemed to have been tabled in the Chamber.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

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

> That the Standing Senate Committee on Agriculture and Forestry have power to sit at 5:30 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. Sharon Carstairs (Leader of the Government): Honourable senators, I do not think that is necessary because we passed a motion that we would rise.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, that motion relates to Wednesdays.

Senator Carstairs: It is for today that the honourable senator is requesting leave.

Senator Oliver: That is correct.

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

Hon. Marcel Prud'homme: Objection.

The Hon. the Speaker: Is that a "no," Senator Prud'homme?

Senator Prud'homme: No, just the usual objection.

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

Hon. Senators: Agreed.

Senator Prud'homme: On division.

Motion agreed to, on division.

[*Translation*]

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(h), I have the honour to present the petitions signed by 500 other individuals, for a total of 15,500 signatures, asking that the City of Ottawa, the capital of Canada, be declared officially bilingual and reflect the country's linguistic duality.

The petitioners are calling on the Parliament of Canada to consider the following:

> That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;
>
> That section 16 of the *Constitution Act, 1867*, designates the city of Ottawa as the seat of the Government of Canada; and;

[*English*]

> That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;
>
> That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.
>
> Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the *Constitution Act*, from 1867 to 1982.

QUESTION PERIOD

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— STATUS OF PROCUREMENT PROJECT

Hon. J. Michael Forrestall: Honourable senators, my question is for the Leader of the Government in the Senate. This is another auspicious date. Ten years ago today, a man who is about to retire and is in the midst of celebrating his tenth anniversary cancelled, with a flourish, the contract for the Sea King helicopters.

Some Hon. Senators: Shame!

Senator Forrestall: With the air force investigation into the cause of the two Sea King loss-of-power malfunctions while hovering still ongoing and the entire fleet still under flight restriction, can the Leader of the Government give us some direct information as to the status of the maritime helicopter replacement project? Where does it stand? It is two or three months overdue again. When will requests be called?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator knows and certainly alluded to in the preamble to his question, there was a suspension of operation of the Sea Kings due to problems with two of them. The entire fleet did undergo a suspension of normal flying, but that suspension has now been lifted. The Sea Kings are now back in operation.

It was a prudent precaution. Although the honourable senator does not always concur, the Canadian government, in particular those in charge of our military operations, does not allow the operation of any piece of military equipment that is considered to be unsafe.

As to the ongoing procurement process, as I indicated to the honourable senator some months ago, a decision is expected early in 2004.

Senator Forrestall: There is a temptation to give another explanation as to just what "immediately" means, what "soon" means and what "high priority" means. However, it merely means the passage of time.

As the Leader of the Government may know, the pre-qualification phase of the Maritime Helicopter Project was at an end on October 30, 2003. Will the Leader of the Government tell honourable senators something a little more specific than "some time next year?" Will the Leader of the Government tell us when the request for proposals will be released to industry, keeping in mind that the request for proposals was expected in September?

It is now November 4, 2003, 10 years after the date of cancellation.

• (1430)

Senator Carstairs: Honourable senators, I will try to obtain the date of when they expect to release the request to the industry and provide that information to the honourable senator.

Senator Forrestall: Given the constant delays of this Maritime Helicopter Project, given the fact that the Department of Defence is faced with cuts, and given that a new Prime Minister and new cabinet have no commitment to the Sea King replacement at all, indeed nor to any other much needed equipment by the Canadian Armed Forces, can the Leader of the Government give us a categorical commitment that the military will receive at least one replacement helicopter for the obsolete Sea King before the end of this decade — by then some 17 years after the current Prime Minister cancelled the EH-101 program?

Senator Carstairs: As the honourable senator knows, until such time as the final bids have been submitted and the final choice of an aircraft has been made, the actual date of when the first one would be delivered will not be available.

HEALTH

FINANCIAL UPDATE— ADDITIONAL FUNDS TO PROVINCES

Hon. Gerald J. Comeau: Honourable senators, yesterday in his economic update, the Minister of Finance warned the provinces that they may not get the supplementary $2 billion payment for health care announced in the last budget. They will only get the full amount if there is $2 billion left at the end of the year, and if there is a lesser amount, they will get the lesser amount.

Can the Leader of the Government assure the Senate that the government will not try to dispose of any of the surplus at the end of the current fiscal year through the purchase of executive jets or by dumping money into foundations in order that the $2 billion earmarked for health care stays in the surplus and does finally wind up in health care, which is the number one priority of Canadians?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is an amazing day when a very positive announcement made by the Department of Finance is twisted by the honourable senator opposite. The original agreement with the provinces was that they would only get this money if there were a $3 billion surplus. The decision has now been made that a lesser surplus would be required in order for them to get this money. Indeed, if the surplus were less than $2 billion, they would get up to whatever the surplus was, which is a much greater commitment than was made at the time of the signing of the accord.

Senator Comeau: Honourable senators, "twisting" is a word that is very well known to the other side. This side tries to stay with the proper wording.

In reading the wording of the Finance Minister, he is basically saying that if the amount is not there, they will not get it. The provinces are endeavouring to provide services to their people based on the commitment that the $2 billion would be there. It looks as if it may not be paid at all now. We will not really find out until August when the books are closed, and possibly even after that, if any money is to be forthcoming.

Can the government leader in the Senate assure the Senate that the new, incoming Prime Minister will not review this $2 billion, as he planned to do with the $700 million promise to VIA Rail, and that this will not become one of the other items on the review by the incoming Prime Minister?

Senator Carstairs: Honourable senators, I would be very surprised if a new Prime Minister would not review all programs and initiatives of the government. I would think that to do so would be extraordinarily prudent on his part.

Senator Comeau: Honourable senators, is the Leader of the Government in the Senate saying that the $2 billion commitment of the current government is up for review by the incoming Prime Minister?

Senator Carstairs: I did not say that, senator. I said that the new Prime Minister would review all the initiatives of the government, because to do otherwise would be less than of service to the Canadian people.

Hon. Donald H. Oliver: Honourable senators, my question is a follow-up to the line of questions just posed by Honourable Senator Comeau. It arises from the fact that the provinces may or may not get that $2 billion.

Another set of numbers in the economic statement is equally disturbing. In last year's economic update and in the budget, the government said that it would spend $13.4 billion on fiscal arrangements this year. This is mostly equalization payments but also includes transfers to the territories and a few other, minor transfer payments. We have now learned that the government expects to send the provinces only $11 billion, or $2.4 billion less. Will the government leader confirm that the real question facing the provinces is whether they will end up with $2.4 billion less than they were told to expect in February, or adding in that doubtful $2 billion, they will find themselves $4.4 billion short?

Senator Carstairs: The honourable senators know that the fiscal arrangements that are entered into with provinces are ones which both parties agree to, and there is no change, or attempt to do it any other way.

FINANCE

FINANCIAL UPDATE—EQUALIZATION PAYMENTS

Hon. Donald H. Oliver: Honourable senators, in each and every year going out to 2007-08, the government expects that transfers for fiscal arrangements will be $2 billion to $2.4 billion less than expected at the time of the last economic update. It all adds up to more than $11 billion over five years being taken away from the provinces that can least afford it. At the same time, the equalization-receiving provinces are being asked to repay more than $1 billion from last year. Why is it that whenever this government faces a fiscal shortfall, it tries to offload the problem on the provinces?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, there is no offloading here at all. As the senator knows, equalization payments are based on a formula, and that formula is being respected.

INTERNATIONAL TRADE

PHARMACEUTICAL SALES TO PEOPLE IN UNITED STATES

Hon. Brenda M. Robertson: Honourable senators, last Wednesday the Mayor of New York City, Mr. Michael Bloomberg, called upon American pharmaceutical companies to stop supplying drugs to Canada. Mr. Bloomberg contends that American consumers are forced to pay more because the pharmaceutical companies need to recover lost profits due to our price controls. Although the government leader in the Senate told us last week that Canada does not impose price controls on pharmaceutical products but, rather, regulates the prices, obviously many Americans do not make that distinction, and they may put pressure on the drug companies to cut our supply.

My question is for the Leader of the Government in the Senate. What is the federal government's response to Mr. Bloomberg's appeal to U.S. pharmaceutical companies, and does it have any concern that they will listen to his requests?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I must say it is hard enough in my job to answer for all of the ministers in the Government of Canada. I will not attempt to answer for the Mayor of New York.

Senator Robertson: Honourable senators, I guess the honourable minister misunderstood my question, because my question was what the federal government's response was to Mr. Bloomberg's appeal to the U.S. pharmaceutical companies, and that is completely different from her interpretation.

HEALTH

PHARMACEUTICAL SALES TO PEOPLE IN UNITED STATES—POSSIBILITY OF SHORTAGES

Hon. Brenda M. Robertson: I also have a supplementary question: Health Canada sent a letter last Monday to pharmacy and medical associations across the country, warning that risks inherent in the Internet pharmacy practice may lead to drug shortages in Canada. The letter asks that any trends spotted concerning drug supplies, safety concerns or impacts on health human resources be communicated to the department.

I should like to ask the Leader of the Government in the Senate to tell us if pharmacies are already letting Health Canada know about shortages they are facing that they can somehow trace to the sale of Canadian prescription drugs to American consumers.

Hon Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the letter was dated October 27, 2003, which was just last week. To my knowledge, no responses have been received, but I think it was highly prudent on the part of Health Canada to ask pharmacies throughout the country, as well as medical associations and regulatory authorities, to inform the government if there were a potential for any drug shortages in Canada.

INTERNATIONAL TRADE

PHARMACEUTICAL SALES TO PEOPLE IN UNITED STATES

Hon. Consiglio Di Nino: Honourable senators, some of us have been around long enough to remember when the previous government fought very hard for legislation to create a pharmaceutical industry in this country based on brand-name manufacturing.

• (1440)

The government included in that legislation certain safeguards to ensure that Canadian interests were respected. At the time the honourable senator's colleagues were very critical of that system, but they have since come on board and have agreed that this is a very good system.

Would it not be appropriate to tell the Americans that, unlike some other things that we may not do quite as well, this is one thing that we have done right? This is one thing that has worked. This is one thing that we, as a country, have been able to accomplish to the benefit of both the pharmaceutical companies and the consumers; it is a win-win situation. If they do not know how to do that, they can come up here and we can teach them how to do it.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I would assume that the American government is well aware of the Canadian regulatory system with respect to prescription drugs. I think they could learn a great deal about the way in which we manage our health care system, but they have not, up to this time, chosen to do so.

FOREIGN AFFAIRS

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—REQUEST FOR INQUIRY

Hon. Marcel Prud'homme: Honourable senators, people did not pay much attention on Tuesday, October 22, 2002, when I was the first one in either house to raise the very scandalous events that took place concerning Mr. Arar. I know the region he comes from particularly well. My father always told me that if you want to talk about human rights, you must have universality or you do not have it at all. If abuses take place in countries that I know very well, those are still abuses.

Then we heard from our friends Senators Di Nino, Doody and Andreychuk on September 18, 2003, a year later; from Senator Nolin on October 7; from Senators Di Nino, Kinsella and Lynch-Staunton on October 8; from Senators Nolin and Prud'homme on October 20, 2003. Some of us have been interested, but a full year has passed since my first intervention.

In view of all the answers that the Honourable Leader of the Government has given — and I appreciate them — and in view of the logic of all her answers and the logic of all the government's actions, the time has come for an inquiry.

I listened attentively this morning for an hour and a half to the first press conference given by Mr. Arar and his wife. It was an open conference, as is done in Canada. There is no doubt in my mind that nothing will satisfy Canadian public opinion but an open, public, independent inquiry as to exactly what took place in New York regarding the immense abuse that was suffered by this Canadian citizen there and by some forces in Jordan.

I am somewhat nervous and surprised that no one has yet asked this question today. Will the government now consider holding the public, independent inquiry that was requested earlier by my other colleagues in this house?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the chair of the Commission for Public Complaints against the RCMP has initiated a complaint, as permitted under the Royal Canadian Mounted Police Act. That was done prior to Mr. Arar's press conference today. As a result of that press conference, I can only assure honourable senators that the Government of Canada is reviewing that matter. Cabinet was meeting at the time of the press conference, so none of us were able to watch it, but after cabinet has reviewed that conference, they will then determine if the present process is adequate.

INDUSTRY

INTERNATIONAL COMPETITIVE STANDING

Hon. W. David Angus: Honourable senators, in the press daily since last Thursday, we have seen reports that, according to the World Economic Forum, Canada's competitiveness ranking has plummeted from third to sixteenth in just two years. The rating appears to be plummeting earthwards, very much like the Sea King helicopters. Among factors cited by the respected forum, which represents 95 nations, are distorted government subsidies, favouritism in government decisions, bureaucratic red tape, foreign-ownership restrictions and taxes, among other things. However, the biggest reason cited for Canada's embarrassing fall is a clear decline in the level of confidence held by business operators in the government's ability to limit corruption and bias in the public sector.

Honourable senators, 10 years ago the Prime Minister came to office with a Red Book that devoted a full chapter to governing with integrity, and a full chapter as well devoted to an innovative economy. What went wrong? Why are we slipping in competitiveness? Why has Canada fallen behind in the level of confidence that business operators worldwide have in the Canadian government's ability to limit corruption?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator refers to the WEF, which is the World Economic Forum. That forum is one of many organizations that publish rankings of countries each year, but I think it is important to note that their rating is based on a survey of only 75 business executives in Canada. That is the extent of the engagement there. On the other hand, a study done by KPMG last year ranked Canada as the leading cost-competitive country among the most advanced industrial economies. We know that we are the leading economic nation in the G7. So, yes, to answer honourable senator's question, the report is worthy of our examination. It is a report which we must consider, but we should consider it in tandem with other reports, such as that of *The Economist* magazine, which ranks Canada as one of the best places in the world to invest and to do business.

Senator Angus: Honourable senators, whether the government leader accepts the findings of this respected international forum or not, its reports are considered by decision-makers around the world when they seek safe places to invest their funds. A report like this can only damage Canada's reputation.

There is, of course, some good news in the report in certain areas, including the banking sector, Internet access in schools, and our communication systems. However, what steps is the government prepared to take to deal with the evidence that our tax system is inefficient, that there is favouritism in the decisions of government officials and that there are excessive amounts of bureaucratic red tape delaying key government decisions on business matters? Does the government not see this as a wake-up call?

Senator Carstairs: Honourable senators, clearly the report of the WEF must be considered, but it must be considered in tandem with the published reports of many other organizations. For example, when this report came out, James Milway, Executive Director of the Toronto-based Institute for Competitiveness and Prosperity, dismissed the report, saying, "There is less there than meets the eye."

I think it is quite clear that Canada remains a very competitive economy.

HEALTH

RESIGNATION OF FORMER ASSISTANT DEPUTY MINISTER OVER ALLEGATIONS OF BRIBERY AND FRAUD

Hon. Marjory LeBreton: Honourable senators, I would like to follow up on some questions I posed earlier regarding Mr. Paul Cochrane and his assistant Aline Dirks, formerly of Health Canada.

On September 17 in this place, the government leader in the Senate stated that the allegations pertaining to bribery and fraud came after Mr. Cochrane had resigned from the government and not before. Now we know that Health Canada began a forensic audit in October of 2000 about the use of public funds. In December of 2000, Mr. Cochrane was suspended from the public service. Yet in December of 2002, Public Works hired Aline Dirks, and in March 2003 Paul Cochrane was hired. In total, the contracts were worth approximately $100,000.

My question again to the Leader of the Government in the Senate is: How did it come to pass that someone who had been suspended from the public service with allegations of the misuse of public funds, bribery and fraud can be hired back as a consultant?

• (1450)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as I have told the honourable senator in the past, in this country you are innocent until you are proven guilty. Allegations do not make for a conviction. In the case of Mr. Cochrane, forensic audit led to serious criminal charges having been laid against him. That has taken place and those trials will proceed in the due process of time.

Senator LeBreton: Are there no precautionary measures? Surely they could have hired people on contract other than Mr. Cochrane and Ms. Dirks.

A series of audits has been conducted on the former Health Canada branch that Paul Cochrane headed up. Former deputy minister David Dodge told the Senate Standing Senate Committee on Banking, Trade and Commerce that senior management was in the process of addressing a number of issues concerning the old medical services branch when this particular incident came to light. Yet, despite concerns about his management, Mr. Cochrane was awarded a $7,000 bonus for his performance in 1999-2000.

Can the Leader of the Government tell us how a performance bonus can be awarded to someone who headed up a branch that was the subject of audits, including a forensic audit?

Senator Carstairs: Honourable senators, it would appear that these performance bonuses are awarded quite readily. As the honourable senator is well aware, 95 per cent of public servants who are eligible for the bonus system seem to collect. That would appear to me to be good reason to investigate carefully how bonuses are awarded, and I understand that is being done.

VETERANS AFFAIRS

VETERANS INDEPENDENCE PROGRAM— ENTITLEMENT TO WIDOWS

Hon. Michael A. Meighen: Honourable senators, last week, the House of Commons unanimously approved the sixth report of its Standing Committee on National Defence and Veterans Affairs.

In that report, it was unanimously recommended that lifetime VIP benefits, program benefits, be paid to all war veterans' widows, including those whose husbands had died before May 12, 2003. This measure is intended, as honourable senators are well aware, to correct a decision made by Veterans Affairs earlier this year that, unfortunately, granted lifetime benefits only to those widows whose husbands had died after May 12, while at the same time arbitrarily leaving 23,000 widows with no VIP benefits. Each day that passes for these widows is obviously another day without much needed help around the home.

My question to the Leader of the Government in the Senate is this: In view of the unanimity surrounding this question in this chamber and in the other place, and of its critical importance to some 23,000 widows of Canadian war veterans — and, keeping in mind that we, as a nation, will be celebrating Remembrance Day in exactly one week's time — can the minister tell all honourable senators when her government will do the right thing and make an announcement of its intentions?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can tell the honourable senator that before the unanimous report was tabled, the Prime Minister made an undertaking to review this file, and that review is ongoing.

Hon. A. Raynell Andreychuk: Honourable senators, I am tempted to ask a supplementary to Senator Meighen's question. Surely, after a report on what I would call a pretty straightforward issue such as the House report, what is left to investigate on behalf of these widows? Surely it is a question of compassion versus scrutiny, if I can call it that.

Senator Carstairs: Honourable senators, it involves a little something in the order of $300 million.

Senator Andreychuk: I think that taxpayers would consider that $300 million is justified and reasonable to assist those whose families put their lives in harm's way to protect us.

Senator Carstairs: I will certainly convey to the Government of Canada that honourable senators think it is reasonable. I would therefore hope that, if the expenditure of that amount would result in fewer dollars being paid out to the provinces for the health care delivery system, you would also be supportive of that.

Senator Andreychuk: I do not think that is a fair comparison. This government spends a lot of money supporting loans for companies and risk ventures. I can also say that many other dollars are quite properly spent. However, in weighing the humanitarian need in this instance and the need for justice, it has nothing to do with how much money goes to the provinces. The relevant question is how the government federally exercises the discretion with which it spends its own money — lest I bring up the gun registry or the purchase of jets. There is discretionary spending within the government envelope, and I would urge it to exercise that discretion in favour of these widows.

Senator Carstairs: Honourable senators, the senator is quite right that the government does have to set priorities, and that is what the government is considering when deliberating on this issue.

Senator Andreychuk: I should hope it would stop deliberating and start acting, as one of its final gestures.

FOREIGN AFFAIRS

IRAQ—RECONSTRUCTION ASSISTANCE

Hon. A. Raynell Andreychuk: Honourable senators, Canada has agreed to contribute $300 million to help with the reconstruction in Iraq. Yet, the dire security situation has prevented the release of much of the money pledged. Indeed, the death toll of U.S. soldiers in Iraq now exceeds the number of deaths the United States suffered during the war itself. Neither aid nor humanitarian workers are immune from attack, as the Red Cross in Iraq can attest.

I know that the Minister for International Cooperation pledged, as part of the $300 million, a $100 million contribution to the International Reconstruction Fund Facility for Iraq, stating:

> Our view at this point is that there are sufficient conditions in place to give us confidence that the Fund will serve to move Iraq's reconstruction agenda forward.

My question to the Leader of the Government in this chamber is: What are those conditions? Do they relate to the fund itself or do they relate to the security situation in Iraq?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, one of the initiatives that was announced is the training of police officers. That will not take place in Iraq. My understanding is that it will take place in Jordan. There would be no safety concerns for those delivering that training there.

There are other such opportunities. Clearly, the safety issue is a significant one. We know that the Red Cross has pulled out a great many of its workers, and that the United Nations has pulled out a great many of its workers. It will be difficult to spend these dollars if the conditions are such that we cannot get the aid to the people in Iraq who need it the most.

Senator Andreychuk: As a supplementary, is the minister saying that some of the $100 million has been disbursed in this training, or is it coming out of the other $200 million pledged? In other words, is money actually going into reconstruction on the ground that Iraqis can see, or is it the situation that the money will not be put directly into Iraq but will be used for training off ground?

Senator Carstairs: Honourable senators, my understanding is that $10 million of the $100 million has been put aside for police training, which was determined to be an essential measure in order for the other dollars to be effectively spent.

[*Translation*]

QUESTION OF PRIVILEGE

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, in accordance with rule 43, Senator Kinsella gave written and oral notice of a question of privilege that was subsequently considered yesterday at the conclusion of Orders of the Day. The question of privilege being raised by Senator Kinsella challenges the meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament held last Friday, October 31. During the course of that meeting, the committee completed clause-by-clause consideration of Bill C-34, establishing separate ethics officers for the Senate and the House of Commons.

