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THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, November 5, 2003

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

Prayers.

SENATORS' STATEMENTS

REMEMBRANCE DAY 2003

Hon. Pat Carney: Honourable senators, on November 11, Canada will observe Remembrance Day in many different ways in many communities. On Saturna Island, our services will be organized by the Lions Club and held in our island's only church, St. Christopher's Anglican Church. Nearly everyone on the island will come.

The service hardly varies from year to year. The church will be decorated with the last of the chrysanthemums from Pam and Harvey Janszen's garden. Pam is the President of the Lions Club this year, so she will give the lesson and conduct the prayers. Fellow Lion Tom Johnstone will give the invocation.

We will sing *God Save the Queen*. We will sing *Eternal Father, Strong to Save* and pray for those in peril on the sea. This year, in a daring innovation, we will replace *O God Our Help in Ages Past* with the more upbeat *Abide With Me*. There are not enough school children this year to sing *Where Have All the Flowers Gone*, but teenager Brianna Jones will recite two poems, *Poppy*, *Poppy* and *Remembrance Day*. Lois Buttery will play the organ.

Then we will place the wreaths and crosses at the foot of the altar, accompanied by an honour guard of children carrying flags. Since there are more flags than children, they will double up, giggling. I will walk up the aisle and place the Canada wreath. Veteran Jim Campbell, his medals pinned to his blue blazer, will place another, accompanied by children carrying the Navy's White Ensign. Military Cross winner Al Farrow will take his turn. Hugh Grasswick, a former Canadian Air Force pilot who served with the NATO Forces in Europe, will place a cross. His wife, Barbra Grasswick, will place the cross of poppies for the women in the Armed Forces and the war widows, if former WREN Margaret Fry feels too frail. Bert Whitehead usually does the honours for the Canadian Merchant Marine and U.S. veteran Darrell Jones will place a cross for Americans lost in conflict. The United Nations flag will be unfurled.

Then, when the church is crammed with flags we see only on Remembrance Day, we will tell stories of what Remembrance Day means to us. Former Lions president Paul White started the tradition when we could not find a priest or minister free to attend our services. In past years we have read letters written in First World War trenches. Ray Lindsay told about a visit to Vimy Ridge. Jon Guy recounted how his parents came to Canada

following the London blitz. Hugh Grasswick described the Silver Cross awarded to mothers whose children were killed in action. This year the storyteller will be Scott Lambert, whose wife Mei-man and daughter Jasmine will be in the audience.

Finally, Neal MacDonald will recite, from memory, the beloved poem *In Flanders Field*. After singing *O Canada!*, we will go down to the community hall where Marie Mackie and the Saturna Women's Club will serve scrumptious sandwiches, devilled eggs, butter tarts and tea. The day will be grey, and the last of the golden aspen leaves will drift to the forest floor. The wind will smell of the sea, but it never rains.

Honourable senators, in our major cities there will be cenotaph services, military bands and fly-pasts, but nowhere will there be more warmth, reverence and thanksgiving among Canadians than on Saturna Island and in other small Canadian communities. Lest We Forget their losses, too.

SHAKE HANDS WITH THE DEVIL

EXCERPT FROM BOOK BY
GENERAL ROMÉO DALLAIRE (RTD.)

Hon. Laurier L. LaPierre: Honourable senators, General Roméo Dallaire has just published his book, *Shake Hands with the Devil*. I would like to read four paragraphs from his introduction:

It has been almost nine years since I left Rwanda, but as I write this, the sounds, smells and colours come flooding back in digital clarity. It's as if someone has sliced into my brain and grafted this horror called Rwanda, frame by blood-soaked frame, directly on my cortex. I could not forget even if I wanted to. For many of these years, I have yearned to return to Rwanda and disappear into the blue-green hills with my ghosts. A simple pilgrim seeking forgiveness and pardon. But as I slowly begin to piece my life back together, I know the time has come for me to make a more difficult pilgrimage: to travel back through all those terrible memories and retrieve my soul...

It is time that I tell the story from where I stood — literally in the middle of the slaughter for weeks on end. A public account of my actions, my decisions and my failings during that most terrible year may be a crucial missing link for those attempting to understand the tragedy both intellectually and in their hearts. I know that I will never end my mourning for all those Rwandans who placed their faith in us, who thought the UN peacekeeping force was there to stop extremism, to stop the killings and help them through the perilous journey to a lasting peace.