• (1500)

Earlier today, the committee presented its report on the bill without amendment. All of these actions, according to Senator Kinsella, constitute a contempt of Parliament.

In the view of the Deputy Leader of the Opposition, the contempt arises from the fact that the conduct of the committee was already under review through a point of order that was awaiting a Speaker's decision. "Holding a meeting while the validity of a previous meeting has been taken under advisement by the Speaker carried with it," as the senator explained it, "the clear implication that the ruling of the Speaker and, thus, of the chamber is irrelevant." The meeting of the committee last Friday, according to Senator Kinsella, was an improper action taken in contempt of the chamber itself.

[*English*]

Senator Robichaud, the Deputy Leader of the Government, then spoke to contest the merits of the question of privilege. In his estimation, no prima facie case for a question of privilege has been established. The actions taken by the Rules Committee last week were, according to the senator, the result of decisions that had been made by its steering committee with respect to the consideration and disposition of Bill C-34. In the Deputy Leader's view, there was no motion or order of the Senate to prohibit the committee from meeting and no senator was prevented from participating in the committee's deliberations at meetings that were properly called following the required notice.

[*Translation*]

In supporting the position of Senator Kinsella, Senator Lynch-Staunton requested that due consideration be given to the long-standing customs and traditions of the Senate, not just to its written rules. In fact, as the Leader of the Opposition explained, this is the basis of the question of privilege. Alluding to the point of order that had been raised last week, Senator Lynch-Staunton maintained that the rights of certain senators sustained by custom and tradition have been violated. This breach of their rights was now compounded by the committee's actions to meet last Friday and to adopt a report on Bill C-34.

[*English*]

Several other senators participated in the debate on the question of privilege. Senator Milne, the chair of the Rules Committee, disputed the notion that the committee was effectively immobilized by virtue of a pending ruling from the Speaker. Senator Andreychuk, on the other hand, suggested that the point of order raised with respect to the committee's meeting last Thursday also had inferential implications that undermined the validity of what occurred last Friday. Senator Fraser defended the process that the Rules Committee followed in providing notice for the Friday meeting. The senator also noted that, in comparison to the complaint regarding the Thursday meeting, there were no scheduling conflicts affecting the ability of any senator to attend. For Senator Stratton, the fundamental question is one of cooperation or rather the lack of it. Next, Senator Rompkey asked me to take into account what occurred in 1991 when the Rules Committee met to adopt important amendments to the *Rules of the Senate* despite a deliberate boycott by the Liberal opposition.

Finally, Senator Kinsella made another intervention to close the debate on the question of privilege. He reiterated the point that, in his view, there is a tradition suspending any activity that is the object of a ruling by the Speaker until the ruling is made. Based on this understanding, the Rules Committee's meeting last Friday and the presentation of its report on Bill C-34 violated this tradition and constituted a breach of privilege. That the ruling made earlier today did not sustain the point of order, according to Senator Kinsella, did not materially affect this basic proposition. The meeting of the Rules Committee last Friday, based on this perspective, is invalid and the report adopted by the committee is equally invalid.

[*Translation*]

Let me begin by thanking all honourable senators for their participation in the debate on the question of privilege. It is always a challenge for the Speaker to come to terms with these complex procedural issues. As Speaker, I am duty bound to be concerned with my obligation to balance as best I can the opposing principles that are at the core of our parliamentary system — to permit the transaction of business in a timely manner while at the same time preserving the right of opposing factions to be properly heard. In fulfilling this responsibility, I am conscious of the need to take into account the traditions and customs of the Senate, but I am equally obliged to abide by the *Rules of the Senate* whenever they provide clear direction.

[*English*]

Rule 43 provides some guidance on the procedures to be followed in raising a question of privilege for the purpose of obtaining a ruling from the Speaker on its prima facie merits. The notice requirements have been met and the arguments for and against the question of privilege have been made. The question of privilege was raised at the first opportunity and it involves a matter within the competence of the Senate to correct. What remains to be determined, however, is whether the matter of the question of privilege is a "grave and serious breach."

Senator Kinsella has argued that the question of privilege he alleges in this case is in fact a contempt of Parliament. According to *Marleau and Montpetit: House of Commons Procedure and Practice*, on page 52, a contempt of Parliament refers to:

> Any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed...

The text continues and states:

> Contempt may be an act or an omission; it does not have to actually obstruct or impede the House or Member, it merely has to have the tendency to produce such results.

Erskine May: Parliamentary Practice points out that it is not really possible to list every conceivable contempt, though it generally relates to misconduct of some kind that impedes either House of Parliament in the performance of its functions.

In this case, the contempt of Parliament that allegedly infringed the rights of some senators relates to the decision of the Rules Committee to meet last Friday despite the fact that questions about the committee meeting on Thursday, October 30 were the object of a point of order awaiting a ruling from the Speaker. It is being asserted that because of this impending ruling, the committee was not entitled to meet and to pursue its business until such time as the ruling was made.

Although I have been asked not to neglect the traditions and customs of the Senate, I am hard pressed to understand how they relate to this case in the way that has been suggested. It is true that an item on the Order Paper is normally suspended once a point of order has been raised concerning a procedural question requiring a ruling from the Speaker. This is because it is usually not possible to pursue the item within the chamber while its procedural probity is in question. There are numerous examples where this has occurred. It is not invariable, however. Debate on two Royal Assent bills last year, for example, was not suspended following a point of order on the possible need to seek royal consent from the Crown.

In dealing with committees, we are confronted with something that is quite different than an item of Senate business on the Order Paper. The workings of a committee are not the same as items on the Order Paper. By tradition, custom and practice, Senate committees are generally autonomous in the way they conduct their business. This is the case despite the fact that committees receive their authority from the Senate. Each standing committee has a mandate under the *Rules of the Senate* and receives from time to time orders of reference to undertake certain specific work. Committees expect to conduct their affairs without undue interference from the Senate itself. Arrangements are often made between members of the government and opposition to guide the operations of committees. As has been discussed, time slots are assigned to committees based on an understanding reached between the leadership of the parties, not by order of the Senate. This is done, in part, to better accommodate the needs of senators who are often members of several committees. Each committee elects a chair and a deputy chair to regulate the proceedings of committee meetings. Most committees also establish steering committees to set the agenda and schedule of their meetings. All of this is done without reference to the chamber and even less to the Speaker.

• (1510)

In my ruling yesterday, I referred to a passage from Beauchesne's 6th edition, at citation 760(3) which explained that the Speaker of the other place has declined many times to exercise procedural control over committees. I stated at that time that this proposition is no less true in the Senate; it is one of our customs and practices. Now, however, it would seem that the question of privilege is expecting me to do the reverse and to go against this practice.

The point of order that was raised last Thursday addressed an objection to the arrangements that had been made to a meeting of the Rules Committee that morning. As I understood it, neither the committee's mandate nor its specific order of reference was in question. Though I was fully prepared to make my ruling at the time, circumstances intervened to prevent me from doing so. Nonetheless, there was nothing in the point of order to indicate that the committee was not competent to carry on its work. The objection to the method followed by the committee with respect to one meeting did not put into question the entire operations of the committee or its ability to call more meetings. To suggest otherwise would seriously undermine the ability of committees to function and would even jeopardize the work of the Senate itself. If I were to accept the underlying proposition of the question of privilege, any point of order could halt the operations of any Senate committee at any time. I do not believe that this is right. This is not correct procedurally and is contrary to the Senate's traditions.

As I tried to indicate in my ruling on the point of order, I appreciate the sense of grievance that some senators of the opposition, as well as some senators from the government side, have expressed in respect to the pace that is being followed in the deliberations on Bill C-34. On the one hand, some senators are convinced that there is need for more time to study this complex question. The government, on the other hand, feels that the work already done by the Rules Committee should be sufficient to enable it to review the bill within a limited time. This is not a procedural issue, but a political one. With respect to this point, I appreciate the analogy that was made by Senator Lynch-Staunton regarding the decision of the Supreme Court and the matter of a unilateral decision to patriate the Constitution: legally it was possible, but it might not be prudent or right. As Speaker, however, I have no role in resolving these different points of view because they are political and not procedural.

Based on the arguments that have been made, it is my ruling that there is no prima facie question of privilege. No compelling case has been made that the Rules Committee committed a contempt of Parliament in meeting last Friday and adopting its report on Bill C-34.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS—
MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

(i) the Senate do not insist on its amendment numbered 2;

(ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;

(iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly,

And on the motion of the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the motion, together with the message from the House of Commons dated September 29, 2003, regarding Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Hon. John G. Bryden: Honourable senators, the principal reason given by the Minister of Justice for the cruelty to animals provision of the original Bill C-10 was to increase the penalties for violation of the Criminal Code offences relating to cruelty to domestic animals, and that it was not intended to create new rights or offences.

As the Standing Senate Committee on Legal and Constitutional Affairs examined the provisions of what is now Bill C-10B, we found that an entirely new regime was being introduced and a new part of the Criminal Code created.

The Legal and Constitutional Affairs Committee has spent a great deal of time on this bill. They have heard many witnesses, and individual senators have devoted considerable time away from the committee attempting to develop amendments that would move the bill along and yet protect the interests of persons legitimately dealing with animals, both domestic and wild. The bill has been improved, but it has a small number of serious flaws left in it.

I wish to associate myself with the excellent and serious analysis given in this chamber by our chairman, Senator Furey, and with the other members of the committee who spoke to the last position taken by the Department of Justice. In particular, I wish to support the amendment of Senator Watt dealing primarily with the aspect of the bill on the rights of Aboriginal peoples, as well as his proposal to refer the bill back to the Legal and Constitutional Affairs Committee.

Some Hon. Senators: Hear, hear!

Senator Bryden: I support returning this bill to the committee because many of us do not want to give up on this bill yet. We are so close and yet so far. The few issues left affect the fundamental rights of hundreds of thousands of people. I believe that, perhaps, the committee can resolve these issues.

Senator Watt and others have adequately canvassed the Aboriginal peoples' concerns to be considered by the committee.

I will deal quickly with the new criminal offence created within the new regime, that is, the criminal offence of killing an animal without lawful excuse, and give an approach that might help the committee and the government reach a consensus.

The proposed section 182.2(1) contained in the bill states:

> Every one commits an offence who, wilfully or recklessly,
>
> (*c*) kills an animal without lawful excuse;

The courts have said that "without lawful excuse" only means that an accident, duress or mistaken fact are implied by that phrase at common law. They have also said that the phrase has little significance unless Parliament specifically indicates that it has a particular meaning.

The failure to distinguish between the treatment and the killing of domestic animals that are in the care and control of a person, which has been regulated and has specific prohibitions and penalties attached to it in the Criminal Code, seems to have prevented the other place from recognizing that the creation of the new Criminal Code offence of killing an animal that is not under any person's care or control — a wild animal — does not have the defences that are available to the owners of domestic animals.

The new offence to wilfully kill an animal — any animal — is inconsistent with the common law right to kill an animal. The Criminal Code is clear that the common law defences are not available if they are inconsistent with the code. To put the new offence into the code would negate any common law defences that would otherwise be available, because it would be inconsistent with the statutory presentation that that is an offence.

The case law indicates that the possession of a permit or licence issued by a provincial government does not constitute a lawful excuse. An example is the *Jorgensen* case where a video store owner had the approval of the provincial censor board but, nevertheless, the police charged him under the Criminal Code. The Supreme Court of Canada ruled that the approval of provincial authorities did not constitute a lawful excuse.

Indeed, Mr. Justice Sopinka of the Supreme Court stated:

> Two propositions which are somewhat related militate against the submission that the OFRB approval (i.e. the provincial permit) can constitute a lawful justification or excuse. First, one level of government cannot delegate its legislative powers to another. Second, approval by a provincial body cannot as a matter of constitutional law preclude the prosecution of a charge under the Criminal Code.

• (1520)

Another illustration is the fact that when provinces wished to grant gambling licences for the purpose of conducting lotteries to raise funds in their provinces, they attempted to get specific agreements and exemptions from the federal government to the application of the laws in the Criminal Code against gaming.

We need to give "lawful excuse" a direct meaning and application to the new penalty created by this bill. This might be accomplished by adding a clause after proposed section 182.2(1)(*c*), which would say — and I am not proposing an amendment, but rather suggesting it be considered by the committee —

For the purposes of this clause, "lawful excuse" includes:

(*a*) the possession of a valid licence or permit to hunt, fish or trap issued by the Government of Canada, a province or a territory; and,

(*b*) the right of Aboriginal peoples to hunt, fish and trap in accordance with their inherent rights under section 35 of the Constitution and in accordance with any treaty or agreement between the Crown and Aboriginal peoples.

I believe that the committee, given the chance to consider this type of approach or a variation of an approach such as this, particularly the one relating to Aboriginal issues, may be able to come up with a reading of lawful excuse and a listing that makes it acceptable to the committee and to this chamber.

My position, in support of Senator Watt's amendment, is that I would support sending this bill back to the Standing Senate Committee on Legal and Constitutional Affairs to have them take another opportunity to use such an idea to bring this very difficult issue to a conclusion.

Hon. Gérald-A. Beaudoin: Would the honourable senator accept a question?

Senator Bryden: Certainly.

Senator Beaudoin: I agree with everything that the honourable senator has said. The resumé that was made by the chair of our committee was very good.

My question is this: Is it not also possible that in this case we are going against the fiduciary duty that we have under section 35 of the Canadian Constitution as interpreted by the courts? I believe that we are going against a principle that is enshrined in the Constitution. The fiduciary duty is mandatory. If we do not accept it, does the honourable senator not think that we are going against the Constitution?

Senator Bryden: Senator Beaudoin is much more familiar with the details of the Constitution and section 35 than I. However, my understanding is that what the honourable senator states is correct. Over all of these rights and concerns in relation to Aboriginals and their use of the land and resources stands the fiduciary relationship that initially comes from the Crown, which is a relationship we have as a society to our Aboriginal people.

Hon. Anne C. Cools: Honourable senators, if Senator Carstairs does not wish to speak, I move adjournment of the debate.

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

Some Hon. Senators: No.

The Hon. the Speaker *pro tempore***:** Will all those honourable senators in favour of the motion to adjourn please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore***:** Will all those honourable senators opposed to the motion to adjourn please say "nay"?

Some Hon. Senators: Nay.

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

Senator Cools: We cannot hear!

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

On motion of Senator Cools, debate adjourned.

BUSINESS OF THE SENATE

Hon. Anne C. Cools: On a point of order, I thought something else was happening.

What was that vote on, Your Honour, and why were we voting on it?

Senator Robichaud: It was on you.

Senator Tkachuk: On your adjournment.

Senator Cools: Why was there a vote on the adjournment?

Senator Carstairs: It does not matter. They can vote at any time, Senator Cools.

Senator Lynch-Staunton: The government does not want its own legislation. That is what it is all about.

Senator LeBreton: The government is filibustering.

Senator Lynch-Staunton: The Liberal Senate goes against the Liberal committee.

The Hon. the Speaker *pro tempore***:** The motion of Senator Cools to adjourn the debate was carried. We are now on Bill C-25.

Senator Cools: Your Honour, I am sorry about this, but quite often in this corner we cannot hear. It sounds unbelievable. I do not understand what happened, but many things —

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

Senator Lynch-Staunton: Some people want us to be on TV.

Senator Cools: I heard that, honourable senators.

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING

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.

Hon. Anne C. Cools: Honourable senators, I rise to speak to third reading of Bill C-25. As honourable senators know, my concern is that Bill C-25 will repeal the requirements of public servants to take the oath of allegiance.

At second reading, I expressed my objections, which found no favour with the government or with the minister. I will take the opportunity today to record my objections again.

Honourable senators, we should be aware that what is happening with this bill is that party discipline and the whip are being used to obtain a vote repealing the oath of allegiance for public servants. I contend that this is no simple matter; in point of fact, it is a matter of serious constitutional import.

Before I proceed with my remarks, I wish to take the opportunity to say that earlier today, this morning at 11 a.m., I attended the sixth annual Senate Ceremony of Remembrance. The event was an enormous success. It was sponsored by the Speaker of the Senate, Senator Dan Hays, and organized by our Usher of the Black Rod, Mr. Terrance Christopher, and our Mace Bearer, Mr. Richard Logan. I want to put on the record my appreciation and the appreciation of the many who attended for the efforts of these two gentlemen in organizing this event.

• (1530)

Interestingly enough, honourable senators, this morning the service focused on remembering the soldiers and those who participated in the Korean War. That was especially pleasing to me because, oftentimes, the Korean veterans are sometimes neglected.

Honourable senators, in the same vein as we are now leading up to Remembrance Day, we and the entire country will be recalling and remembering our veterans, our war dead and the war effort. In fact, we shall be recalling and remembering their supreme service. These ceremonies bring home the enormity of the sacrifice made by these young people. This morning, I was deeply touched to see that in the organization of the event the Usher of the Black Rod and the Mace Bearer included the Royal Anthem *God Save the Queen*.

Honourable senators, we live in an era of dismantling the principles of the system and deconstructing our history. I want to use this opportunity to say that all those soldiers, Canadians, men and women who served in the forces all marched in the service of God, king and country. We shall remember them.

I wanted to begin by putting that on the record. When soldiers go out to be that heroic, that self-sacrificing, they usually serve a higher ideal than just serving a government. Governments can be pretty bad, but the sense of king and queen is a notion higher than government. Governments may be removed, and governments may be bad and good, but the king and queen remain in perpetuity. It is a wonderful notion and one that I feel quite deeply and emotionally about.

Honourable senators, the law of allegiance is the ancient law that sets out the moral structure of the relationships between the governor and the governed. Between queen and subjects, allegiance is defined — and I shall read a definition from *Jowitt's Dictionary of English Law* — as being derived from Norman French, "aleggeaunce", from "lige" meaning "pure, absolute", unconditional homage owed to the lord liege. Allegiance, then, is described as follows:

> ...the natural, lawful, and faithful obedience which every subject owes to the supreme magistrate who oversteps not his prerogatives; the tie or *ligamen* which binds the subject to the sovereign in return for that protection which the sovereign affords the subject...

Honourable senators, that is a peculiar aspect of the law of allegiance, the very personal relationship that exists between queen and subject.

The oath of allegiance, as taken, sets the moral underpinnings regarding the performance of duties in public service. We must understand that an oath is a solemn declaration, which is made on an invocation of one's deity by calling forth God as a witness, so to speak. An oath is that declaration with that invocation, where one calls upon God — "so help me God" — to be a witness and to give testimony to what has happened.

Honourable senators, the oath of allegiance that we take when we come to the Senate — and it is found in the fifth schedule of the BNA Act — is as follows:

> I...do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Elizabeth. So help me God.

Honourable senators, this oath of allegiance, as I said, forms the moral structure and moral underpinnings of our constitutional system. It is complemented by another part of the oath system, which is the oath of Her Majesty at the coronation, and it is called the coronation oath. I would like to read from the Form and Oath of Her Majesty's Coronation a part of the coronation oath as taken by Her Majesty Queen Elizabeth II on June 2, 1953. In it, the archbishop asked:

> Will you solemnly promise and swear to govern the Peoples of the United Kingdom of Great Britain and Northern Ireland, Canada...and of your Possessions and the other Territories to any of them belonging or pertaining, according to their respective laws and customs?

Her Majesty is swearing to govern in accordance with the law and customs.

Her Majesty responded:

> I solemnly promise so to do.

Then the archbishop administers another part of the oath, saying:

> Will you to your power cause Law and Justice, in Mercy, to be executed in all your judgments?

The Queen responded:

> I will.

Then the archbishop said:

> Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel?

The Queen responded:

> All this I promise to do.

Then the Queen kneeled and with Her hand on the Bible continued:

> The things which I have here promised, I will perform, and keep. So help me God.

Honourable senators, if members of Parliament and members of cabinet would rely on and study the oaths of allegiance and the coronation oath, they would discover that those two pronouncements lay out the ethical and moral conditions of office and service. If we truly followed these pronouncements, we would not need ethical bills and ethical packages because the observance of these is, indeed, an ethical matter.

Honourable senators, the question that I have raised and what has been especially bothersome to me about repealing this oath is that there has been no public debate whatsoever in this country on the matter. I observed that the National Finance Committee in its hearings called no witnesses on this particular question. It is true that Minister Robillard appeared before the committee and answered questions posed by myself, I believe, but no independent witnesses appeared before the committee to give evidence about the propriety or the wisdom of repealing the oath of allegiance. I found that to be a terrible oversight. I found it also very bothersome that millions of people in this country have no idea that this is happening in Bill C-25. Bill C-25 has not been attended by much publicity.

In addition, I remind senators of the distress that was caused last year in October when John Manley made his not-so-flattering statements about Her Majesty while Her Majesty was actually visiting the country. There is no need for me to repeat my concerns because I have raised them here in this chamber.

• (1540)

Honourable senators, it is a fact that if we look to the committee proceedings, we find that this matter of the oath of allegiance received little attention. I would have hoped, and I would have thought, that the committee would have heard several witnesses on this matter.

I have one final point, on the committee proceedings. I questioned Minister Robillard twice on the matter, and in both instances I had the distinct impression that she was not familiar with the issues and that she was not really current on the law of allegiance. I also gleaned that the initiative was not hers at all. From that, I gathered maybe it was that of someone in the department, or it was departmental. However, what is crystal clear if you look at the testimony — for example, the Standing Senate Committee on National Finance proceedings, Tuesday, September 16, 2003 — you can see very clearly that the minister has difficulty answering the questions.

She brought along to that committee one particular lawyer, a departmental lawyer from the Department of Justice, whose name is Henry Molot. His answers were, to my mind, extremely insufficient. What is clear is that the whole phenomenon of the prerogative in respect of the Queen's right to receive allegiance is not well understood. Many of these lawyers, in my opinion, stumble with these questions very quickly and easily.

It would do us well, honourable senators, if we could begin to study some of the law that has governed this grand institution at some point in our endeavours — being the law of the prerogative on the one hand and the law of Parliament on the other hand. It was these two grand systems of law that were supposed to guide and direct the passing of statutes in this place.

Anyway, those are my thoughts. It is my view that the comprehension of this set of laws is disappearing very rapidly from our midst. For example, again on the law of the prerogative, I remember reading the lawsuit of now Lord Black of Crossharbour, Conrad Black, against Mr. Chrétien. I read what the judges in the case had to say about the law of....

The Hon. the Speaker *pro tempore***:** Honourable Senator Cools, I regret to inform you that your time for speaking has expired.

Senator Cools: Perhaps I could make a closing comment?

Hon. Senators: Agreed.

Senator Cools: I was saying it became clear quickly that those judges are no longer conversant with the law of the prerogative in these areas.

Honourable senators, because Bill C-34 is coming up today, I would love to use this as an opportunity to encourage senators to put some time and study into these two very difficult areas. In the meantime, I thank honourable senators for their attention, and I hope that I have recorded my very strong objection to the alteration and removal of the oath of allegiance. I sincerely believe that it should have taken more than a simple bill to do this. Her Majesty Queen Elizabeth should have been involved in this matter, at least through the Governor General of Canada. I am sad, and very sorry, that colleagues on the committee did not see to it that the Constitution of this place and the Constitution of this land was upheld in respect of the relationship between Her Majesty the Queen and Her Majesty's subjects, the citizens of Canada.

Hon. Tommy Banks: Honourable senators, I want to say — in perhaps a more colloquial and not nearly as well-informed a way as Senator Cools has referred to these questions of the oath — that in respect of both the oaths that I can find in this bill which is now before us, they are, if you will permit the colloquialism, the wimpiest oaths I have ever seen anywhere about anything.

The first one, which is in section 246, says:

> I,..... do swear (*or* solemnly affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of.....

Faithful to what? Faithful to whom? You cannot simply be faithful in an abstract, sort of free-standing way; you have to be faithful to something and you have to swear to something. This is nothing more than a vague promise to do sort of the best that one can under the circumstances. It is the Canadian answer to "as American as apple pie," which, in Canada, is "as Canadian as possible under the circumstances." This really wimps out. I agree that these are practically meaningless oaths, and if we are to have oaths such as this, we should simply strike them and not pretend that they are oaths in any meaningful sense.

[*Translation*]

Hon. Laurier L. LaPierre: Honourable senators, what this means is that the time has come for Canadians to be truly mature.

[*English*]

The time has come for us to be mature; the time has come for us to swear allegiance to our country; the time has come for us to say what we will do to the best of our ability, and we promise to the Canadian people — who are sovereigns of Canada — that we shall do our duty by them, and do it as well as possible. The day will come — and not too far in the future — when the successor of mine here in the Senate will swear allegiance to Canada, and not to the Queen of Great Britain and the kingdoms beyond the sea.

Senator Banks: May I ask a question?

Senator LaPierre: No.

Senator Cools: On a point of order, I would like to say that there is a requirement in the BNA Act that every senator here takes an oath of allegiance. I would like to submit that the statements that were just made are not harmonious with the sense of allegiance that is expected of the oath. If I can just find my copy of the oath — I have it right here.

The Hon. the Speaker *pro tempore***:** Honourable Senator Cools, I believe that this is —

Senator Cools: Honourable senators, the fact is that every senator who comes here —

Senator LaPierre: On a point of order.

Senator Cools: Every senator who comes here is called upon, in the presence of us all, to make declarations and to take an oath. Maybe some do not take it very seriously, but my point of view is that if it is such a hardship to do it, then do not do it. It is better not to come here and not take the oath than to make a mockery of those of us who believe and take our oath very seriously. I want to surprise Senator LaPierre and to let him know that all senators when they —

The Hon. the Speaker *pro tempore***:** Honourable senators Cools —

Senator Cools: — take it very, very seriously.

Senator LaPierre: Enough is enough.

The Hon. the Speaker *pro tempore***:** Order. Honourable Senator Cools, this is a point of debate, not a point of order.

Honourable senators, are you ready for the question?

Hon. Senators: Question!

Senator Cools: There is a point of order on the floor. Honourable senators want to speak to it.

The Hon. the Speaker *pro tempore***:** Order. It was moved by the Honourable Senator Day, seconded by the Honourable Senator Harb, that Bill C-25 be read the third time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Senator Kinsella: On division.

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

• (1550)

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

Hon. Sharon Carstairs (Leader of the Government) moved third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

She said: Honourable senators, it is an honour to rise this afternoon to speak to third reading of Bill C-34, to amend the Parliament of Canada Act, to establish a Senate ethics officer and an ethics commissioner.

As many of you now know, because I have said so on a number of occasions, Bill C-34 is the culmination of over three decades of work by honourable senators and members in the other place on conflict of interest rules for Parliament. Until now, every effort has died on the Order Paper, including the 1973 Green Paper on Conflict of Interest in Parliamentarians, the 1978 Independence of Parliament Act, the 1992 Stanbury-Blenkarn report, and the 1995 Milliken-Oliver report.

Conflict of interest provisions for honourable senators have been an evolving issue. Initiatives over the past three decades have included a range of statutory and non-statutory approaches for the appointment of a Parliamentary ethics office and the establishment of a code of conduct.

Over the past year and a half, honourable senators and members of the other place have renewed their efforts to develop a code of conduct for Parliament. In May 2002, the Prime Minister announced an eight-point ethics plan that included a code of conduct for parliamentarians inspired by the Milliken-Oliver report. In October 2002, I tabled in the Senate on behalf of the government a draft bill to establish an independent ethics commissioner and a draft code of conduct to be part of the *Rules of the Senate*. In April 2003, the Rules Committee interim report on these documents was tabled. All of the recommendations in this report were accepted by the government and included in Bill C-34.

The committee recommended that each House have its own ethics officer and Bill C-34 would establish a separate Senate ethics officer. The committee recommended that the Senate ethics officer be appointed after agreement of the leadership of the recognized parties in the Senate, followed by a confirming vote in the Senate. Bill C-34 provides for the appointment of the Senate ethics officer after consultation with the leaders of the recognized parties in the Senate, followed by adoption of a resolution in the Senate which is consistent with the approach for other officers of Parliament. In other words, honourable senators, without a vote in this chamber, no appointment will be made. That is the important point.

The committee recommended that the term should be for seven years and should be renewable; Bill C-34 does this. The committee did not reach a consensus on whether to appoint the Senate ethics officer by statute or by rules. Bill C-34 takes what I believe is a balanced approach of appointing the Senate ethics officer by statute and of having conflict of interest requirements in rules that would be adopted by this chamber for our Senate and for our senators.

Of course, Bill C-34 only contains an appointment process for the Senate ethics officer. We already have conflict of interest provisions in our rules as well as in the Parliament of Canada Act. The Rules Committee has been considering whether to consolidate and modernize these provisions into a single code of conduct. However, that will be a matter for honourable senators in the future.

In other words Bill C-34 is framework legislation. It neither changes existing conflict of interest rules of the Senate nor enacts additional rules in this area. Thus, it will be for the Senate alone to establish rules of conduct that respect the privileges, immunities and practices of this house.

The Rules Committee has given particular consideration to the issues of constitutionality and parliamentary privilege. I am pleased that the witnesses heard by the committee confirmed that Bill C-34 does not affect the balance of powers between Parliament, the executive and the judiciary, nor does it raise new parliamentary privilege concerns. Mr. Robert Marleau, a former Clerk of the House of Commons and co-author of a respected commentary on parliamentary rules, Mr. Joseph Maingot, an expert on parliamentary procedure, and the Senate Law Clerk stated that the statutory appointment of a Senate ethics officer would not — I repeat, would not — undermine Senate privileges. Mr. Marleau, in an appearance before the Rules Committee on September 16, 2003, stated:

> ...the Senate ethics officer would simply be just another officer of the Senate and therefore at any time he or she would be executing his or her duties would be covered by usual privileges when any officer of the Senate exercises an order of the house or the committee.

Mr. Maingot, in his appearance before the same committee, stated:

> ...the legislation provides that the Senate would set out the rules dealing with the ethics of the senators. In that case, it is an internal matter of the Senate, and the courts have historically said that when you are dealing with the internal proceeding of the House or the Senate, you are dealing with a constitutional power. The courts, historically, have always been very deferential to what the Houses of Parliament do.

On the privileges of Parliament provided for in the Constitution, Mr. Marleau stated:

> On the issue of whether we are creating a new privilege, I would opine that no, this bill does not create a new privilege. It would not be a whole lot different than if you created a new committee of the Senate, hired a new committee clerk, and that committee clerk would be given orders by that committee, which would be covered by the usual parliamentary immunity.

Mr. Marleau also stated:

> We have a long-standing practice of house officers being in statute. I am one as the interim Privacy Commissioner, who is in statute appointed by the Governor in Council and ratified by Parliament. The Clerk of the House of Commons, and I believe the Clerk of the Senate, find their genesis in the Public Service Employment Act and are appointed by the Governor in Council...

Some honourable senators have expressed concern about confidentiality for the work of the Senate ethics officer. The committee heard that the specific duties of the Senate ethics officer would be set out in the *Rules of the Senate,* where confidentiality would be detailed. The other place has taken this approach in the code of conduct that was recently reported from their committee. It is also the approach taken in the code set out in the Milliken-Oliver report.

All confidentiality rules governing the declaration of conflicts of interest and the registration or publication of assets would be established by the Senate and the Senate alone. The Senate would be within its rights to limit disclosure as the other place has done in the code of conduct report from committee and as the Milliken-Oliver report has recommended.

Honourable senators, Bill C-34 represents the culmination of 30 years of work by parliamentarians on the issue of conflict of interest. The Rules Committee has heard that the Parliament of Canada is behind the provinces and other Commonwealth countries on this issue. In these jurisdictions, a parliamentary ethics officer has benefitted legislators by providing them with a source of independent advice on ethical matters and by demonstrating to their constituents that they take ethical matters seriously. I believe that experience will be shared by honourable senators once the Senate ethics officer is approved by a vote of this chamber and finalized by the Governor in Council.

To those senators who suggest that we need more time to study this issue, I would say that we have been studying this issue for 30 years. We have, in Bill C-34, a balanced approach that is the culmination of our work. The provinces have an independent ethics officer and other Commonwealth countries have one as well. In the private sector there are rules for boards of directors, and the other place wants an independent ethics officer. In this chamber, I believe that a majority of honourable senators believe that the time has come for the Senate to join the rest of the world in having an independent ethics officer reporting to Parliament. I would call on all honourable senators to support the passage of Bill C-34.

• (1600)

Hon. Anne C. Cools: Would the honourable senator take a question?

Senator Carstairs: Certainly.

Senator Cools: Honourable senators, I have several questions. I will ask them one at a time.

The proposed sections 72.06, 72.07 and 72.08 in the bill, under the heading, "Functions in Relation to Public Office Holders," use the phrase "Prime Minister" seven times. The phrase "Prime Minister" is very rarely used in any statute. It is not supposed to be used in statute since certain words do not have much legal existence.

Why is the title "Prime Minister" used seven times in these proposed sections? It is most unusual. It would suggest that those proposed sections are the Prime Minister's sections. Would the Leader of the Government respond?

Senator Carstairs: The honourable senator should look at the proposed section 72.061 in the bill, which reads:

> "The Prime Minister shall establish ethical principles, rules and obligations for public office holders."

Members of the Senate and members of the House of Commons, unless they are also members of cabinet and members of the parliamentary secretary grouping, are not public office holders in the definition of this bill. As it is the Prime Minister who will establish those ethical principles, rules and obligations, it is reasonable that he would be found listed in a number of its provisions.

Senator Cools: Honourable senators, another question relates to what has been historically called the independence of Parliament. The government would know that Parliament, for many centuries now, has been extremely jealous of and hostile to the introduction of new office holders into Parliament. I believe it was Mr. Marleau who said that appointing this new officer would be akin to appointing another clerk. That is not so at all.

As a matter of fact, the first statutes barring office holders were passed during the reign of Queen Anne in the early 1700s. This law existed in Canada until the time of Mackenzie King. It was based on the phenomenon that a Member of Parliament could not be a member of cabinet without submitting himself first for re-election by his constituency. Based on that, Mackenzie King was able to defeat Prime Minister Meighen and invoke that crisis.

The tradition and law of Parliament have been resistant to bringing into Parliament office holders or servants of the Crown. I ask the honourable senator why that grand principle of constitutionalism is being violated in Bill C-34.

In 1931, an act repealed parts of the law therein to allow only cabinet ministers not to have to seek re-election. The only office holders who can sit in Parliament are cabinet ministers, such as Senator Carstairs. In addition, Parliament declared over 200 years ago that it wanted no more office holders in its midst. Even the appointment of our house officers is different.

I have looked up the record. The Independence of Parliament Act was passed in 1868 by Sir John A., which replicated the act from Queen Anne's time. Why are we now being compelled to pass bills and to adopt a position in law that Parliament has historically rejected and to which it has been very hostile?

Senator Carstairs: In response to the honourable senator, I would refer her to the proposed section 72.06, which reads.

> For the purposes of sections 20.5, 72.05 and 72.07 to 72.09, "public office holder" means —

The bill then provides a list of who is included as a public office holder.

I would suggest to the honourable senator that, from very early times in the history of Canada, we have had ministers of the Crown, ministers of state and parliamentary secretaries, and we have had people who worked for those individuals.

We have certainly had others who have been appointed to represent the Parliament of Canada, such as the Privacy Commissioner, the Information Commissioner and the Commissioner of Official Languages. All of those are public office holders. They have received their authority sometimes through legislation and sometimes through custom and precedent.

Senator Cools: Honourable senators, perhaps Senator Carstairs could differentiate, because we are talking about officers of this place as opposed to officers of Parliament.

Honourable senators, do not be mystified by this term "officers of Parliament." Its history is very short and shallow. The real position of officers of Parliament is an entity still unknown, as was demonstrated in the case of former Privacy Commissioner Radwanski when Senator Lowell Murray raised what he thought would be the Senate's interests in an office of Parliament. He basically discovered that the Senate did not have much interest in it.

We are talking about the relationship between Parliament and office holders. By law and statute now, the only office holders who can sit and vote in Parliament are members of the cabinet. The other range of office holders can no longer take their seats here. For example, judges cannot take a seat.

There is an age-old standard — it is a couple of hundred years old — that members of Parliament are not to be subordinated or subjected in any form, way or fashion to servants of the Crown, which is what office holders are.

Senator Carstairs: In response to the honourable senator, that is exactly why her committee so wisely insisted that the Senate have its own ethics officer and that the Senate ethics officer not be the ethics officer for public office holders. The committee insisted that it should be two separate individuals.

The House of Commons chose to have their ethics officer and the public ethics officer as one and the same person, but we did not choose that, and I think it was a wise decision on the part of our committee to make that recommendation.

Senator Cools: Perhaps the honourable senator is not grasping my point. My point is about the relationship between members of Parliament and servants of the Crown, who are office holders. The bill obfuscates and confuses the matter. Most officer holders, such as cabinet ministers, who sit in Parliament are removable at pleasure. Our table officers, such as the clerk, are removable at pleasure.

The particular officer holder who will be appointed under this proposed legislation will be harder than the devil to remove. This office holder could only be removed on an address of the Senate to the Governor in Council.

The Senate does not make addresses to the Governor in Council, honourable senators. The Senate makes addresses to the Governor General or to Her Majesty, but not to the Governor in Council. This proposed section 20.2(1) tells us clearly that not only is this initiative creating an office holder who will have the conduct and the activities of senators within his or her purview, but also that it would be very difficult to remove this office holder.

• (1610)

The terms that are used to describe this office holder are the kinds of terms that you find in the BNA Act in respect of judges — "during good behaviour." Honourable senators should know this. Honourable senators should know the deep confusion and deception in this bill.

For example, proposed section 20.2(1) says strongly that they hold office. The Senate ethics officer would hold office during good behaviour for a term of seven years and may be removed for cause. This is not proper. It should be either cause or good behaviour but not both. The words "for cause" in there and the address to the Governor in Council tells you clearly that that person will be loyal to the Prime Minister's office. A baby could see it from 10 feet away.

Hon. Norman K. Atkins: Honourable senators, I rise today to speak at third reading of Bill C-34, to amend the Parliament of Canada Act. As it pertains to us here in the Senate, it would establish a Senate ethics officer. This is not a subject upon which I originally intended to speak. However, as I sat and listened to the arguments on both sides, especially those of Senator Lynch-Staunton, Senator Andreychuk, Senator Sparrow and Senator Joyal, I had cause to reflect back on my life in politics and really question, as they have done, the need for this measure at all.

Few, if any of us, know anyone who got into politics for personal gain. Ethical issues arising here in the Senate are so few that I am sure, historically, over 135 years, they can virtually be counted on the fingers of one hand. The most recent, of course, was the matter of attendance, and we dealt with it. I would say, looking back from where we are now, that we dealt with it effectively.

Those honourable senators who are lawyers tell me that when legislation is drafted, it is drafted to deal with and address a particular evil, to ensure that, if that evil subsequently occurs, those perpetrators will be punished.

When I look at this bill and the circumstances surrounding its conception and the government's attempt to rush it through the Senate, I must ask myself: Why are we doing this? This, of course, is the same question Senator Sparrow asked when time allocation was introduced at second reading: Why, why, why? The answers are not terribly helpful. If it is to fulfil a 1993 election promise, my answer to that is that the government is a bit late in coming forward, 10 years later, with this legislation.

If it is addressed to ethics problems in the other place at the cabinet table, then bring in legislation that does just that. We have been calling for such legislation for years — legislation that would establish a truly independent ethics commissioner or counsellor as an officer of Parliament.

If this legislation is being introduced and rushed through to create the perception that this is a government that has high ethical standards and believes those standards should be imposed on all MPs and senators, my answer is that the government has missed the boat completely, as we already have rules and legislation in place — rules and legislation that have effectively dealt with this issue for many years.

Perception of this government aside, the reality is that there is really no need for this legislation as it affects the Senate. Having said that, I wish to make it perfectly clear that I agree totally with Senator Joyal and others who have expressed this same sentiment: that there is nothing more important for the sake of public governance than ethical standards for those who are governed and for those who govern. As Senator Joyal went on to say, and I agree, the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter, or appear to falter.

As many honourable senators have pointed out, this bill weakens the independence of the Senate and does nothing to invoke the so-called new high standard. My thesis is simple: We have been well served, and Canadians have been well served, by the regime presently in place. We have two extraordinarily competent officers present to serve us in the person of our Clerk and our Law Clerk and Parliamentary Counsel. These are people who have the expertise, experience and respect for this institution, the Senate, to advise on all issues related to ethics or conflict of interest.

As to the legal norms present to guide us, and them, we have the Criminal Code, the Parliament of Canada Act, the Senate rules and the parliamentary law of custom and precedence, and not to sound too philosophical, as that is Senator Kinsella's area, we have the inherent goodness of humankind.

All of these statutes, rules and customs, taken together, form a comprehensive compendium of the law as it relates to ethics and our conduct in this place. I believe we should be very careful, as we deal with Bill C-34, to ensure that, in our rush to react to the will of a Prime Minister searching for a legacy, we do not end up with a system guiding our ethics and conduct which is inferior to the one already in place.

This is a chamber of sober second thought. We should take the time to reflect on the need for this package, Bill C-34. I believe that if we take the time to study what we now have in place and compare it to the contents of Bill C-34, we will opt to maintain the current regime that has served this country well.

Hon. Tommy Banks: Honourable senators, I agree very much with what the Leader of the Government in the Senate has said about this bill. I do not believe that this matter can be put off any longer. There is inexorable pressure upon us to do something. There is a general agreement about where we want to go, but as I have said in other places, there is disagreement about how to get there.

I believe that Bill C-34 should be passed. I believe that it should be in a bill, but I believe the bill needs to be modified so as to ensure that the executive, by whatever name it is called, does not select or appoint the Senate ethics officer. This person will not be appointed just for this Senate or for those of us who are presently here, or just for the present or the next Prime Minister, or for that party, but for all time, one assumes. If a Prime Minister can appoint, and has the authority and the power to appoint notwithstanding — and I understand that we have a sort of veto in that respect — when it comes those questions, as we have often seen, the government quite rightly exercises a significant amount of suasion.

When the Prime Minister can appoint, the Prime Minister can also point, and the person that the Prime Minister will be appointing, whoever he or she might be, will be someone who will be our confidante, a person to whom we, perhaps, will make our innermost secrets known, and who will one day also be, according to the way even this bill is set out, in a sense an investigator of us. An admonition in that respect in a bill does not do any good. It is like a judge saying to a jury, "Ignore what you have just heard." A Senate ethics officer, having heard from us disclosures of things which we wish to disclose to him or her, cannot put those things, reasonably, out of his or her mind when he or she has been asked, directed or decides to conduct an investigation or whatever might happen under the terms of this bill.