What I have come to realize as the root of it all, however, is the fundamental indifference of the world community to the plight of seven to eight million black Africans in a tiny country that had no strategic or resource value to any world power.

This book is a *cri de coeur* for the slaughtered thousands; a tribute to the souls hacked apart by machetes because of their supposed difference from those who sought to hang on to power. It is the story of a commander who, faced with a challenge that did not fit the classic Cold War-era peacekeeper's rule book, failed to find an effective solution and witnessed, as if in punishment, the loss of some of his own troops, the attempted annihilation of an ethnicity, the butchery of children barely out of the womb, the stacking of severed limbs like cordwood, the mounds of decomposing bodies being eaten by the sun.

This book is nothing more nor less than the account of a few humans who were entrusted with the role of helping others to taste the fruits of peace. Instead, we watched as the devil took control of paradise on earth and fed on the blood of the people that we were supposed to protect.

• (1340)

[Translation]

NATIONAL DEFENCE

LAUNCH OF INVISIBLE RIBBON CAMPAIGN

Hon. Lucie Pépin: Honourable senators, I seek leave to distribute some lapel ribbons. These are the Invisible Ribbons that represent military families. I want to speak about those families.

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

Hon. Senators: Agreed.

Senator Pépin: Honourable senators, this is the week of the Invisible Ribbon campaign, a grassroots demonstration of support for Canadian military families. It is an initiative of the military community, which sometimes feels it has no voice and wonders whether it still has the support of the people of Canada.

This campaign helps us reaffirm our pride in our military, and is a way of showing the men and women in uniform, and their families, that Canadians recognize and support their vital contribution to this country and the world.

The clear plastic lapel ribbons, fastened with a Canadian flag pin, symbolize the "invisible uniform" worn by families who are part of the military way of life. Wearing them is a way of showing that we are friends of the Canadian Forces.

The sight of these ribbons helps boost the morale of military families, who are seldom in the limelight. They are always there, however, standing proudly behind their family members. Although they have not actually enlisted in the Forces, they might as well have.

[Senator LaPierre]

[English]

Honourable senators, the Invisible Ribbons underscore that family of military members committed to the military way of life as the personnel who wear the uniform.

[Translation]

In fact, these families are just as devoted to the Canadian Forces. Their daily lives are largely shaped by the military environment, which demands of its members a disciplined lifestyle and a respect for hierarchy. As a result, these families live in unique conditions that sometimes take a heavy financial, professional, personal and emotional toll.

Moreover, we all recognize the burden imposed on families by the long missions of an army such as ours, which, despite being short of personnel, currently has 3,800 soldiers deployed in various operations around the world. I think it is completely legitimate to say of these family members that they are wearing "invisible uniforms."

[English]

Honourable senators, I hope that all members of this house and, indeed, all Canadians will join me in wearing an Invisible Ribbon to demonstrate that we very much appreciate military personnel and their families.

[Translation]

ROUTINE PROCEEDINGS

WESTBANK FIRST NATION SELF-GOVERNMENT AGREEMENT

TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, two copies of the document entitled: *Westbank First Nation Self-Government Agreement between Her Majesty the Queen in Right of Canada and Westbank First Nation*.

[English]

STUDY ON PUBLIC HEALTH GOVERNANCE AND INFRASTRUCTURE

REPORT OF SOCIAL AFFAIRS, SCIENCE
AND TECHNOLOGY COMMITTEE Tabled

Hon. Michael Kirby: Honourable senators, I have the honour to table the fourteenth report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled "Reforming Health Protection and Promotion in Canada: Time to Act."

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

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

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

NOTICE OF MOTION REQUESTING ADDITIONAL FUNDS

Hon. Tommy Banks: Honourable senators, I give notice that tomorrow, Thursday, November 6, 2003, I will move:

That it be an instruction to the Standing Senate Committee on Internal Economy, Budgets and Administration that, with respect to the Supplementary Estimates 2003-2004, the Committee include in the Senate's request to Treasury Board an amount of \$450,000 for Senate Committees; and with respect to the Main Estimates 2004-2005, the Committee include in the Senate's request to Treasury Board (i) an amount of \$4,000,000 for Senate Committees and (ii) an amount of \$400,000 for witnesses' expenses.