• (1620)

It is my belief that the bill ought to proceed forward exactly as it is with the exception of amendments to proposed sections 20.1, 20.2(1) and (2), and 20.3. For all intents and purposes, those amendments substitute "the Senate" for "the Governor in Council." Proposed section 20.1, for example, would read, "The Senate shall...appoint a Senate Ethics Officer..."

The amendments immediately following that paragraph ought simply to reflect that fact. The Senate, rather than the executive or the Governor in Council, ought to appoint the ethics officer. If that happens, we will have a statute that will do all of the things the leader has said need to be done, and I agree with those. However, there will then be no question as to the direction of that officer.

The leader spoke about Mr. Marleau having said that he does not see much difference between this officer and us creating a new Senate committee and hiring a clerk, but there is a difference. When we create a new Senate committee, we do hire a clerk. "We" hire a clerk by means of the actions of this house, in and of itself. It is not the same thing.

It is true, also, that every one of us is appointed by Governor in Council, as are the Speaker and the leader and the deputy leader and the clerks. However, there is a long understanding and convention that, once done, we are at — to use the old expression — arm's length, to a degree. However, an ethics commissioner, counsellor or officer appointed by, for all intents and purposes, the Prime Minister and subject to reappointment by the Prime Minister is subject to a degree of direction, I believe, by the Prime Minister that simply does not exist — I hope it does not exist — otherwise in this house.

There is a much more mundane amendment, honourable senators, that I believe must be made in this bill. I say this only to prove, I suppose, that I have read the entire bill. I refer to proposed section 72.08 on page 8 of the bill. I ask honourable senators to imagine what our reaction would be if one of the first three clauses of the bill read that a member of the House of Commons might bring to the attention of the Senate ethics commissioner a view that something needed to be investigated; yet that is exactly what proposed section 72.08 says about matters in the other place. That is not fair. What is sauce for the goose is sauce for the gander. I believe that proposed section 72.08 ought to be amended by removing the words "the Senate" in the first line. They are inappropriate.

By way of housekeeping, in that same proposed section 72.08, there is an error, only in English, that needs to be corrected. The third-last line now reads "the Prime Minister for public holders office." I am sure that means "holders of office" or "office holders." That phrase ought to be corrected.

Senator Carstairs: Would the honourable senator accept a question?

Senator Banks: Of course.

Senator Carstairs: Honourable senators, proposed section 20.5 states:

> (1) The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of Senate.
>
> (2) The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

Why does the honourable senator feel that the Prime Minister would have any authority over this particular individual —

Senator Nolin: Salary, remuneration.

Senator Carstairs: — when the legislation clearly gives all authority for that individual to this very chamber?

Senator Banks: Senator Carstairs is right, of course, in that the parameters for the nature of investigations — to use the colloquial term — are set out in this bill. I believe they are right. However, that does not address the question of whether or when, necessarily, a person might be asked to do something with the right whisper in the right ear.

Please understand that I am not ascribing any ulterior motives to this or any subsequent prime minister. I have the highest regard for this Prime Minister, and I know he would never do such a thing. However, my point was not that the Prime Minister would have anything to do with determining the rules under and by which the Senate ethics officer would conduct an investigation. There is a considerable hammer that could be seen to be held by the Governor in Council — for all intents and purposes, though, the Prime Minister — who will in the end determine whether the person will be reappointed. If a suggestion is made by the Prime Minister in that circumstance — for some motive which I do not ascribe to any existing or future prime minister — that would carry a lot of weight. It would carry less weight, I believe, if one of us were to suggest to an officer who was selected and acclaimed by this house to do the same thing. No one senator could make a determination as to whether that officer would be reappointed. I was not talking about the rules. I was talking about "wink-wink, nudge-nudge."

Senator Carstairs: Honourable senators, if and when that person is to be reappointed, it can only be done by a resolution of this chamber. If there were to be a "wink-wink, nudge-nudge," it would have to be by members of this chamber, not by the Prime Minister, in order to get the support that the individual presumably wants.

Could the honourable senator also answer whether he thinks other officers of Parliament — the Auditor General, for example — are subject to the same "wink-wink, nudge-nudge"?

Senator Banks: The Auditor General surely is not. However, this bill says that, "The Governor in Council shall, by commission under the Great Seal, appoint," and then it goes on to modify that in some way.

My point is that if the reappointment of such a person arose, notwithstanding that the members of this place might want him or her to be reappointed, the Governor in Council could decline to make such a reappointment.

Hon. Francis William Mahovlich: Honourable senators, if this particular bill had passed last year and the ethics commissioner was in place, would the Privacy Commissioner have committed the sins he committed?

Senator Banks: I am not competent to answer that question. I suspect that it would not have made any difference. I am not inside Mr. Radwanski's mind and never have been, so I do not know.

Senator Mahovlich: We cannot legislate morals.

Hon. Gerald J. Comeau: Honourable senators, we learned last week what can happen when a committee decides to act on its own and impose the will of the majority on a minority. As I understand it, our committee members were stuck on another committee. Therefore, the Rules Committee imposed the views of the majority side on our side. That is one angle.

• (1630)

If the Prime Minister appointed an ethics counsellor to uphold a set of rules which had been decided upon by a committee which had no minority input, we would then find ourselves in a situation where, for example, I would have to open my personal books, depending on the Rules Committee's decision, to this ethics counsellor. I would have to open my wife's books, depending on what the Rules Committee had decided.

Senator Carstairs: It would be based on the *Rules of the Senate*.

Senator Comeau: Just last week, the Rules Committee met and decided to impose its views on the minority. That happens. It is fine providing it is the majority side, but what would happen if there were a change of government and this side decided to start imposing its views?

Would we not be in a much better position — I think this is where the honourable senator is leading with his proposal — to have the ethics commissioner appointed by the Senate as the result of a joint decision between the leadership of the two sides so that we do not find ourselves in a situation where, as a minority member, I must open my books to a person that I may not trust because this side had no input in the appointment of that person?

Senator Banks: Honourable senators, as I said earlier, I will abdicate the field with respect to the question of whether this ought to be rules-based or statute-based, because there are people here who are much better qualified to argue those points than I am. I will hide behind the same premise in answering the honourable senator's questions. I do not purport to have the faintest idea what the process might be down the road by which the Senate will determine the rules contemplated in this bill. I do not know enough about the committee system, or how it works, or how that would be done, except to say that it is my understanding that it is always the case that, as a general rule, the majority in this house — on whichever side it might sit or however that majority might be constituted from among both sides — will determine what those rules, as contemplated in this agreement, might be from time to time.

Senator Comeau: That is where my question was leading. The majority rules and, of course, at the end of the day we must accept that, if the majority decides to go in a certain direction, by all means that is the way we will go. We had an indication of that last week, when we pointed out that we had some problems with the date of a meeting because none of our members could attend, and the meeting went ahead anyway. The committee made its decision and reported to this house. That should have been a committee meeting that included the input of the minority. That input was never given.

Honourable senators, if we establish the kind of precedent that we established last week, then, trust me, the Liberals will not be in power. Eventually, there will be a change. Picture a day when the kind of actions we saw last week are taken by people on this side. The tables will be turned and then you will find yourselves in a position where you will have to start baring your souls, your personal finances and the finances of your spouse to someone in whom you have no trust or faith. This is the acid test that you must apply to this bill.

Senator Banks: Honourable senators, I have three points in response to that. First, what goes around comes around. Second, there are checks and balances because, notwithstanding what any committee might report to this house, it is the house that decides what happens in the end. Third — and I hope we all remember this — democracy does not consist simply in the rule of the majority; democracy consists in the rule of the majority taking great care to take into account the interests and needs of the minority in every respect. I hope we will always do that.

The Hon. the Speaker: I know Senators Cools and Grafstein have questions but, unfortunately, Senator Banks' time has expired.

Senator Banks: May I have leave, Your Honour?

The Hon. the Speaker: Senator Banks has requested leave to continue. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Cools: I thank you for being willing to take the question, Senator Banks. As always, you bring exciting insights to debate. It is always a pleasure.

The proposed section 20.2(1) deals with the removal of this person. Many statutes in this country contain similar provisions for the removal of an office holder. However, we all know that no office holder has been removed by an address of this house or of the other House or of the two Houses together in at least 100 years, if ever. When we see those magical words, "by address," it means that the office holder cannot be removed. Does Senator Banks have any insights on that? For example, our Clerk of the Senate, who is sitting at the Table, is removable at pleasure, as are most such appointments. That also applies to the Clerk of the House of Commons and the ministers. Many office holders are removable at pleasure.

Has Senator Banks any insight into the drafting of this particular clause? For example, removing one of our own Table officers, even at pleasure, is a difficult proposition. Removing them by address is bordering on the impossible and that would have been the intention of the drafters of this bill. They know these rules far better than I. This clause is drafted in the most peculiar way. It states that an office holder may be removed, but there must be cause. Usually, if it is behaviour-related, the removal is for whatever reason. An appointment is made "during good behaviour;" bad behaviour is whatever the chamber will say it is. They have qualified the removal. They have qualified the phrase "during good behaviour" to include "for cause," which is a little unusual. They have then qualified it by adding that the address is not to Her Majesty or to the Governor General; it is to the Governor in Council. Honourable senators should really look at it. It is most peculiar and defeating of the Senate's interests.

Does Senator Banks have any insights?

Senator Banks: No, honourable senators, not in the context of this kind of employment. If this were an employment contract, honourable senator, outside of this place, I would have a great deal of experience on this subject, but certainly not as the drafter. I only say that, based on the limited knowledge that I have in that respect, I would prefer "for cause" rather than "at pleasure."

Senator Cools: Yes, but "at pleasure" is the condition of most appointments. For example, many ambassadors are appointed at pleasure. "At pleasure" is a common way to proceed. All ministers are appointed "at pleasure". There are many appointments at pleasure.

"During good behaviour" was the terminology that came out of the development of the relationship between the courts and Parliament. Judges were being appointed during good behaviour, subject to an address of both Houses. It is a hybrid but, undoubtedly, the term "for cause" is employment law terminology. It is not Her Majesty's appointments' law terminology but it definitely relates to employment. It is the mixture that is troubling. The real essence of my concern is that removing any office holder by address is so rare that I know of no situation where that has happened. I know of some who started, like in the instance of Judge Landreville, and I believe the Bank of Canada and Governor Coyne, but they did not get very far. Therefore, there are no concrete examples for us to point to in our history. I can tell honourable senators that all the chambers across the country have had to remove — rarely, granted — clerks or officers of the House for some reason or another. Usually it is done subtly, but my question to you —

You should try going on; it might be good for you. Yes, it is good. Get on this ground; it is exciting ground. I was encouraging the honourable senator to get up and speak.

• (1640)

Senator Watt: Come on.

Senator Cools: We can talk to each other. There is nothing out of order with that.

I was wondering whether the honourable senator has wrapped his mind around it or is prepared to wrap his mind around it. I was not a member of the committee, but perhaps someone canvassed addresses in the committee. Maybe someone asked as to how many times office-holders have been removed by addresses. I do not know of any, and I think it is next to impossible.

Senator Banks: I am sure the honourable senator is right.

Hon. Jerahmiel S. Grafstein: I want to refer the senator to his suggestion that members of the Senate have no place, on unreasonable grounds, suggesting that an office-holder other than the office-holder in this place be challenged. That appears to me to be inconsistent with our report, where we concluded that we should keep the matters separate and distinct from the other place. This seems to be an override. Is that the nature of the honourable senator's comment?

Senator Banks: Yes. The simplest answer would be that what is sauce for the goose is sauce for the gander. If we are to separate the two parts of this bill without actually cleaving them apart, then we ought to be consistent and ensure that there are no intrusions into the Senate's business in the first part of this bill and that we ought not to intrude into the business of the other place in the second part of the bill.

Senator Grafstein: I see a deeper problem that the honourable senator has raised because I looked at proposed section 72.08 more carefully as a result of his comments. It says that a member of the Senate can, on reasonable grounds, write to the commissioner in the other place that an office-holder has not observed ethical principles, rules and obligations — ethical principles set out by the Prime Minister.

What is the difference, therefore, between ethical principles and ethical rules? Can one have certainty in ethical principles sufficient to displace a public office-holder?

Senator Banks: Again, the honourable senator has asked a question that I am not really competent to answer except to refer to Senator Mahovlich's point and question, which was — and I think this is what my honourable friend is getting at — that it is not possible to legislate good behaviour. It is only possible to legislate sanctions against bad behaviour or punishment that results from it. I believe that is the point here.

This section deals with and has been dealt with by the House of Commons alone. We ought not to intrude in it, even if we think the wording "ethical principles" is wrong, or attempt to change it because that is their business. Our business — and I think this is the point of many honourable senators — is our business and their business, in the other place, is their business. However, I do think we should remove ourselves from that paragraph.

Senator Cools: Honourable senators, if we were to look at proposed section 20.4(7), we would discover that this new office-holder would obviously have a car, perhaps many staff members, and quite a budget. I looked through the bill trying to discover how the estimates and proposals for funding would be determined. Honourable senators will notice proposed subsections 7 and 8 state that the Senate ethics officer shall prepare an estimate of the amounts that would be required for the next fiscal year. Estimates from every Senate committee are well examined by our Internal Economy Committee. However, these estimates will not go through such a process, which is quite unique.

Proposed subsection 8 states that the estimates referred to shall be considered by the Speaker of the Senate and then will be transmitted to the President of the Treasury Board. I wonder if Senator Banks, since he was a member of the National Finance Committee, has wrapped his mind about the business of control of the public purse in respect of this officer's spending. Remember Radwanski.

Senator Banks: Honourable senators, with respect to remembering Radwanski, I think once burned, twice shy. We have touched that hot stove or the wet paint on that fence, and I think we will be well informed by it. However, with respect to proposed subsection 20.4(8), I have looked at it. I think it is right that the budget be submitted to the Speaker and then as a separate item to the House of Commons for examination. If the budget were to be submitted to a committee of this house, in the normal sense of the word, absolute justice would not then be seen to be done, and there could be an inference that might otherwise not be the case. Therefore, I would prefer, only in this case and only in these matters, that the budget of that officer be submitted to the Speaker of the Senate and then to the House of Commons, rather than to any committee of the Senate, in order to make it clear that no committee of the Senate is being subsumed by that consideration.

Senator Cools: I have no problem with it being submitted to the Speaker or to anyone to actually deliver it to the President of the Treasury Board. The question I am trying to get at is how will limits to that office's spending be set?

Senator Banks: By the same procedure and means by which all of our spending is clearly curbed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to participate in the debate at third reading and will abbreviate my remarks given the heavy schedule of business that still lies before us.

As I reflected upon the bill and read the debates again at second reading and the proceedings in committee, on balance it became clear that, as Senator Carstairs has indicated, there has been a movement in other assemblies — not only across Canada but also around the world, particularly in the Westminster Parliament — to have some kind of an ethics regime. Therefore, in principle I have no difficulty. It is probably one of those things that in the year 2003 one finds being set in place. We have something similar in the provincial jurisdiction of my home province.

Honourable senators, I ask this question: Should we have this model? The answer, on balance, probably is in the affirmative. However, Senator Carstairs pointed out the long history of work in trying to identify the models to be brought into place. I listened to her.

• (1650)

The most important consideration for us would be that we get it right. Given the world that we live in, there is no question but that we need this kind of mechanism, apparently, in the world of the 21st century, but is it the right model?

I then began to ask myself the question about this model. If it is not a model with which all honourable senators are comfortable, what good would be achieved in forcing through a regime that all honourable senators, or a vast majority of them, have not embraced? We all have had experience in other situations or circumstances of trying to impose a regime that, in a sense, is trying to facilitate self-regulation. Such regimes are not successful. Therefore, it seems to me that our principal concern should be to come up with a model that would have near-unanimous support. You will never be able to force a system that speaks to conduct on people who do not like that system. It seems to me that it is incumbent upon us to spend our effort in identifying the model that we are prepared to work with and to make it work.

Honourable senators, with respect to the term "ethics" that is employed, the first question that should present itself when we talk about "ethics" or "ethics commissioner" or "ethics officer" is what we mean by ethics. All definitions, from early Greek moral philosophy through Aristotle's ethics or Nicomachean ethics or the ethical treaties through the Middle Ages, through scholasticism and down through the ages in the history of ideas, have one thing in common: they seek to identify the norm of ethics. Clearly, honourable senators, we have to ask the question: What is this norm of ethical conduct against which our behaviour is to be measured?

I heard some honourable senators say during the debates, "Well, maybe we have the cart before the horse. Maybe what we should have established first is not a regime but rather the norm of ethics, the criterion against which behaviour will be measured." I also heard some senators say during the debates, "Well, you know, it is not that we have been without some norms of conduct."

Therefore, I went through our rule book, and lo and behold, I quickly found at least two very important rules. The first is rule 94(1), which reads as follows:

> A Senator who has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown, in the matter referred to any select committee, shall not sit on such committee and any question arising in the committee relating to that pecuniary interest may be determined by the committee, subject to an appeal to the Senate.

That is one normative element that we find right in our rules.

Also relating to the same issue of pecuniary interest, rule 65(4) provides the following:

> A Senator is not entitled to vote on any question in which the Senator has pecuniary interest not available to the general public. The vote of any Senator so interested shall be disallowed.

Those are two ethical, normative propositions that are there as a standard, a norm against which the conduct of senators can be measured.

I also heard in the debate that the work to articulate an ethical standard or an ethical norm is something that could be addressed in a reasonable period of time and is not beyond our reach. It seems to me that the best way of assessing whether this particular model or machinery is appropriate is to ascertain what that machinery is measured against, or what that machinery is to manage, or will be called upon to enforce, if you want to use that terminology.

In any assessment of ethical conduct, as measured against the ethical norm, certain determinants of ethical conduct are identifiable. We speak of the end of the agent, the end of the act and of the ethical circumstances. I find nothing in the bill to give guidance to the machinery to help it measure the ethical conduct, let alone how one would measure without having the norm to begin with.

There is a flaw, but it is one that is not beyond our ability to fix. We, Parliament and the people of Canada, ultimately, would be far better served if we got this thing right rather than simply putting in place a system for some public perception reason.

I do not think I have heard anyone say that the principle of a regime was somehow unacceptable. It does seem to me, honourable senators, that we have to try to find a model — and with some adjustments to this bill, we can do that — that will be embraced enthusiastically by all members of this place, because, after all, it is to help honourable senators do their work in the public interest of the country in a manner that meets the highest standard that we would set for ourselves. Little is to be gained, I suggest, honourable senators, by coming up with a system that a few want and would use the force of numbers to impose. Unless a large percentage of senators embrace this model, it will be a failure.

I think that we are close to coming up with a system that can work. We must have the code developed, and we must have a model that will be embraced, supported and made to grow by the enthusiastic support of all senators. At this juncture, it is not quite there, but it is within our grasp and we should use our creativity, goodwill and sense of compromise to do the right thing and get this one right.

• (1700)

Hon. John G. Bryden: Honourable senators, this will not be a philosophical question. Does the honourable senator have the bill before him?

Senator Kinsella: I do not.

Senator Bryden: I know the honourable senator probably knows it by heart. I will read part of clause 2 for the information of honourable senators. It refers to the proposed section 20.1 in the bill before us.

Senator Kinsella: What page?

Senator Bryden: Page 1.

In any case, it deals with the Senate ethics officer, and it states:

> The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

My question to the honourable senator and to the world at large is: What happens if the Senate does not pass a resolution approving the appointment?

Senator Kinsella: In response to the honourable senator, if that paragraph were written a little differently, to say that "after consultation with and the agreement of the leader of every recognized party," that problem would be completely obviated. If the leaders of all of the recognized parties reach an agreement, they will be speaking for their respective caucuses, and the adoption by the house, I suggest, would be guaranteed.

Importantly, consultation and agreement with the leaders speaks to the groupings of individual senators. Therefore, to make this work — and even, indeed, if we want this to work — it must have the support of the senators. If it is left as it is, chances are it could very well happen that it would not be approved by the Senate. That does not get us very far.

I am arguing that there must be a system that honourable senators can make work. That is one point that should be considered. We should include the words, "with the approval of those leaders."

Senator Bryden: Perhaps I could make one comment in relation to that. An old Scotsman in Scotland was ploughing his field. I walked over to talk to him and he told me that he got paid for doing that. I said, "How do you get paid — by the acre or by subsidy from the government?" He answered, "No, no, by the hour." I asked, "How much do you make?" He then replied, "You can take a long time to plough a field if you put your mind to it."

We can take a long time to pass a resolution in this house if we put our minds to it. It may very well be the case that we could go a long time under this provision without an appointment being made, because — to go back to my arbitration days — there is no decision-maker here.

Senator Nolin: What about closure?

Senator Bryden: Unless it is the Governor in Council — I do not see any override provision so that, after certain length of time, something will happen automatically.

Senator Kinsella: I think Senator Bryden's question is an important one. We should all draw on his immense experience in labour relations. I am sure that the honourable senator would agree with us, and indeed instruct us, that the best labour relations environment is that environment in which the parties work very hard to make it work — where a sense of conciliation, compromise and understanding are brought to bear.

As Senator Bryden knows better than anyone else, at the end of the day, you must reach the collective agreement at the negotiating round. One side or the other can win all of the arbitration cases, but you would have an ineffective, unproductive work environment if the parties to the collective agreement are not rowing in the same direction.

It is important to have a provision that allows for consultation and conciliation with the leaders of the respective parties so that they agree on a nominee. That nominee can then be brought forward to the Senate and we would not be faced with this long, drawn-out process.

The idea is to try to have a system that we can make work. We are not trying to come up with a system that everybody can get around.

Senator Grafstein: I would bring to the honourable senator's attention the proposed section 20.2(2), which I think answers Senator Bryden's question on the proposed legislation. It states that:

> In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint a qualified person to hold that office in the interim for a term of up to six months.

As presently drafted, the bill contemplates that the Prime Minister has the ability to make an appointment, if there were a deadlock in the Senate, which is possible, for an interim period of six months.

Does Senator Kinsella agree with that?

Senator Kinsella: Yes.

On motion of Senator Moore, for Senator Furey, debate adjourned.

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. Consiglio Di Nino: Honourable senators, I wish to take a few moments to give my perspective on Bill C-49.

Honourable senators, this bill is the latest example of this government's disrespect for our democratic system. As the saying goes, absolute power corrupts absolutely. That seems to be what this government is practising. We in this chamber are now witnessing one of the worst examples of this by this government's handling of Bill C-34.

Honourable senators, for me, Bill C-49 is a blatant example of a government with a large majority pushing its own agenda for crass political purposes. This bill is about manipulating the system to benefit the electoral career of the incoming Prime Minister.

Honourable senators, we have an independent election commission for a reason. It is so that we can have an unbiased, non-partisan arbitrator of our election process. Those commissioners have done their job. They have recognized the fact that Ontario, B.C. and Alberta should have more seats, in accordance with our laws and rules. The effective date to increase these provinces' representatives in the House of Commons is August 25, 2004. That is set. That is a fact. On that date, seven more seats will be distributed to those provinces.

• (1710)

I applaud the commission for having an open and effective process because it works. Now we are being asked to change the effective date for no other reason than to suit a political purpose. We are being asked to subvert the system, and not for the first time. The Prime Minister in waiting is urging the electoral boundaries commission and both Houses of Parliament to change the system for a partisan benefit. This is reprehensible. This is an example of tyranny of the majority, plain and simple, and tyranny of the majority is the bastardization of a healthy democracy. We know that the Liberals have a large majority both here and in the other place — we can count — but that is no excuse for them to do whatever they want. There needs to be some restraint and there needs to be respect for the integrity of our system.

Senator Lynch-Staunton, in his address to this chamber on Bill C-49, reminded us that, in 1995, this same Liberal government introduced Bill C-69, legislation intended to delay redistribution, once again for self-serving political purposes. We call that gerrymandering. As Senator Lynch-Staunton recounted in speaking to the proposed legislation, Mr. Sarkis Assadourian, a loud proponent of Bill C-69 and a member of the other place, said, in part:

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

My response to this, on November 21, 1995 in this chamber, was:

> If we succumb to the Chrétien government's pressure to pass this bill, we can then immortalize Mr. Assadourian, and Canada will have its own term when referring to future manipulations of electoral boundaries. The term will be "sarkising."

Perhaps today we should change the term to "martinizing." Senator Lynch-Staunton's speech on this bill should be mandatory reading for all of us. He eloquently placed on the record the reasons that all of us should be concerned about this bill.

The bill is symptomatic of this entire legislative session. We are working overtime to ram through bills that could have been introduced months or even years ago — some were promised in 1993. Instead, they are being jammed through in one session and we are being asked to deal with them all in an abbreviated session, at least we think so. No one has had the courtesy to tell us directly. Rather than act as a chamber of sober second thought, we are being asked to act as a chamber of rapid rubber-stamping. We are collectively abdicating our responsibility to safeguard and protect democracy, and we should put a stop to this, regardless of which team we play for.

Honourable senators, there is not much we can do to influence what goes on in the other place but we can certainly do our part in respecting our laws, our rules and our traditions. Anything less would further erode public confidence in our institutions, in our leaders and in our cherished democracy.

Hon. Marjory LeBreton: Honourable senators, I rise to speak to Bill C-49, in respect of the effective date of the representation order of 2003. The representation order of August 25, 2003, by Order in Council, proclaimed that the new electoral boundaries would come into effect one year hence, in August of 2004. That would allow time for Elections Canada to have in place the technology, the maps, the enumeration officers and the returning officers required to conduct a fair election. This made eminent sense, and makes eminent sense.

The last federal election was in November 2000. August 2004 would still be more than a full year before an election was required to be called. Indeed, these boundaries would be in place a full three months before the fourth anniversary of the election of the present government. What happened to cause this law to be interfered with? An *Ottawa Citizen* story on July 18, 2003 tells us what happened. It was reported that Mr. Kingsley, our Chief Electoral Officer, was closely monitoring the media following the musings of one Paul Martin, incoming Liberal leader. It reported:

In particular, he —

— Kingsley —

> — said a June National Post story revealing that Mr. Martin, during a private meeting with some 30 Senators, indicated he wanted to be ready to call an early election in the spring of 2004 spurred him to examine the matter further with a view to fast-forwarding expansion plans.
>
> However, Mr. Kingsley conceded that he had also received a June phone call from Elly Alboim, a top Martin leadership campaign strategist and principal at Earnscliffe Research and Communications, asking about the potential of moving forward on the redistribution of election boundaries, which would yield seven new members of Parliament — four from Western Canada and three from Ontario — faster than current legislation provides.

Very inappropriately, this Officer of Parliament, Mr. Kingsley, in response to these media musings by the Member of Parliament for LaSalle-Emard, takes it upon himself to write to Mr. Peter Adams, Chair of the Standing Committee on Procedure and House Affairs in the other place. Mr. Kingsley correctly noted in his letter of June 16, 2003 that the time frame for the new boundaries to come into effect as provided for under the Electoral Boundaries Redistribution Act is one year from the date of the proclamation of the representation order. He helpfully added that in order to change the time frame, a legislative change would be required.

In his letter to Mr. Adams, the Chief Electoral Officer pointed out that the electoral district boundaries are fundamental to election administration, and changes impact on almost every aspect of an election. Mr. Kingsley said:

> A very important condition concerns the timely appointment of returning officers for the 308 electoral districts. Every electoral district that has boundary changes will require an appointment. In order to implement the new boundaries by April 1, 2004, the appointment of the returning officers needs to be completed by mid-September 2003. Returning officers require extensive training to perform their duties during an election, as well as to become familiar with their electoral district and to perform a number of pre-writ tasks in preparation for an election.

Here we are, honourable senators, in November of 2003. Last week in the House of Commons, the Government House Leader confirmed that not all 308 returning officers required for an early election have yet been appointed. The point raised by the Chief Electoral Officer, that the appointment of returning officers needed to be completed by mid-September 2003 in order to make an early election work, is a valid one, even from the ever-helpful Mr. Kingsley. Will Elections Canada have the time to prepare returning officers and perform the pre-writ tasks that are required to be done? This is a question that we need to fully explore during the committee examination of this bill.

Honourable senators, raising questions and concerns about this advancement of the new boundaries does not mean that we question the fairness of Alberta, British Columbia and Ontario gaining additional seats. This has already been done by the representation order on August 25, 2003. This is done and it is on the books. We fully endorse these new ridings, which will give Alberta, British Columbia and Ontario more seats to reflect their growing populations. What is being questioned, honourable senators, is why Parliament sets up a process that is supposed to be removed from politicians and the government, then abandons it when it is electorally advantageous to do so.

Honourable senators, Senator Lynch-Staunton and Senator Stratton have spoken about previous efforts to interfere with electoral boundaries. Senator Stratton said yesterday that this is a very disconcerting trend "which seems to say that the riding boundary redistribution process is just another instrument of the federal government to be manipulated at the convenience of the government of the day."

Let us remember, honourable senators, that redistribution is required by both the Constitution and section 3 of Canada's Charter of Rights and Freedoms. The Electoral Boundaries Readjustment Act is the legislative mechanism that drives this process. Basically, every 10 years more seats are added to provinces that have grown significantly in population, and a redrawing of riding maps to reflect population shifts within the provinces takes place. This process is driven by provincially-based federal electoral boundaries commissions, which are responsible for holding public hearings. The commissions can accept written submissions from the public over the course of their deliberations.

• (1720)

These commissions are chaired by a judge appointed by the Chief Justice of each province and also include two residents of each province, appointed by the Speaker of the House of Commons. Members of the House of Commons can also get further input through an objections process coordinated by a parliamentary committee, but the main decisions on redistribution of federal riding boundaries are the responsibility of the commission. My colleagues on the other side should remember that it was their own Lester Pearson who introduced this change, so that there would not be this gerrymandering. How quickly they forget.

Although the commissions must adhere to a number of criteria in making their decisions, including the advancing of the principles of proportionate and effective representation, the process is theoretically supposed to be non-partisan and not driven by the electoral considerations of the government of the day.

Unfortunately, the extent to which each of these principles has been advanced by this Martin-Chrétien government has not been overwhelming.

For instance, some honourable senators may remember that after the 1993 election the Chrétien government attempted to bring in Bill C-18, which was essentially an attempt to stall the electoral boundary redistribution process. The bill quickly passed through the House of Commons, but Progressive Conservative members on the Standing Senate Committee on Legal and Constitutional Affairs successfully exposed the serious ramifications of the bill. At issue was making sure that a redrawing of Canada's riding maps reflected the population growth and shifts, and that redistribution would be done in time for the next election, which subsequently occurred in 1997. At that time, it was widely reported that the genesis for Bill C-18 was unhappiness in the Liberal caucus, as my colleague Senator Di Nino just said, over proposed new riding boundaries.

By the end of committee hearings, public opinion was shifting against this arbitrary action of a government that was trying to push through Bill C-18. Helpful in this regard was the opposition expressed at the time by the provincial governments of Ontario and British Columbia, whose provinces stood to lose additional MPs allotted to them should the redistribution process be suspended.

As many honourable senators will recall, faced with mounting opposition and amendments to their legislation, the Martin-Chrétien Liberals were forced to offer a compromise solution. The redistribution process would be suspended for a shorter period than originally called for. This compromise ensured redistribution would be done before the next federal vote, but also allowed the government an opportunity to examine a new regime for readjusting boundaries.

Unfortunately the government's next attempt at electoral boundaries reform, Bill C-69, was just as ethically bankrupt as their first attempt.

As with Bill C-18, with Bill C-69 the Standing Senate Committee on Legal and Constitutional Affairs was called upon once again to expose the Liberal government's attack on one of Canada's democratic principles. After thorough hearings, the committee reported the bill with several amendments that were adopted by the Senate and referred back to the House of Commons. The Commons did not approve the Senate's proposals and sent the bill back to this place.

At this point, the calendar was beginning to be a factor, as the suspension of the then-current redistribution process set out in Bill C-18 was due to end in days. Following some procedural wrangling, the bill and the message from the House of Commons were referred back to the Legal Committee for further study. By this time, the redistribution process had restarted and it became even more apparent that the government's continued insistence on the passage of Bill C-69 was to prevent new boundaries from coming into force. As with Bill C-18, Progressive Conservative senators would not budge in their opposition to Bill C-69. Bill C-69 died on the floor of the Legal Committee when Parliament prorogued in February of 1996.

Today, honourable senators, we are witnessing another manipulation of the electoral boundary process. The question is why does the incoming leader of the Liberal Party feel that he has to advance the election? What is so pressing and urgent that he feels he needs a mandate by next April? Why does he want the ability to go to the Canadian people just three and a half years into the Liberal mandate? Is he afraid to govern following Mr. Chrétien's retirement?

Honourable senators, there is a process in place for electoral boundaries readjustment. It is to promote equality of representation and the integrity of the vote. Parliamentarians should not be put under the gun to pass legislation that, in effect, is gerrymandering because they fear they will be accused of refusing new seats in fast-growing areas, which of course is not true.

We are seeing, with Bill C-49, a crass manipulation of a system that is supposed to be non-partisan. Shame on those of us who advocate this, and shame on all of us who support this tampering with our laws by writing new laws to get around existing laws.

On motion of Senator Nolin, debate adjourned.

APPROPRIATION BILL NO. 3, 2003-04

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Léger, for the second reading of Bill C-55, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004.

An Hon. Senator: 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.

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

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

LIBRARY AND ARCHIVES OF CANADA BILL

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-36, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence.

Hon. David Tkachuk: Honourable senators, I wish to make a few remarks on Bill C-36. In fact, I have about 16 pages of them.

The bill, in principle, seeks to create the Library and Archives of Canada Agency, according to the Department of Canadian Heritage press release of May 8, 2003.

The reason I refer to it in that way is that, in the government's press release of May, there is no mention of the significant amendments being made to the Copyright Act at the same time. Apparently, this newly created agency is in response to a Throne speech commitment. However, there was no mention throughout the body of the press release about the subject of the changes being made to the Copyright Act. Much like Bill C-10, where the government dropped in gun registration amendments on top of animal cruelty legislation, they have dumped copyright amendments on top of an act to create a new agency of the Library and the Archives of Canada.

I am not alone in thinking that it is incongruous that amendments to the Copyright Act are being attached to a bill that creates a new agency. In order to prepare myself, I have familiarized myself with some of the debates of the other place. It seems, at one time, that a bipartisan deal had been reached, which had been proposed by a Canadian Alliance member — our new cousins — to remove clause 21 from this bill. The Canadian Heritage Committee agreed to do that. Even Ms. Carole-Marie Allard, Parliamentary Secretary to the Minister of Canadian Heritage, committed to removing clauses 21 to 22 pertaining to the Copyright Act at a House committee meeting in June of 2003. Strangely, another meeting was called on short notice once Parliament was recessed, with mostly members from the government side, who ensured those clauses were reinstated and part of Bill C-36.

Further, those members from the government side who did vote on Bill C-36 were not the same members who had been part of the previous hearings on the bill nor, coincidentally, were they part of the arrangement.

At issue is clause 21, which is known as the "Lucy Maud Montgomery clause," for the author of *Anne of Green Gables* and many other published works. Her estate also includes several unpublished works, and clause 21 provides for an extension of the time limit on the copyright protection afforded these works by at least another 14 to 34 years, but only for those authors who died between January 1, 1930 and January 1, 1949. Lucy died in 1942.

• (1730)

Clause 21 was intended to rectify the amendments to the Copyright Act passed in 1997. At that time, unpublished works were brought into line with published works — that fifty years after the death of the author, copyright would expire. Formerly, unpublished works had been given copyright in perpetuity.

The estate that lobbied so hard for that clause was that of L.M. Montgomery, a pretty powerful estate, I would say, since their power is demonstrated by the fact that they have been able to have this clause dropped into a piece of legislation that has little to do with copyright except for consequential amendments.

At first and second reading of Bill C-36, clause 21 originally read that copyright protection on her unpublished works would last until 2017 — that is, from 1942 until the changes made in 1997 equals 55 years, plus another 20 years for lobbying so loudly. In fact, Lucy's estate is the big winner, gaining more years to hold back unpublished works than an author who died in 1950.

The problem with this legislation is that it is piecework legislation. Any time you cater to one specific group, you are bound to upset another. The estates of authors who died before 1949 were given a five-year extension in 1997 to find publishers. That made sense because the estates of those who died previous to that legislation taking effect needed five years to get their estate in order to see if they could sell their works, give them away or whatever the estate decided to do. This was an exception that those who died after 1949 did not receive.

Dare I suggest that precedents being set here actually set the stage for amending this legislation again in a few years, possibly at the five-year statutory review of the Copyright Act, and further extending the protection? We cannot afford to legislate in this way nor set these kinds of precedents since we are governed by the rule of law.

Since the uproar caused by the insertion of clause 21 in Bill C-36, the deal, the subsequent takeover and bad-faith vote in committee, the subsequent motions that were lost at report stage and the voluminous debates that exist for all to read in Hansard, we have yet another instalment in this debate. On October 28, due to the mounting pressure within the Liberal caucus and the continuing excellent work of the opposition, the government finally acknowledged that it ought not be creating legislation for individuals. After all, there can be no "Dave Tkachuk bill of procedural attacks" or "Herb Sparrow legislation on unruly behaviour." None of us can be the sole subject of legislation. Thank God for that! At the same time, we must be very cautious when it is suggested that the legislation we are studying fits this description.

The problem is that by granting further extensions for the benefit of Ms. Montgomery's estate, we will be granting further copyright extensions to all dead authors who have posthumous unpublished works before the date of 1948, but after 1929, at the least a three-year extension.

Honourable senators, I have some questions. Where do the dates 1929 and 1948 come from? They sound arbitrary.

Second, who is benefiting and who would we be hindering? Obviously, the answer to that would provide some clues. I understand that illustrious Canadians such as Jack Granatstein, Wallace McLean and other distinguished academics, who take as their responsibility to characterize our Canadian history for the benefit and future of all Canadians, are very concerned about these ad hoc amendments.

I see this offending clause 21 as a form of shelter. It is a shelter designed for the benefit of a single estate in this country against all others, now and in the future, who really do have a right, once copyright has expired, to have access at no cost to these special materials.

Honourable senators, if the government has a policy, say a Red Book policy on special treatment of friends of the Liberal Party, then they should just say it. If they want to pass the bill for the benefit of a friend, then at least they should have the courage to stand up for what they believe in and have a bill designed for that individual.

Here — I can even assist in naming the bill. Why do we not move a Senate bill? We can call it Bill S-50, the Lucy Maud Montgomery Estate's Special Protection Bill. That "50" is for 50 years, automatically renewed at the end of every fiftieth year, in perpetuity.

The latest instalment in this debate was that yet another deal was offered and voted on at third reading in the other place. Some may see it as a compromise; others, a Sheila Copp-out.

I ask honourable senators if this is the best that can be done with the mess? The new deal amends clause 21 to assign a further three years of protection to the estates of authors who died between December 21, 1929, and January 1, 1949, which effectively means that Lucy's estate does not have to worry about their protection expiring this December 31, 2003, which is what the amendments of 1997 would have done. They have three more years to find a publisher. Instead of giving the estates another 14 years, to December 31, 2017, the compromise is to merely give them another three years, lasting until 2006.

The circumstances are different for estates of authors who died after January 1, 1949. This shows why we need committees to do a lot of work. I am reading this and I think I know it, but I am confused now.

The estates of authors who died in 1949 or later are protected until the end of 2048, whether the work is unpublished, performed or communicated in any way.

Senators, 50 years is a long time — just a bit less than my lifetime. Surely finding a publisher would have occurred some time within that period. Senator Leo Kolber found a publisher in a heartbeat when they heard that he would be unusually frank about the inner workings of the Liberal government.

Honourable senators, the amendments in 1997 changed the rules for those authors who had died before January 1, 1949. To try be fair, a five-year transition period for any estates affected was instituted. I am not sure if any other estate expressed concern about needing more than 55 years to find a publisher for unpublished works, but I understand that only the Montgomery estate has made the case. I also understand that one other famous author, Steven Leacock, will benefit from the Montgomery lobbying.

The reality of Bill C-36 is that it is intended to protect unpublished works for a total of 50 years, period. Frankly, if an author passed away in 1948, that is 55 years ago. Unpublished works, even personal letters of historical importance, surely came to light a long time ago. The changes made in 1997 were a warning shot for estates to take "publishing" and profitable action within the next five years before their copyright expired. That seems so reasonable.

It Canadians thought or, worse, knew that we were making laws for the sole benefit of one individual or the estate of one individual in Canada, I do not think we would be here so comfortably.

My last argument against copyright clauses being included in Bill C-36 is one of logic. Last June, the House Standing Committee on Canadian Heritage announced that it would be conducting its mandated review of the Copyright Act with a deadline for completion of June 2004. Here are the windows for copyright legislation. Either significant changes to the Copyright Act should have been made in Bill C-48 last session, then Bill C-11 that passed in December, or any further changes should be made following the 2004 report of the House of Commons Canadian Heritage Committee. That would be an appropriate way to manage the responsibility of overseeing copyright legislation in this country. That would be one of the reasons Canadians entrust us to preserve their heritage and rights. That would be doing our job properly. It should not be that during review of the bill, we are reviewing the Copyright Act.

I will be putting these questions to the Minister of Canadian Heritage when, I assume, she will be before committee to defend her legislation.

An interesting and similar situation is the newly discovered unpublished papers of the late Ernest Hemingway that have been carefully guarded at his villa in Cuba or Lookout Farm. His fourth wife, Mary, in the two months after his suicide in 1961, made a quick trip to Cuba and took away 200 lbs of his papers. The rest must have been sitting there unviewed, used, or read by scholars.

• (1740)

Yet, as one English professor from Pennsylvania State University said:

> These are materials that form a record of one of the longest and most formative periods of his life, and yet one of the least-known periods of his life. If that paper disintegrates, we've lost that part of Hemingway's life, the record of it.

Perhaps Montgomery was not a pack rat like Hemingway, but surely we, as Canadians, have a right to learn about one of our most famous authors from her unpublished works and papers, as much as we have learned from her published works.

I truly do not believe the government intended this to be true, but here we are, dealing with legislation that establishes an agency to protect records of importance to Canadian history and the nation itself, and ironically, at the very same moment, we are also preventing any Canadian public or scholarly institutions the benefit of access and rights to use what should rightly be public records.