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF LEGAL AID

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

That, notwithstanding the Order of the Senate adopted on October 7, 2003, the date for the report of the Standing Senate Committee on Legal and Constitutional Affairs regarding its study of the status of Legal Aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal aid for both criminal and civil matters be extended from December 31, 2003 to March 31, 2004.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF INCLUDING IN LEGISLATION NON-DEROGATION CLAUSES RELATING TO ABORIGINAL TREATY RIGHTS

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

That, notwithstanding the Order of the Senate adopted on October 7, 2003, the date for the report of the Standing Senate Committee on Legal and Constitutional Affairs

regarding its study of the implications of including, in legislation, non-derogation clauses relating to existing aboriginal and treaty rights of the aboriginal peoples of Canada under s.35 of the Constitution Act, 1982 be extended from December 31, 2003 to March 31, 2004.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT ON STUDY OF INCLUDING IN LEGISLATION NON-DEROGATION CLAUSES RELATING TO ABORIGINAL TREATY RIGHTS WITH CLERK OF THE SENATE

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

That the Standing Senate Committee on Legal and Constitutional Affairs be permitted, notwithstanding usual practices, to deposit its report on the implications of including, in legislation, non-derogation clauses relating to existing aboriginal and treaty rights of the aboriginal peoples of Canada under s.35 of the Constitution Act, 1982 with the Clerk of the Senate, if the Senate is then not sitting; and that the report be deemed to have been tabled in the Senate.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT ON STUDY OF LEGAL AID WITH CLERK OF THE SENATE

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

That the Standing Senate Committee on Legal and Constitutional Affairs be permitted, notwithstanding usual practices, to deposit its report on the status of Legal Aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal aid for both criminal and civil matters with the Clerk of the Senate, if the Senate is then not sitting; and that the report be deemed to have been tabled in the Senate.

STUDY ON NEED FOR NATIONAL SECURITY POLICY

NOTICE OF MOTION TO PLACE INTERIM REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE ON ORDERS OF THE DAY

Hon. Colin Kenny: Honourable senators, I give notice that tomorrow, Thursday, November 6, 2003, I shall move:

That the seventeenth report (interim) of the Standing Senate Committee on National Security and Defence, entitled: "Canada's Coastlines: The Longest Under-Defended Borders in the World," tabled in the Senate on October 28, 2003, be placed on the Orders of the Day for consideration at the next sitting of the Senate.

• (1350)

[Translation]

OFFICIAL LANGUAGES

BILINGUAL STATUS OF OTTAWA— PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(h), I have the honour to table, in this chamber, additional signatures to add to the 16,000 signatures already tabled, on a petition to declare Ottawa, the capital of Canada, a bilingual city, reflecting 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;

[English]

That section 16 of the *Constitution Act, 1867*, designate the city of Ottawa as the seat of government of Canada;

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

FOREIGN AFFAIRS

ZIMBABWE—DISCUSSIONS BETWEEN PRESIDENT OF SOUTH AFRICA AND PRIME MINISTER

Hon. A. Raynell Andreychuk: Honourable senators, there have been a number of issues in which Canada could and should exercise leadership with respect to stability and democracy and good governance. With the visit of President Mbeki from South Africa, I was pleased to see that the government indicated that it would take every opportunity to raise with the President our concern that South Africa take a more assertive role with the situation in Zimbabwe. What discussions were undertaken between the Prime Minister and President Mbeki with respect to the Zimbabwe situation?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, since I was not there and since the discussions between the Prime Minister and the President were private, I cannot possibly tell you the exact discussions that took place. All I can say is that discussions did take place.

Senator Andreychuk: Without disclosing the conversations, did the government follow through in expressing to the President the Canadian position that more action should be taken with respect to President Mugabe and Zimbabwe, particularly within the Commonwealth and the upcoming meetings?

Senator Carstairs: I can only tell the honourable senator that there were vigorous discussions between Mr. Mbeki and Prime Minister Chrétien. Zimbabwe was certainly one of the topics they discussed thoroughly.