In the case of Hemingway, the historical coming together of Cubans and Americans, according to one of the stakeholders:

> ... is not commercial. This is based on working together to save something precious and very important.

Are the claims of the Montgomery estate not commercial?

If Hemingway had been a Canadian, if he had stayed in Canada and kept his job at the Toronto *Star* in the 1920s, his unpublished papers, which total as many 10,000 letters, as well as many volumes of potential manuscripts, would be publicly accessible in eight more years, since he died in 1961. In fact, the Hemingway estate is as anxious for the public preservation of these records as any would-be biographer or academic and is cooperating fully with authorities to catalogue the collected works.

My concluding comments will be on the rest of the substance of the bill and what it is intended to accomplish. The history of this bill, in fact, goes back four years, when the goal of establishing the Library and Archives of Canada was first initiated. There was no discussion at that time of changes to the Copyright Act because the Copyright Act had no place in this legislation.

In a 1999 report entitled "The Role of the National Archives of Canada and the National Library of Canada," the vision —

The Hon. the Speaker: Senator Tkachuk, I am sorry, but your time has expired.

Senator Tkachuk: May I have leave to continue?

The Hon. the Speaker: Is leave granted? Senator Tkachuk is asking for leave for additional time to speak.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am prepared to allow him a few minutes more, because this is only the second speech on this matter.

[*English*]

Senator Tkachuk: Thank you. This stuff is so darned interesting. I did not think it would be when I first looked at the bill. Trust the Liberals to make bills like this interesting.

In a 1999 report entitled "The Role of the National Archives," the vision of a new agency was discussed, which would ensure that the National Library, which was established in 1953 to preserve Canada's rich publishing heritage, would be better able to fulfil its mandate of protecting important archives by working in partnership with the National Archives, which had been established much earlier, in 1872, to preserve the documents of a new nation, Canada. In addition, creating one agency would eliminate any duplication of services to Canadians.

The important work of the National Library and National Archives goes unsung, and I thought I would take this opportunity to state how much Canadians appreciate the collective memories that are so professionally maintained by our public servants employed at these two institutions. Perhaps working together under the roof of one agency will create a synergy that will be greater than the sum of the various parts and responsibilities. Creating one agency eliminates strange divisions of labour that exist today because of a piecemeal approach to legislation.

In closing, and along a similar theme I have spoken on in the past, I believe the government has mismanaged its responsibilities on copyright legislation in Canada. In summary, I would like to review the following points.

I think it is likely that Bill C-48 from the first session of the Thirty-seventh Parliament, which became Bill C-11 during this session, would have been a more logical place to make amendments to the Copyright Act, a bill that was just passed this year. Indeed, committee study of that bill would have ensured that the witnesses were all focused on one piece of legislation and could provide a clear direction for the framework of such legislation.

If we divide this bill, or send an instruction on how to deal with this bill, I believe the committee will be better equipped to properly deal with the new agency and copyright matters separately. In this way, we will not be holding up the creation of the new agency unnecessarily while, at the same time, we will be separating matters that have nothing to do with each other.

I also noted that the Standing House Committee on Canadian Heritage, according to an October 6 press release, will launch its statutory review immediately and report back no later than September 2004, an amendment to an earlier press release in June 2003 which announced it needed only until June 2004.

Honourable senators, the government has equivocated on clause 21, having made changes, deals, rescinding of deals and new deals. This tells us that there is something wrong in general with these provisions.

Finally, it is my duty as a parliamentarian to stand up against legislation that has no place here, legislation that is designed for the specific benefit of one individual or, in this case, one estate. Later on, I will ask you to join with me in this effort.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I would echo Senator Tkachuk's outlining of the bill and how reprehensible it is for the government to have contributed to the delay of the merging of two entities, the Archives and National Library, because they slipped in two completely unrelated clauses amending the Copyright Act that have absolutely nothing to do with the merger. Had these amendments not been in the bill, the merger would have gone through months ago. The merger was recommended by John English, who chaired a committee to study the issue. It was well received in committee. The staffs of both institutions are keen to get together. I am familiar with the archives in particular, for one or two special reasons, and I know how they feel about it. I am told that the National Library is also keen on the merger.

This move, however, is being held up because of these two amendments, which have absolutely nothing to do with the merger the bill wants to do and which are controversial amendments whose history is scandalous. As Senator Tkachuk has said, a deal which was struck was broken suddenly, and then the final amendments were tabled by the house leader in the House and passed unanimously without any debate or any opportunity for those directly concerned to debate them. I would hope that the committee will take that into consideration, recommend taking out the copyright clauses and come back with a clean bill which, on this side, we will look forward to passing with great enthusiasm.

Senator Tkachuk: Honourable senators, notwithstanding rule 58(1), I would ask leave of the Senate to return to Notices of Motions to enable me to move a motion.

The Hon. the Speaker: We are at second reading stage of this bill. We should dispose of that before we proceed with anything else.

Is the house ready for the question on second reading?

Hon. Senators: Question!

The Hon. the Speaker: I see no one rising. I will put the question.

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 Carstairs, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

NOTICE OF MOTION FOR INSTRUCTION TO COMMITTEE

Hon. David Tkachuk: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(f), I move:

> That it be an instruction to the Standing Senate Committee on Social Affairs, Science and Technology, that it divide Bill C-36, An Act to establish the Library and Archives of Canada, to amend the Copyright Act, and to amend certain Acts in consequence, in order that it may deal separately with the provisions relating to the creation of the Library and Archives of Canada and the provisions relating to the Copyright Act.

The Hon. the Speaker: Is leave granted, honourable senators, for Senator Tkachuk to put his motion?

Senator Carstairs: No.

• (1750)

The Hon. the Speaker: Leave is not granted.

Is leave granted to revert to Notices of Motions?

Hon. Senators: Agreed.

Senator Tkachuk: Honourable senators, I give notice that I will move:

> That it be an instruction to the Standing Senate Committee on Social Affairs, Science and Technology, that it divide Bill C-36, An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence, in order that it may deal separately with the provisions relating to the creation of the Library and Archives of Canada and the provisions relating to the Copyright Act.

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING—DEBATE SUSPENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

Hon. Wilbert J. Keon: Honourable senators, I rise at second reading to speak to Bill C-13, respecting assisted human reproduction and related research. This is a most important, controversial and emotionally charged bill. The proponents, as equally as the opponents, speak about the issues with great knowledge and passion. Today, I speak to you, I hope, with objectivity in an attempt to have you focus on the extremely daunting task we have before us. Our thorough and informed assessment of this bill is crucial to our assignment and, consequently, to all Canadians.

I must first congratulate all involved for the enormous contribution of time and commitment provided to study this subject and to construct Bill C-13. To quote Senator Morin, this bill has had an extremely long gestational period.

In November of 1993, a royal commission chaired by Dr. Patricia Baird released "Proceed with Care," the final report of the Royal Commission on Reproductive and Genetic Technologies.

Its mandate was extraordinarily broad to inquire into, evaluate and make recommendations about new reproductive technologies in terms of their social, legal, ethical, economic, research and health implications for women, men and children and for society as a whole.

The Baird report, as it became known, presented 293 recommendations, including prohibiting human cloning and creation of animal-human hybrids and commercial surrogacy, and recommending the establishment of an independent regulatory body to administer rules and regulations, provide licences and monitor relevant activities.

In the decade since the royal commission, there have been several failed attempts to provide legislation in this area. In 1995, the Minister of Health at that time introduced a voluntary moratorium on cloning and many other activities to which the royal commission had objected. Three years after the Baird report in June of 1996, the government introduced Bill C-47, which dealt only with prohibiting certain assisted reproductive activities such as sex selection.

That bill died on the Order Paper when, in 1997, the federal election was called. A further attempt at creating legislation was also unsuccessful when Bill C-247, which was mostly a ban on human cloning, failed on its second reading in 1999.

Bill C-56, to create an act respecting assisted human reproduction, was introduced as draft legislation in May 2001. The bill made it through first and second reading in the other place and was referred to the Standing Committee on Health. It died when Parliament was prorogued in September 2002. The bill now before us was first introduced in the last session of Parliament, in fact, on October 9, 2002.

Let us take a moment to appreciate the foremost importance of this bill to couples wishing to have children and needing the assistance of the technology in question. Consider a couple, both in their early 30s, happily married for two years, and infertile. Above the fact that knowing a woman will not be able to become pregnant, she may be overwhelmed with tremendous reactive depression, the inability to function, and relationship disharmony. Undergoing investigation and treatment precipitates an additional flurry of pain, anguish and uncertainty. Infertility threatens what for many are life-long dreams to give birth and raise a family. Couples going through in vitro fertilization are embarked on a roller coaster. They must go through interviews, testing, waiting for a donor, painful treatment, running up the costs, and waiting, waiting, waiting.

Infertility, considered by some as a medical disability, affects one in six Canadians of reproductive age. For an egg donor, the process generally looks like this: She must first go through extensive interviews, see a lawyer, and take a psychiatric evaluation; followed by painful injections into her leg every night for two weeks to raise the appropriate hormone level; visit the fertility clinic five to six times to ensure the hormone levels are correct; take numerous blood tests and have ultrasound monitoring to ensure egg development is progressing; then undergo the egg retrieval process under sedation.

The central purpose of this bill should not be forgotten. The central purpose of this bill is to ensure that the reproductive technologies are provided in a quality-controlled, safe and ethically sound manner, and to protect from exploitation vulnerable individuals.

Bill C-13 sets out seven principles, (*a*) through (*g*) under clause 2, declaring that the Parliament of Canada recognizes the following:

> (*a*) the health and well-being of children born through the application of assisted human reproductive technologies must be given priority...
>
> (b) the benefits of assisted human reproductive technologies and related research for individuals, for families and for society in general can be most effectively secured by taking appropriate measures...
>
> (*c*) while all persons are affected by these technologies, women more than men are directly and significantly affected...
>
> (d) the principle of free and informed consent must be promoted and applied...
>
> (e) persons who seek to undergo assisted reproduction procedures must not be discriminated against, including on the basis of their sexual orientation or marital status;

(f) trade in the reproductive capabilities of women and men and the exploitation of children, women and men for commercial ends raise health and ethical concerns that justify their prohibition; and

(g) human individuality and diversity, and the integrity of the human genome, must be preserved and protected.

These, I believe, are all very sound principles on which to base this proposed legislation. I believe no one can dispute them. I believe there is universal agreement that they are necessary.

Although there is no consensus about the merits of every part of this bill, there appears to be strong support for the ban on reproductive cloning. Both ethicists and those in the scientific community generally condemn it. Currently, there are no comprehensive rules that govern human cloning, a practice widely considered unacceptable.

In that particular instance, Canadian scientists hold themselves to a voluntary moratorium. We cannot expect that this will always remain the case. In Italy, for example, in the absence of regulatory laws, we have created an environment in which fertility doctors have impregnated a post-menopausal woman; they have harvested eggs from foetuses and deceased women; and they have experimented with male pregnancy. Although these are extreme examples, none of us would wish to see a similar situation emerge in Canada.

Consequently, there is almost universal support for this part of the bill. Indeed, the "Prohibited Activities" section of the bill, even though it has stirred much social controversy, is well supported by most segments of society. Clause 5 states:

(1) No person shall knowingly

(*a*) create a human clone by using any technique, or transplant a human clone...

(*b*) create an *in vitro* embryo for any purpose other than creating a human being...

(*c*) for the purpose of creating a human being, create an embryo from a cell or part of a cell taken from an embryo or foetus or transplant an embryo so created...

This subclause is important. Subclause (*d*) states:

(*d*) maintain an embryo outside the body of a female person after the fourteenth day —

I repeat, "the fourteenth day..."

— of its development following fertilization or creation...

The Hon. the Speaker: Senator Keon, I am sorry to interrupt you.

[Senator Keon]

It is six o'clock. I am obliged to leave the chair until eight o'clock, unless it is the wish of honourable senators that I not see the clock. It only takes one senator to see the clock.

Is it agreed that I do not see the clock?

Some Hon. Senators: Agreed.

Senator Cools: No.

Senator Prud'homme: Your Honour, on a point of order —

Senator Di Nino: See the clock or not see the clock, this is not debatable.

Senator Prud'homme: I would wish to let Dr. Keon finish and then see the clock.

The Hon. the Speaker: Honourable senators, I cannot go beyond six o'clock unless there is unanimous agreement that we not see the clock. Senator Cools is not giving her consent to not seeing the clock. I leave the Chair and will return at eight o'clock.

The Senate adjourned during pleasure.

• (2000)

The sitting was resumed.

SPECIFIC CLAIMS RESOLUTION BILL

MESSAGE FROM COMMONS—
SENATE AMENDMENTS CONCURRED IN

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, and acquainting the Senate that they have agreed to the amendments made by the Senate to this bill without amendment.

Some Hon. Senators: Hear, hear!

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

The Hon. the Speaker: Honourable senators, when debate was suspended at 6 p.m. we were on Item No. 7 on the Order Paper, Bill C-13, and Senator Keon had the floor.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to adjourn the debate in the name of Senator Keon for the balance of his time.

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

PUBLIC SAFETY BILL, 2002

SECOND READING—ORDER STANDS

On the Order:

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

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I will be ready to speak to this item before the end of the week. Although I have unlimited time, there is so much to say that I may even exceed that.

Order stands.

[*Translation*]

FISHERIES AND OCEANS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the Fisheries Committee has started to sit. Therefore, I am seeking leave for it to continue its work even though the Senate is sitting.

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

Hon. Senators: Agreed.

Motion agreed to.

NATIONAL ANTHEM ACT

BILL TO AMEND—THIRD READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Milne, for the third reading of Bill S-3, An Act to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Lapointe*).

Hon. Jean Lapointe: Honourable senators, I have learned that voting in favour of Bill S-3 would do justice to the honourable Stanley Weir, author of the English version of our national anthem. By supporting the bill of Senator Poy, whom I congratulate for her excellent work, we will be correcting the injustice done following recommendations by the Special Joint Committee of the Senate and the House of Commons in 1968, which had the effect of changing Mr. Weir's text.

I fully support Senator Poy's bill and I urge all senators to do likewise.

Hon. Joan Fraser: Honourable senators, I have always admired Senator Lapointe's commitment to artistic integrity, but does he realize that, with Senator Poy's bill, we would be keeping other changes made by Parliament, including some atrocious turns of phrase and dramatics, and that the text still would not reflect the late Mr. Weir's intent?

Senator Lapointe: Honourable senators, I am not aware of any such massacres. All I do know is that the phrase "Our sons command" is the only thing we are dealing with; we are reverting to the original version. Other changes I regretfully know nothing about.

Hon. Serge Joyal: Honourable senators, if I understand correctly, the objective of the bill is to reflect ...

[*English*]

The Hon. the Speaker: Senator Joyal, do you have a question or do you wish to speak to the bill?

Senator Joyal: I wish to ask a question.

[*Translation*]

Honourable senators, the objective of the bill as I understand it is to reflect the equality of men and women and to properly recognize the contribution women have made to building Canada. There will, however, still be other anomalies remaining in the wording that clash with contemporary standards. For instance, in the French version we sang this morning:

> ...car ton bras sait porter l'épée, il sait porter la croix.

The cross is a symbol of Christian faith. It does not represent all of the faiths in Canada. If we change the original wording, ought we not to make other changes to reflect the present day values Canada expresses in its legislation, in its Charter, and in particular in the religious diversity that characterizes this country?

• (2010)

Senator Lapointe: It is a question of interpretation, Senator Joyal. When we say "il sait porter l'épée et sait porter la croix", in my opinion it means that we know how to fight and become soldiers and we also know how to bear life's daily burdens. It is not a question of religion despite what some say. It is a question of interpretation and it is the wrong one. Without boasting, I know my craft well enough to know what a song is.

In light of what Senator Fraser has said, I am a bit reluctant. That said, no one must tinker with the French Canadian national anthem. I shall defend it to the end and against all comers!

Hon. Marcel Prud'homme: Honourable senators, my good friend, the Honourable Senator Lapointe, anticipated that I was going to ask him to define "la croix" or the cross. I have already heard him give a similar speech. Excuse me, that was my question and he answered it magnificently.

I have a supplementary question. In 1968, I was a member of the committee appointed by Mr. Pearson. There are not many left in Parliament from that committee, just Senator Forrestall and myself. It was a long time ago. My fear — and I think it is justified — is just what Senator Joyal, Senator Kroft and others have told us: if you change one word, you will have to change others.

Currently, some people want to remove the word "God". Others object to "native." The danger in revisiting the wording of a national anthem, be it English or French, is that it is extremely difficult afterward to say no to those with such interesting, well-researched proposals as that of Senator Poy. That is my fear and that is why I will vote against this bill. I would like your opinion on the dangers of revisiting the wording of the French or English national anthem.

Senator Lapointe: I sometimes sing the national anthem in English but only at the end. A national anthem, like a song or a symphony, is a work of art created by our artists. If anyone changed 25 notes of Listz's Hungarian Rhapsody, they would get booed! I do not think that we should change the original in any way whatsoever.

When Senator Poy tells me that we made a mistake in 1968 and that this change brings the 1968 version back into line with the original, I am in complete agreement.

You are right. If any national anthem is as problematic as ours, multiplied 50 times over, it is France's national anthem, *La Marseillaise*. Try to change a single note or word in France's national anthem, which is incredibly violent, and you will get a beating. We do not need to beat anyone. We are pacifists.

[*English*]

Hon. Anne C. Cools: I was about to ask Senator Lapointe a question, but he has begun to answer my concern. He was talking about the absolute resistance that would be put up in France if anyone tried to change their anthem, *La Marseillaise*, by one dot, word or letter. It is the same in the U.S, with *The Star Spangled Banner*. Their anthem still talks about their fight with the British, and blowing the British to smithereens.

What is it about Canada that we feel we have to change our history daily when other countries preserve and cherish theirs?

[*Translation*]

Senator Lapointe: If I understand correctly, you are repeating what I just said, unless I misunderstood your question.

[*English*]

Senator Cools: I was asking the honourable senator to address the social phenomenon. He spoke about *La Marseillaise*, and I agree with him. These are pieces of art, pieces of history. They are usually created at the time of a country's formation or thereabouts, and there they are. They reflect the country at one point in time. That is just the way it is.

What prompted my question is that, yes, there is this concern about the 1908 version. However, my understanding is that the descendents of the composer of the lyrics of *O Canada!* are disputing whether or not those were the 1908 words, and whether or not there is another version. My understanding is that the descendents of Mr. Weir do not agree with these changes.

When we are told that we are going back to the 1908 version, that has to be properly established and proven before us. The fact is that what we are changing is what has been accepted by Canadians for 60 or 70 years. It is the version that has been established since World War I. I just wonder about this phenomenon of constantly revising history.

An Hon. Senator: Question!

Senator Cools: I do not believe that equality is the same as revising history. I have strong opposition to what may be called the deconstruction of history.

An Hon. Senator: Question!

Senator Cools: My question is there. I was asking about the phenomenon of revising history. History is what it is, with its imperfections and its warts, like people.

[*Translation*]

Senator Lapointe: You are perfectly right. We should not, as Senator Prud'homme said, make changes to a work of art, for fear of not recognizing it 300 years down the road.

Has the time come today to make changes? I am not in a good position to judge. Another bill addresses copyright. Copyright is a sacred right. If you do not like a painting and spray orange paint on it, claiming it makes it look more modern, I say that is a crime, a sacrilege. I also think that changing national anthems is a sin.

[*English*]

Senator Cools: That is what we are proposing!

The Hon. the Speaker: Honourable senators, I regret to inform you that Senator Lapointe's time has expired.

Hon. Douglas Roche: Honourable senators, I wish to support Bill S-3, and I commend Senator Poy for her vision and persistence in bringing this bill through the processes of the Senate to third reading.

The arguments for this bill have, by now, been well set forth. The Standing Senate Committee on Social Affairs, Science and Technology unanimously approved this bill. Let us not dwell on trivial points, which will be never-ending. Let us rise to this occasion. Let us not make "the best" the enemy of "the good". It is good to move forward on this bill.

• (2020)

We are not constantly revising history; we are making our history relevant to this moment.

Senator Cools: If you do not like it, then change it.

Senator Roche: This bill is about women and fairness to them.

Honourable senators, it is time to pass this bill, and thus have the Senate make an important statement on behalf of equity for the women of Canada. This bill deserves passage and the Senate would do itself proud to pass it right now.

Some Hon. Senators: Hear, hear!

Senator Cools: I would like to ask a question of Senator Roche. When last I looked at the data, I was informed that the majority of Canadians is universally against this change. If this is so good for Canada, why is it that Canadians do not like it or want it?

Senator Roche: I would have to tell Senator Cools that this is not my reading of public opinion. As a matter of fact, I have a file full of letters from almost every province in Canada, urging me to support this bill on behalf of the women of Canada, and in fairness and equity to them.

Senator Cools: I was not talking about your letters. We all have letters. I have a file of letters opposing it. I was talking about concrete evidence that this is wanted by the people of Canada and that it is not just the invention of a few members of the elite sitting in this chamber.

Senator Lynch-Staunton: What about the children of Canada?

Senator Roche: I am trying to answer the question, Your Honour.

The movement to fairness and equity for women in Canada is not some sort of figment of our imaginations; it is happening. It is all around us.

Senator Cools: I know. I sit here daily.

Senator Roche: There are people, both men and women — as a matter of fact, honourable senators, now that I am getting going, Mr. Stewart Lindop of Sherwood Park — which is a suburb of Edmonton, Alberta — a distinguished veteran of World War II, who received the Queen's Jubilee Medal for his service to Canada, has been an outstanding proponent of this change on behalf of the Canadian Legion and the Canadian Armed Forces. It is not just women who are seeking this fairness. There are many men as well. It is time that men woke up and recognized this reality of Canada's present existence.

Senator Cools: As a woman — and when last I checked, I was one — I would like to say that the opinion you express is not the opinion of most Canadians. I would also say it is not the opinion of most women in this country. I would also like to say it is not the opinion of most people in this country.

I want to tell the honourable senator that a lot of women purport to speak for women. I have news for you. That is a lot of rubbish. There are a lot of women who feel very strongly that their roots in this country are worthwhile —

An Hon. Senator: Question!

Senator Cools: — and are worthy of being preserved, as the history of Canada is worthy of being preserved without being revised.

However faulty and flawed that history is in places, it is still the only one that we have.

Senator Roche: Honourable senators, outside this building, a few steps away on the hill, is a new and thankfully modern statue of five Alberta women who stood up in those days to ensure that women would get the right to be members in this Senate. Thanks to those pioneers, women have come into the Senate and are serving today in a distinguished manner. They deserve to be represented in what Senator Poy's bill represents, not just by women, of whom there are plenty across this country, according to the surveys, but also by men who will stand up and say that it is time that we eliminated any kind of discrimination against the women of this country.

Senator Cools: I think, honourable senators —

Some Hon. Senators: Oh, oh.

Senator Cools: Quite frankly, the concept that the national anthem of this country is discriminatory or against women is a wild assertion. I will tell honourable senators something now. If we know anything — this morning, honourable senators, I was at that memorial celebration and if you know anything about men, honourable senators, every penny they have ever earned and everything they have ever had, they have given to their wives and to their children.

Some Hon. Senators: Oh, oh!

Senator Cools: We sit in this chamber day after day after day and malign and revise history. I have listened to Senator Poy. I have listened to her talk, cite the Persons case, and talk about Lord Sankey, when he talked about barbarous times when women were excluded from office. If you go to the judgment, and saw what he had to say, when he made those statements about those positions being from times more barbarous than others, he was talking about the times when men came to meetings under arms, under force of arms.

Honourable senators, if we were to look at the space between the two sides of this chamber, this aisle here is — I forget how many swords' lengths, because it was intended to be, to make sure that blood would not flow.

Honourable senators, since I have the opportunity, the expression "drawing blood" is an old parliamentary expression, because it came from the time when disputes would arise —

An Hon. Senator: Question!

Senator Cools: — to such a heat that swords might touch and blood might be drawn.

If we are really to talk about our history, honourable senators, let us look at our history. I want to tell you something. We are so elitist in this chamber. Well, honourable senators, most men in this country are blue-collar types. They are coal miners, they are construction workers, plumbers and welders. They do not earn a lot of money. They will never be judges. They will never be able to say, "I want to be "X" in this chamber." All I say, honourable senators, is let us be balanced and fair.

If I were to write a national anthem, I may not write today what Mr. Weir wrote. It might be amusing. Honourable senators, if any of us had a chance to write the national anthem, we would write a different national anthem from what we have now. You know, honourable senators, if I were to write anything, I would write it differently from what was written 100 or 150 years before us. The fact of the matter is that what we have before us is a product of a previous age, something that was adopted because of its popular use in the community. That is all I am trying to say to honourable senators: that Canada's history and Canada's past is worthy of preservation.

Honourable senators, you know I was not born in this country, but I can just as easily say, "Well, Canada is not my native land".

• (2030)

Honourable senators, I do not mind. Everyone can make speeches here.

I challenge the honourable senator and I ask him what is his concrete evidence for the fact that this ancient piece of literature, this ancient piece of music, is discriminating against or hurting anyone. It is like saying that John Graves Simcoe, poor fellow, was a man and did not have enough foresight to see many things. This is the biggest problem in this country. Fundamentally, we do not believe our history is worthy of recognition, and we feel we have to amend the Constitution and amend history every day. You will never get support from me for that.

Senator Roche: Honourable senators, it has been suggested that I give some evidence on behalf of my position. First, when I spoke this evening, I did not intend to use this morning's event as part of my argumentation. I am referring to the memorial service held in this chamber this morning under His Honour's chairmanship. I was there. It is my belief that those who gave their lives in the wars of our past, including the Korean War, did so not on behalf of one gender; they did so on behalf of the people as a whole. It is the people as a whole who ought to be recognized in our national anthem. If we have been late in repairing a discrimination, let us not falter at this moment, for as Senator Banks reminded us a long time ago in this debate, the wording of "in all of us" instead of "thy sons" was in the original version of the anthem.

The senator asks me for some evidence of my concern. I have four daughters who have educated me quite a bit over the years. I think that as samples of public opinion, my four daughters are a pretty good reflection of what Canadians feel about the fairness of the anthem.

Honourable senators, I believe that we have had a sufficient debate on this subject, and I hope we can vote tonight to pass this bill.

Hon. Senators: Hear, hear!

Some Hon. Senators: Question!

The Hon. the Speaker: Does Senator Cools wish to speak?

Senator Cools: I wish to speak, but I do not wish to speak now. I do not have my file in front of me. The hour is late.

The Hon. the Speaker: It is hard to hear you from this distance.

Senator Cools: This is the justice that I always hear from my female sisters.

Senator Lynch-Staunton: Not your male sisters?

Senator Cools: Senator Lapointe has just spoken. It is quite normal for debate to go on, a speaker to speak a day here, a day there, but yet my sisters would deny me that. Do they think that they advance the cause of sisterhood? I do not think so. I have a view, and I think honourable senators know that I have done a fair amount of research on the subject matter. Senator Lapointe has spoken. I would like the opportunity.

Do you want to speak now, Senator Banks?

Senator Banks: When you are done.

Senator Cools: I do not want to speak now. You go ahead and speak, Senator Banks.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, one cannot rise and claim to want to speak when in fact one does not. There are honourable senators who came back at 8 p.m. to listen to sensible speeches. I notice that, all of a sudden, we are wandering off topic and wasting a great deal of time. Let us not abuse the patience of those who are here to do something constructive.

If an honourable senator wishes to speak, he or she should also leave time for others to speak in turn. In my opinion, to speak more than once is an abuse of the privileges of the honourable senators who are here to listen to speeches.

[*English*]

The Hon. the Speaker: Is this the same point of order or a different one, Senator Prud'homme?

Senator Prud'homme: A different one.

The Hon. the Speaker: I will deal with them one at a time.

Sometimes, with the switching of the microphones, it is difficult for me to hear senators at the other end of the chamber. I asked Senator Cools, because she has been rising a lot, whether she was putting a question or speaking. I do not know to this moment whether she said she was wanting to speak or wanting to put a question. If there was time, and I think we are fast running out of Senator Roche's time, then she could have put a question. That is fine. If she wanted to speak, I would have said to her that Senator Banks has my eye and I would go to him next for a speech and then go to her for a speech, if she wishes to speak. With that explanation, perhaps honourable senators will understand better the problem I have had from the Chair.

I would like to read a couple of rules that I have been looking at because I am not just sure where we are going sometimes with the exchanges on speeches.

Any senator, of course, can decide not to take questions or to allow comments. The relevant rule is rule 37, which states:

> Except as otherwise provided in these rules, or as otherwise ordered by the Senate:...
>
> (4) Except as provided in sections (2) and (3) above, no Senator shall speak for more than 15 minutes, inclusive of any question —

— singular —

> ...or comments...

— plural —

> ...from other Senators which the Senator may permit in the course of his or her remarks.

The other rule I would like to just remind honourable senators of is rule 51, which states:

> All personal, sharp or taxing speeches are forbidden.

In terms of the civility of debate, the recognition of a speaker's time and the right to put questions or make comments without incurring a lot of heckling or a lot of other reaction from the chamber, is something that I would remind honourable senators would facilitate our work, not that that there is anything against heckling or exchanges. I thought that I would remind honourable senators of those two rules.

I want to clarify the situation between Senator Cools and I. I still do not know whether she wanted to put a question or whether she wanted to speak.

Did you want to speak or did you want to put a question, Senator Cools?

• (2040)

Senator Cools: Honourable senators, while I was in the process of putting a question, I could hear a lot of general comments from these quarters. I was trying to state very clearly to the chamber that I want to speak. Third reading has only just begun on this particular bill, and I am quite happy to defer to Senator Banks if he wishes to speak now. However, I had been asking questions, which were pretty clear. I then said that I wanted —

The Hon. the Speaker: Thank you, Senator Cools. I understand now. Unfortunately, Senator Roche's time has expired. Senator Banks.

Hon. Tommy Banks: Honourable senators, I support this bill. I want to make three short, but I hope, cogent points about it.

First, this ancient lyric that Senator Cools suggests we are altering harks all the way back to 1980. The present authorized lyrics of *O Canada!* were set out in the National Anthem Act in 1980. Up until about 1957, all Canadians sang a different set of lyrics, but in 1980, a substantial change or two was made in the generally accepted lyrics to *O Canada!* That is how old these lyrics are.

Second, Mr. Stewart Lindop, to whom Senator Roche referred, made the suggestion of either this change or one similar to it in the late 1980s, in a letter he wrote to his member of Parliament at the time. The most cogent point is the one about which Senator Cools asked a question, namely, the successors to the author and their view. With all due respect to them, the grand rights question here, the moral right question, must, I think, be referred only to the author and not, with all due respect, to the successors of the author.

The author in question was not Calixa Lavallée, because, as we all know, he wrote the music. The lyrics upon which this whole question is generally based were written by His Honour Recorder Robert Stanley Weir, from Montreal. I have before me, honourable senators, the copy which was registered with the United States copyright office by the Delmar Music Company in 1908. In that same year it was entered, according to the act of Parliament in Canada, by the Delmar Music Company at the Department of Agriculture, which was then the repository of measures of copyright and patent in this country.

In the seventh measure of this original version by Mr. Weir, on the third beat, the third quarter note of the seventh measure, the word is "us".

Senator Cools: In response to all this, honourable senators, I move the adjournment.

Some Hon. Senators: No!

The Hon. the Speaker: It is moved by the Honourable Senator Cools, seconded by the Honourable Senator Prud'homme, that further debate be adjourned to the next sitting of the Senate.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Will those in favour of the motion to adjourn please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed please say "nay"?

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. There will be a one-hour bell, unless it is agreed otherwise.

• (2140)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Atkins	Lynch-Staunton
Banks	Nolin
Buchanan	Prud'homme
Comeau	Robertson
Cools	Sparrow
Gustafson	Stratton
Kinsella	Tkachuk—14

NAYS
THE HONOURABLE SENATORS

Andreychuk	Lawson
Biron	Léger
Callbeck	Losier-Cool
Carney	Mahovlich
Carstairs	Milne
Chalifoux	Pearson
Chaput	Pépin
Christensen	Poulin
Cordy	Poy
Downe	Robichaud
Fairbairn	Roche
Graham	Spivak
Hubley	Trenholme Counsell
Johnson	Wiebe—29
Kroft	

ABSTENTIONS
THE HONOURABLE SENATOR

Fraser—1

Senator Cools: Honourable senators, I rise to speak to Bill S-3 and to record my objection to what I consider the philosophical premise of the bill, which is that men are enemies of women and children and that women are oppressed by the patriarchy. I would like to begin by saying that my mother was a strong Methodist who taught me to respect the labouring classes. A long time ago, I was able to observe that most men are blue-collar workers, miners, construction workers and lumberers, who perform brutish, hard, dirty work.

• (2150)

Honourable senators, I would like to say that I am in favour of equality, but some years ago I started to distance myself from radical gender feminism, and perhaps I should tell some honourable senators why. In my view, I found it hard to accept that women, by virtue of gender, are inherently virtuous, and men, because they are the male of the species, are inherently aggressive and evil. I had to distance myself from that view because I cannot believe that gender conveys morality or virtue. I had to distance myself from the proposition that women are morally superior to men, that men are morally inferior and that, somehow or other, men are morally defective, and lurking inside of every man is a rapist and a wife beater.

Honourable senators, I say all of this as one of the foremost persons in the country on the subject of domestic violence and one of the first people in the country to bring forth the issues of domestic violence. Honourable senators, I also say all of this as one of the first women in the country to take up the banners of equality and independence of women, which I believed in then, and still believe in now.

I would like to share with honourable senators one of the reasons I began to distance myself from radical gender feminism. I could quote Germaine Greer or Madame Justice Bertha Wilson and her assertion that women judges really make a difference and that women are more ethically caring. I just quote one, Sally Miller Gearhart, herself described as a radical lesbian feminist, in an article by her entitled, "The Future — If There is One — is Female," published in the 1982 book *Reweaving the Web of Life: Feminism and Nonviolence*. Sally Miller Gearhart said the following:

> To secure a world of female values and female freedom we must, I believe, add one more element to the structure of the future: the ratio of men to women must be radically reduced so that men approximate only 10 per cent of the total population.

Yesterday we were talking about genocide. This is the statement of a leading American feminist.

Germaine Greer said this in her 1999 book *The Whole Woman*:

> ... men are freaks of nature, fragile, fantastic, bizarre. To be male is to be a kind of idiot savant, full of queer obsessions about fetishistic activities and fantasy goals, single-minded in pursuit of arbitrary objectives, doomed to competition and injustice not merely towards females, but towards children, animals and other men.

Honourable senators, I had to distance myself from that point of view.

In our exchange a little while ago, I asked Senator Roche to give me some evidence of the public support for their position. I have not had much time to prepare for this intervention, but I was able to rummage through my files quickly, and I came across a poll from *The Globe and Mail*, dated August 8, 2001. It may be outdated, but until someone can bring forth a more recent one, I can accept this and I submit this to the chamber. The headline is as follows:

> 77 per cent reject attempt to neuter O Canada, poll finds.

Further down, the article states:

> A *Globe and Mail*-CTV poll released yesterday found that an overwhelming 77 per cent of English Canadians surveyed think that making the national anthem more inclusive and gender-friendly by changing its lyrics is a "bad idea."
>
> And the view is held equally by men and women.
>
> "In this case, people have spoken: not everything has to change," concluded John Wright, spokesman for Ipsos-Reid. "Some things should just be left alone."

Honourable senators, I have difficulty, quite often, being cast as some sort of dinosaur, as if somehow or other I do not believe in the equality of women. If you knew how I was raised, honourable senators, you have not seen equality until you have met my mother or the family members with whom I was raised, descended of free coloured people in the British Caribbean. You do not know independent women until you have met some of those women. My mother taught me when I was very little to set my own course and to captain my own ship, and to learn to ignore the herd because the herd runs like a pack. My mother used to say to me, "If the herd is running that way, stop and walk in the other direction."

Honourable senators, I would like to clarify a few statements, if I can. There is not time because these issues are so huge and so enormous that we do them a terrible disservice. I want to talk about the Famous Five.

First, they are not famous at all. Most Canadians have never heard of the Famous Five. No one knows who they are. One of the reasons, honourable senators, I have not joined in that drumroll about those statues outside is that I think it was a shame that Canadian women went to the Privy Council, a court in England, to try to overrule or to circumvent or to dominate or to subjugate a Canadian Liberal Prime Minister, Mackenzie King. It may surprise some of you, but I feel a great loyalty to King. That is what they did. That thing out there is no testimony to anything other than a small group of very privileged, elite women who went to a court to subjugate and to get a decision over a Prime Minister and a Parliament of Canada. Besides, the whole thing was foolishness. I will tell you why, honourable senators: at the time they went, women were already members of the House of Commons, like Agnes Macphail, about whom I have read a lot. There was a time in my life when I read a lot of this, honourable senators — not recently — but I read a lot about it. I am saying to you, do not be caught up in this illusion. Men and women are equally flawed, equally imperfect, equally capable of sin, equally capable of aggression. That is the nature of human beings. They are imperfect, and God knows I know how imperfect we are.

Honourable senators, I do not talk about these things a lot, but some of the things those women did are nothing to be proud of.

I read a lot — not recently — about Emily Murphy. Now there was a racist woman. She wrote a book that I have not looked at for a few years called *The Black Candle*. I think it was about drugs. She had done an inquiry into the drug trade, and, let me tell you, honourable senators, the things she said about non-white peoples, particularly the Chinese, I would not repeat. I would not dignify them to repeat them.

Do not uphold the five persons to me as some group for me to worship. To be quite frank, honourable senators, I heard Senator Carstairs say in this chamber once that what they said would not be tolerable in today's community. I have news for you senators: it was not tolerable then, either. A lot of people did not accept it, so I am not quite one to uphold all of that, too.

Honourable senators, there are differences between men and women and, yes, there have been injustices, but look at these injustices for what they are. They were acts that were limited by the circumstances of their time and the perception of roles in society that were current at the time.

• (2200)

For Senator Poy and others who believe that we have to reverse history and rewrite it, I would like to quote Mr. Blackstone, that great British master of the common law, on the subject of women. I refer to Volume I of Blackstone, the 1876 edition, edited by Robert Malcolm Kerr. There are many editions. At the end of the chapter where Blackstone is writing about the relations between husband and wife and the authority of the husband, Mr. Blackstone gives us a phrase that I invite honourable senators to contemplate. He says:

> These are the chief legal effects of marriage during the coverture; upon which we may observe, that even the disabilities which the wife lies under, are for the most part intended for her protection and benefit. So great a favourite is the female sex of the laws of England.

The disabilities that women laboured under, and they are serious, were there because, believe it or not, there was a sense of protection. Women were not expected to be pressed into service or into war. When the press gangs came looking, they did not look for women. When Mackenzie King was conscripting, he was not looking for women either. Men had to do it.

Remember when Senator MacEachen told us about his father going down into the coal mines, into darkness, before the sun came up. Some of those men never saw the light of day — some of those men. We cannot reverse that.

Honourable senators, when we see violence between men and women, look at it as pathology of intimacy, not men oppressing women. It is not the patriarchy oppressing women. Look at it as pathology of intimacy between men and women.

Honourable senators, in this particular instance, if we think that history was imperfect then, we cannot change it. God knows that I am a different race from the people here. If I want to talk about history, I can run very far. However, I choose not to do that because I always respect reason and intellect.

That is all that I was expecting senators to do a couple of hours ago. The debate had only just begun. I said that I wanted to speak. Through brute force, spitefulness, or whatever you want to call it, senators decided to vote me down. I scrambled a few notes together, not the best and certainly not the best I have ever done.

In closing, honourable senators, I wish to come to an issue that keeps niggling at me. It concerns this business about changing the national anthem's words back to Judge Weir's original words. Perhaps Senator Poy is right. I do not know.

I do know, honourable senators, that the descendents of Judge Weir were in touch with me. They tell me that they can find no evidence of what Senator Poy has said. Perhaps that was examined in the committee. I do not know.

Steven William Weir Simpson wrote a letter to me dated February 27, 2002, which in part reads:

> ...Parliament has done enough damage already. I attach a copy of Judge Weir's original 1908 version in his own hand. Also, I append his revision of the lyrics in 1921, introduced, I believe in an address of the Canadian Clubs, which we have always sung, certainly in Quebec, and I believe most of eastern Canada.

The copy that he has sent me does not match with what Senator Poy may believe to be correct. I am quite willing to concede that. I feel no investment personally in this matter. However, this question of the difference in the lyrics should be dealt with.

Honourable senators, in my view, when a debate is not pressing and when a debate is still young, unripe and still quite novel, it is an act of enormous disrespect to vote colleagues down who wish to take the adjournment. It is something that I rarely do. Whenever I have done it, it is usually because it is a government initiative and the matter is pressing in time.

Honourable senators, I oppose what is happening. There is no amount of force in this world that will cause me to change my mind because, believe it or not, I love this country and I believe in it. With all its isms, flaws and imperfections, I will uphold it. Whatever it has done to its native people, it is still my country. I support no effort to return —

The Hon. the Speaker: I regret to advise the honourable senator that her time has expired.

On motion of Senator Prud'homme, debate adjourned.

PERSONAL WATERCRAFT BILL

THIRD READING

On the Order:

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

Hon. Mira Spivak: Honourable senators, I have spoken to this bill many times. I simply want to thank all those people who have commented on the bill.

Hon. Tommy Banks: Honourable senators, I believe that I am correct in saying that if Senator Spivak speaks now, it will close debate on this bill.

The Hon. the Speaker: It is Senator Banks' motion; therefore, he would close the debate.

Senator Banks: I beg your pardon.

Senator Spivak: I simply want to thank all those who have appeared before the committee across the country who have expressed their opinions, both positive and negative, mostly positive. I want to thank all of the cottager associations and all of the other individuals who have come to support this bill. I also want to thank those who have spoken on it, such as Senator Moore —

The Hon. the Speaker: I am sorry to interrupt the Honourable Senator Spivak, but she has spoken on this bill already and is entitled to speak to it only once.

Senator Spivak: That is fine.

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?

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

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

• (2210)

HOLOCAUST MEMORIAL DAY BILL

THIRD READING

Hon. Marie-P. Poulin moved the third reading of Bill C-459, to establish Holocaust Memorial Day, as amended.

Hon. A. Raynell Andreychuk: Honourable senators, I rise to speak to Bill C-459, to establish Holocaust Memorial Day.

I want to deal with two preliminary points that have little to do with Bill C-459 but very much to do with the operations of the Senate. I add my voice to the deep disappointment in the way the bill was introduced in the Senate. The rules are clear that there is a mover and a seconder, simply. Agreement with any resolution or bill comes in debate and, of course, in a final vote.

In fairness to all those senators who were not named as alleged seconders, it would be improper and unfair to presume that they are not supportive of Bill C-459 or, more particularly, a Holocaust Memorial Day.

Honourable senators will note that I was not on the list. In my case, contrary to some other senators, I was contacted by Senator Grafstein, but on the floor of the chamber when I was getting ready to speak on another issue. As has been my practice on every issue, not only in the Senate but perhaps because of my legal training and my years on the bench, no matter how worthy a principle sounds, I want to see the proposed legislation or the motion before I agree. Therefore, I said to Senator Grafstein that I would like to read the bill and I would get back to him. I should say he agreed with that request.

When I attempted to get back to him, I was told that he was no longer the sponsor of the bill. It was only on Monday, on the introduction of Bill C-459, that I found out that Senator Poulin was the mover of the motion. By that time, I was told that there would be no mention of seconders but simply the usual rules of moving a bill and one seconder. To my dismay, the list of names was read out and, of course, without my name attached.

The second issue that I would raise is the following: The best way to commemorate the Holocaust and to pay tribute and recognition to the violence, terror and injustice that was perpetrated against 6 million Jewish men, women and children between 1933 and 1945 would be to give my full attention to this bill, exercising the highest standards of care, due process and good democratic principles of operation in this Senate. Therefore, I was saddened and disappointed to hear some honourable senators in this chamber express disapproval of studying this bill in the Committee of the Whole. At the very same time, certain senators were indicating that they knew nothing of the Holocaust during its perpetration or after, until recent years. Surely, the best way that I can give my commitment to this phrase contained in the preamble —

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

— is to use every opportunity in this chamber and as a senator to support democratic principles and not shortcut them. To speak to this issue at every opportunity is surely the way to proceed. Is this record not a source of tribute and education?

As a personal note, I have lived the consequences of the Holocaust, as have many Canadians.

Returning to Bill C-459, on its merits, I wish to give my support to this bill. In answer to some of the questions I put yesterday, Senator Kroft has clarified — and I presume that Senator Poulin and Grafstein are in agreement as they did not voice any objections — that this bill is to establish a Holocaust Memorial Day for the 6 million Jewish men, women and children who perished under the policy of hatred and genocide, and the deliberately planned and state-sponsored persecution and annihilation of European Jewry by the Nazis and their collaborators between 1933 and 1945.

By honouring these people, it is not to say that there were not previous genocides or hatred perpetrated by the state, but that its horror has galvanized the international community to attempt to deal with the consequences and to re-uphold human rights.

Honourable senators, every life is precious and equal. It is our duty to remember, to act and to prevent further atrocities wherever they occur.

With respect to those 6 million people, it is extremely important that we continue our efforts to stamp out anti-Semitism wherever it exists. If this bill reminds us to do so, it will have served a purpose in Canada. We cannot stand by and hear comments, as those made by the former Prime Minister Mahathir of Malaysia, and not take the strongest action taken against them. We cannot have synagogues and cemeteries desecrated without reaction. We cannot allow freedom of speech to allow hate propagation by the likes of Keegstra.

I believe in this precedent, that a Holocaust Memorial Day designated to honour and remember the 6 million Jewish men, women and children is worthy of support to further justice and peace in this world.

When one looks at the atrocities that have occurred since the Holocaust, the world has yet to develop the commitment to uphold human rights, but I would implore all honourable senators to strive to live this challenge every day in their words and their deeds.

Hon. Senators: Hear, hear!

Hon. Mira Spivak: Honourable senators, I congratulate Senator Grafstein and those in the other place who brought this bill forward. I know it is a very befitting memorial in legislation for those people who were victims of the Holocaust.

I would add a personal note. This bill means a great deal to me because my maternal grandfather and most of my aunts, uncles and cousins were victims of the Holocaust. This particular action and the very eloquent words that have been spoken here tonight are fitting memorials to all of those people who were victims of the Holocaust.

Hon. Senators: Hear, hear!

[Senator Andreychuk]

[*Translation*]

Hon. Marcel Prud'homme: Honourable senators, in the rush, not all the facts were presented, as was pointed out yesterday. Having discussed this with the honourable senators, I would like to reiterate that unfortunately, several questions remain unanswered. Consequently, I had to do a little research and, as you know, I will be voting in favour of this bill. Nonetheless, I do not like the typically secretive approach that was taken. As usual, things were done in such haste that no one was able to answer yesterday's questions in a satisfactory manner.

For the honourable senators who are interested, including Senator Mahovlich and a few others, I will list the holidays that seemed to trouble many of our colleagues, in order to make sure there is no confusion in the minds of Canadians for several years to come.

Let us talk about Easter, 2004. We noticed some reluctance by some to advertise their religious denomination, as Christian or Roman Catholic, while others are already talking about the dechristianization of our institutions. We will recall the Honourable Senator Kelly's memorable speech. Very few senators at the time paid attention to what Senator Kelly had to say.

• (2220)

I myself am Roman Catholic. I know there are certain statutory holidays in Canada and others that are commemorative days, which is a different thing. When a person visits another country, he inquires when the statutory holidays are. There are usually six, seven or eight of these. Then there are some more commemorative days, such as the one proposed by the House of Commons. There will not be any confusion, although some senators appear to be concerned about what would happen on Easter Sunday or Good Friday.

In 2004, Easter will fall on April 11, and the commemorative day will be April 18. In 2005, Catholics will be celebrating Easter on March 27, which is not a problem with the other day we would be commemorating, which would be May 6. Easter in 2006 will fall on April 16, and Yom ha-Shoah on April 25.

In 2007 — and this was asked — Easter will be celebrated in Canada on April 8, while Yom ha-Shoah will be April 15. In 2008, Easter will fall on March 23, and Yom ha-Shoah on May 2.

The year 2009 will mark a number of departures, as will 2004. In 2004, 11 senators will be leaving us, and in 2009 another 11, myself included if God gives me breath until then.

In 2009, Easter will be April 12, and I will be marking Yom ha-Shoah on April 21. This is the sort of basic information we could have gotten from witnesses if we had heard any. It means that the date will change yearly, so we need to be prepared, to be logical.

What I find bizarre, and there is one person here who understands very well what I am going to talk about, is the matter of saying "never again", everything is fine, everybody loves everybody else, no more horror, and so on.

I thought my country of Canada could avoid these hate campaigns. I thought my province — I have not yet gone so far as to refer to "my state" — my Quebec, which is so often faulted, could do so; that my City of Montreal, which is going to experience — and this is terrible — great problems, what with mergers and now demergers, with talk of rich and poor, English and French, could do so. But here we are, just at the time we are talking of love, open-mindedness and friendship, reading in the September 10 *Suburban* — and this is something that will be brought up often because we are planning to organize the appropriate reaction to it — that Mr. Jody Benyunes, visiting Shaare Zion Synagogue from Florida was quoted as having said:

[*English*]

"Muslims should not be allowed to immigrate to democratic countries."

The article is vicious and unbelievable.

Honourable senators have to understand something. Senator Fraser and I agree on many issues, and we certainly we agree that the *Suburban* is not our favourite newspaper. The problem is the damage it creates. It is circulated house to house all across the West Island of Montreal for free. Usually, it attacks, with great pleasure, French Canadians. However, now, it is a sponsor.

The event was sponsored by Mark and Judy Litvak. I was going to make a statement tomorrow because some people may take them to court because, if there is pure hate, it is happening right at the moment we are trying to educate people and remind them of what the Holocaust was all about.

I have always said to Senator Grafstein, with whom I totally disagree on our policies in the Middle East, that we should combine our efforts to explain the horror of the Holocaust to people. A moment ago Senator Spivak spoke to us about her family, who went through hell. I must admit that the honourable senator's husband was not too kind to me when I was elected president of the national Liberal caucus in a secret ballot against Sheila Copps, but that is another matter. I won, so all is well.

Now, we are trying to open our hearts and we are inviting every Canadian to commemorate this event every year. However, I find myself in the same boat as those members who would prefer a specific date so that educators can ingrain that date in the minds of the children in their care. However, so be it.

I feel I am a Jew. I would repeat that my remarks this evening are for a lady friend of mine in Montreal called Janet. I will not give you her second name now, but I will eventually. Of course, she is of the Jewish faith. These comments are for her.

I want to try to convince my colleagues. I know I will die trying to convince people who do not want to be convinced. They prefer to manipulate others and go around in circles, destroying reputations. I can certainly tell you, honourable senators, about reputations that have been destroyed.

It is not only our colleague Leo Kolber who can write books. Honourable senators will be horrified when they know what people can say behind curtain — things that they would not say openly. I call them the gossipers.

At this time, honourable senators, when we want to do something positive, I say that the House of Commons has done it the wrong way. They did it in secret. They have done it —

[*Translation*]

"Behind the curtain" means in secret. There is a well known expression in Quebec, which translates as "pulling a fast one," a little bit like last night.

[*English*]

It works. That is what I heard. It is good that we postponed this until today. *The Suburban* is a rag.

[*Translation*]

If you knew all the insults that we French Canadians endure; in Winnipeg, you are not suffering from that fatal disease that exists in Montreal. We are the ones who have to live in Montreal. And those of you who are offended by my remarks can go ask Senator Fraser, who is a good friend of mine.

• (2230)

Ask her about *The Suburban*, about the damage done by that rag at a time when we are trying to convince people to commemorate each year one of the worst horrors in history.

I can see senators who are looking at me wide-eyed, but who are not even tuning in to the language I am using. It sure is disheartening to try one's best to convince these honourable senators. Some of them probably cannot put up with me. Not only do they not use their earpieces to listen, but they are preparing to leave. Well, leave then!

One thing is for sure: when seeking social peace, one must start at home. But I will combine the two. This anti-Muslim rag — and I am not a Muslim, an Arab or a Palestinian. I am a French Canadian from Quebec and a nationalist. I make no bones about it. I respect others who are English Canadians from Quebec and nationalists.

That is what sound nationalism is all about. I do not apologize for that. I just received this rag, at this time when we have to face big problems in Montreal. At this time when we are talking about beauty, celebration and commemoration, this rag insults the entire Muslim community. Honourable senators, I intended to move an amendment, and had given notice to this effect. Immediately, the word got out and spread. What I heard back, honourable senators, was not very nice. I was accused of wanting to use the rules.

[*English*]

I want you to know that if I were to make an amendment tonight, that would be it for today's session. I will not give consent to vote on third reading; if there is an amendment, we will have to dispose of it before we vote. However, I will not play the little, silly games of the Commoners from the House of Commons, where I was so happy to sit in secrecy, using the little book, just talking to two or three. I hope it will be used as a good example for the future, when you deal with something as important — as horrible — as the Holocaust. It is no time for children or little games. It is time to be stateswomen and statesmen.

I will vote for the bill, and I wonder who will defend it with more passion. There are still some people who deny that the Holocaust existed. There are not many, but I will face them any time, any way.

The Hon. the Speaker: I regret to advise that the honourable senator's time has expired.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I would like to say a very few words tonight with respect to this piece of legislation.

When we put into legislation a commemorative day, as this piece of legislation would do, it is really done for our children and for our children's children. For many of us, the Holocaust is still very real. We heard from Senator Spivak. Clearly, her own immediate family was deeply hurt; that had to affect the extended family. However, what we do know of history is that it is all too often forgotten and all too easy to forget, to allow other events and other times to give a different memory, and to somehow or other colour it so that it is not quite so bad as we really know it was.

Therefore, I would hope that every teacher across this country will use this piece of legislation as a teachable moment, to explain to their children the horrors of what happened, and what happened to children.

When I went to the Holocaust Museum in Washington, I found the entire museum difficult to walk through. For me, the most difficult parts were those dedicated to the children, because these children never had a life. They never had the fullness, the richness of a life to experience because of the atrocities that were perpetrated against them.

I believe we are doing a good thing tonight; we are doing a noble thing. However, it will only be good and it will only be noble if it is used; if it does not just become a parchment of words, but leads to actions. Those actions will be to teach this generation, the next generation and future generations that we must learn from our history; we must remember the horror as well as the good times.

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

Senator Grafstein, have you not spoken?

Hon. Jerahmiel S. Grafstein: I have not spoken on third reading. I will be brief; the hour is late.

Honourable senators, on its face, this bill establishes a memorial day. Honourable senators have asked themselves: What is a memorial day? The word "memorial" stems from the word "memory." The word "memory" originates from the Latin verb *memorare*, "to bring to mind." In Hebrew, the word "memory," *zachor*, we are told encapsulates both a reflective and an active meaning. To memorialize, to remember, to bring to one's mind, requires one to think, to reflect and, as Senator Carstairs pointed out, to act.

The purpose of this bill is not to nourish the dark and dismal dialectic that led to the Holocaust. Rather, the high purpose of the bill is to inject a dialogue of hope that we can renovate the human spirit, and renovate and repair the human condition. Honourable senators, it is to question, to seek, and as one great poet once said, it is not to yield to the dark, dank impulses of the human condition. This bill points us toward the light that will push back the darkness and allow us to flourish in the sunshine. I urge the speedy approval of this bill.

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?

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

• (2240)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

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

Hon. David Tkachuk: Honourable senators, I was not sure whether I was going to speak on this private member's bill that was initiated in the House of Commons. I was quite appalled at the short shrift this bill was given in the other place. I sometimes think that our hearts lead our heads, although we have a responsibility to get them working at the same time.

For a private member's bill, this one has generated a tremendous amount of anxiety in the body politic. I heard other honourable senators discussing how many people support the amendments to the National Anthem Act. If we polled Canadians, I think we would find that no one even knows we are dealing with that bill. However, that is not the case with this bill. This bill has generated a tremendous amount of anxiety in the body politic. As a politician, I have learned to listen to the voices not only of support but also of dissent. That is our burden here.

This bill is defined by its author in the other place — a man who describes himself as gay — as legislation that protects homosexuals from the ballast in our society, those who would do another harm for no reason other than that the person being harmed is different from the norm. At our doorstep are the others who disagree that this group requires protection in hate legislation under our Criminal Code. There are those who do not accept the very principle of hate legislation, and there are those who are concerned about the effect of Bill C-250 on freedom of religion and freedom of speech. It is interesting that many of the minority groups protected by hate legislation, Muslims and others, are themselves concerned about the inclusion of the homosexual community in hate legislation under the Criminal Code. Jewish groups, Muslim groups, some Christian groups — themselves minorities — are very vocal in their concern and even, in some cases, their distaste for this bill. Evangelicals, Pentecostals and Catholics join them.

At the heart of their argument is the fact that they speak out against the homosexual lifestyle and see it as anathema to the teaching of their God. They fear for the loss of their right to argue against a social lifestyle of which they do not approve.

We in this place have a duty to listen to them. After all, there are many minorities in these groups. The Senate was established because the majority would not protect the rights of minorities — it would be too easy to take advantage of them. In this case, I think that is a stretch. This assumes that the majority in a democratic state is so crass and morally degenerate that they have no interest in protecting minority rights. After all, common law clearly says that any person or group who counsels harm against an individual or a group is committing a criminal offence. We have the law to protect people. If you counsel someone to hurt someone else, or create a conspiracy to hurt someone else, or propagate the hurting of someone else, you are committing a criminal offence. The majority, who have written our common law, understand that from time to time groups or individuals may utter threats that should be taken seriously.

I have grown to appreciate the need to be precise in our laws, and in Bill C-250 we are including something called "sexual orientation." While I appreciate the wisdom of our judiciary, I have come to know that judges are capable of being profoundly wrong. They, as we, are not exempt from these human frailties and weaknesses. As legislators, we have a duty to not put too great a burden on their intellect. It is the court system that has turned the whole meaning of marriage and many of our social programs on their heads. These social programs were designed to protect families with children so that mothers would be able to stay at home and raise children. Those programs have now become a right that attach to conjugal acts. We did not do that; the courts did that.

People tell us that the legal system understands what sexual orientation means. Not for a minute do I believe that. They will stretch and push definitions and we in this place will have no say in it. That is what these religious groups and others — these other minorities, frankly — are so concerned about.

I and many others have reason to be afraid of the power of judges to make new laws by expanding the very definitions that we thought were clear and that the writers themselves in 1982 thought were clear. If the body politic is divided — and, honourable senators, it is divided — and the people's representatives in their free vote are also deeply divided, then we have a duty to help solve this problem or put it aside for another day.

There is no great crisis in our land and there is the strong possibility that perhaps Svend Robinson, who is a politician, was acting crassly. We do not know that. He represents a community. Perhaps because he infers things about people who oppose the bill, I could infer something about him. Perhaps he is just doing it to ingratiate himself to his own community.

Sexual orientation can mean many things, from homosexuality to the criminality of incest and pedophilia. Homosexuals are not a race. They are defined only by their attraction to members of the same sex. That is fair enough, but it is their sexual behaviour that they say differentiates them. In the statistics that I have looked at, the victims of crime that they claim are crimes against the homosexual community are males, not females. Homosexual females are not the object of any kind of crime in the streets.

The other interesting information that can be found in the Department of Justice statistics on this is that those who are mostly the victims of crimes that we call hate crimes are mostly the victims of gang attacks. These are the same gangs that attack old people, heterosexual women, weak males and fat people with assaults and rape. Anyone who is different from a gang is attacked and hurt. It is not personal. These are bad people.

Svend Robinson voted for and supported the gun registry when he should have been thinking about the $1 billion being spent on eliminating gang crime in the streets of Montreal, Toronto, Vancouver and throughout the land. Honourable senators, it is not the passage of this bill that will save his community from hate crimes, it will be the police and the justice system and the willingness of the community to put money behind it to ensure that these offences do not happen.

Prostitution is not illegal. Why, then, do we not protect prostitutes? We are all aghast about the male who was terribly assaulted and killed in Stanley Park in Vancouver. Police are currently examining the dirt of a pig farm in the Lower Mainland of B.C. where there may be the remains of 50 to 100 women. Now, that is a hate crime.

Many people are worried about religious freedom and freedom of speech. This bill provides that we must protect free speech. Perhaps we should look again at our Constitution, because, it seems, we do not believe in it enough to believe that it protects free speech. Amendments were made to the bill to fortify the protection of free speech and freedom of religion. Our Constitution is not strong enough; we had to put amendments in the bill to say that we are so keen about this that we will add more weight to the constitutional amendments, and that we really intend to protect free speech. We want to make it clear that the bill does not affect religious freedom and free speech. We all know what that means. Some people are afraid that the courts will run away with this bill.

• (2250)

Honourable senators, I am a bit of a libertarian, but, at the same time, I think I am a democrat. All these people who are concerned about this issue have to be listened to. I do not want to see us sit here for two days and run around and say we ought to do this. I want to have lots of debate in this place. We all have a responsibility to respond to what these people are saying, and to do research and make sure that we think about what this bill is saying, and then to act appropriately.

With that, I would like to end my few words on this debate.

On motion of Senator Banks, debate adjourned.

THE FINANCIAL ADVISORS ASSOCIATION OF CANADA BILL

PRIVATE BILL TO AMEND ACT OF INCORPORATION— THIRD READING

Hon. Richard H. Kroft moved third reading of Bill S-21, to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada.

He said: I do not wish to take much of the time of the house at this hour, and the object of this bill does not really require it. The purpose of this special bill is to amalgamate the Canadian Association of Financial Planners and the Canadian Association of Insurance and Financial Advisors. The new name of the amalgamated corporation will be the Financial Advisors Association of Canada, or Advocis.

The purpose of the amendments proposed by the Standing Senate Committee on Banking, Trade and Commerce are to address some confusion expressed by the Investment Fund Institute of Canada, the Investment Dealers Association of Canada and the Independent Financial Brokers with regard to the new association's role in enforcement in regulating certain activities such as financial planning.

Questions were raised in the committee concerning the association's name, and to a Quebec law that prohibits the use of certain titles similar to the title of financial planner. The Quebec law in question governs those financial planners practising in Quebec who are engaged in the business of providing financial services in that province; and in a regulation made under the law, sets out a list of prohibited titles similar to the title of financial planner.

In an opinion from the Law Clerk's office, that law cannot infringe upon or have any effect on the name that is given to a corporation created by or under federal legislation. Such a corporation, however, would be bound by the Quebec law in the granting of professional designations to any of its members practising in that province. Any member of the corporation to whom it awards the title "financial planner" would have to be a person who has fully satisfied all of the requirements under the Quebec law in order to be qualified to use that title.

I would like to add one thought: I know I join fully with the Honourable Leader of the Opposition in this point. I hope this is nearing the last time that we have to bring one of these special act mergers or accommodations before this house. It is an anachronism that no longer is appropriate. It requires time and expense by the parties to these special acts, and it requires the time and preoccupation of this chamber and its committee on a matter that really does not belong here. While we have not formally put anything into this bill, I think I speak at least for the Banking Committee when I say that we will be looking for the first opportunity to take an initiative under the Canada Corporations Act to make sure that this sort of thing is not necessary in the not too distant future.

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 the third time and passed.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe that you will give consent 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: Is it your pleasure, honourable senators, to have all items on the Order Paper that have not been reached stand in their place until the next sitting of the Senate?

Hon. Senators: Agreed.

The Senate adjourned until Wednesday, November 5, 2003, at 1:30 p.m.

CONTENTS

Tuesday, November 4, 2003

ORDERS OF THE DAY

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