SRI LANKA—PEACE TALKS— PLACING OF LIBERATION TIGERS OF TAMIL EELAM ON TERRORIST LIST

Hon. A. Raynell Andreychuk: Honourable senators, the situation in Sri Lanka is extremely troublesome. As the Leader of the Government in the Senate knows, Canada has played a role in attempting to bring the peace discussions to fruition. Canada has refrained from putting the LTTE, the Liberation Tigers of Tamil Eelam, on the terrorist list at the request of the Sri Lankan government in order that the peace talks could continue. There has been some question as to the appropriateness of that action, particularly when there is evidence from human rights groups and others that the LTTE persists in marginalizing and perhaps killing moderate northern Tamils and anyone who does not support the LTTE position. Perhaps it was appropriate that Canada not proceed with putting the LTTE on the terrorist list because peace talks seemed hopeful. We had Canadians involved in assisting and sharing information. However, we have the action taken by the President of Sri Lanka, which it would appear everyone has characterized as a personal feud, of cancelling or suspending Parliament for two weeks, throwing out some cabinet ministers, and really causing turmoil in Sri Lanka.

First, what is the position of the government with respect to this action by the President, which will jeopardize, in my opinion, the peace talks; and, second, will the government reassess its position on the LTTE?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the process of listing any organization as a terrorist organization is a long and clearly important role for the Government of Canada. I can assure honourable senators that as we have been using our legislation to name individual groups to this terrorist list, it is only done on the recommendation of CSIS and after a recognition that this properly fits within the ambit of our legislation.

Senator Andreychuk: Feedback from those involved in the peace talks, particularly the chief negotiator, indicated that Canada's role is extremely important and that Canada has an influence in the Sri Lankan peace talks because of the large Tamil community

in Canada and Canada's reputation. Will there be overtures to both parties in the peace process to indicate that there should not be any advantage taken by the LTTE in the peace talks as a result of the action taken by the President? As well, will we be conveying to the President our concern that the actions taken will jeopardize the peace talks?

Senator Carstairs: The honourable senator has made some suggestions, and I would be more than pleased to bring them forward.

VETERANS AFFAIRS

VETERANS INDEPENDENCE PROGRAM— ENTITLEMENT TO WIDOWS

Hon. Norman K. Atkins: Honourable senators, my question is to the Leader of the Government in the Senate. The theme for this year's Veterans' Week is "Canada's Forgotten War." It is a reference to the Korean conflict and the fact that Canadian veterans of that conflict have been all but forgotten.

Honourable senators, I fear that if the government continues to move at the pace it has been, the theme for next year's Veterans' Week will be "Canada's Widows." Similar to this year's theme, some veterans' widows have been remembered by this government, while other equally deserving widows, some 23,000 of them, continue to be forgotten.

How long is the government's review of the issue of veterans' widows without VIP benefits expected to last, and can we expect to have a decision on this matter by Remembrance Day — that is, Remembrance Day this year, not next year?

Hon Sharon Carstairs (Leader of the Government): Honourable senators, I can only assure the senator what I assured the senators who asked these questions yesterday, which is that the government is reviewing this file. When a decision is arrived at, the people of Canada, and most particularly the potential beneficiaries of this benefit, will be notified.

Senator Atkins: I expect you will hear the question every day until there is a decision from the government because these widows are very anxious to know what the government will do about this.

• (1400)

FISHERIES AND OCEANS

BRITISH COLUMBIA—RELOCATION OF ORCA WHALE

Hon. Pat Carney: Honourable senators, my question is addressed to the Leader of the Government in the Senate. It is simple. It seeks her help regarding the rescue of Luna, the lonely orca, who is stranded in Nootka Sound. Luna has many friends and I have e-mails from as far away as Texas on Luna's behalf. He is a young male orca who is alone in the sound.

We were pleased to learn of DFO Minister Thibault's decision last week to provide funding of \$135,000 for the Luna relocation

project. This is embarrassing to us because the Americans had already offered money and Canada refused. However, we are puzzled to learn that Minister Thibault has decided not to relocate Luna until the spring, which may be too late. I have been informed that the minister has not recalled his own scientific panel to discuss his decision and that the DFO minister's actions are in fact against the advice of the scientific panel, which has told the minister that Luna should be moved now, this fall or winter, when there is less boat traffic and fewer people around.

Senator Carstairs is not, as she says, responsible for all the decisions or non-decisions of her cabinet colleagues, but I have written to the minister and have had no reply. We would like to know who are the experts the minister has consulted regarding the timing of the Luna's relocation, how this decision was made and why he is not listening or consulting his own scientific panel?

I am asking for the help of the leader's office to get this information so that I can relay it to the Canadians who are concerned about Luna's fate.

Hon. Sharon Carstairs (Leader of the Government): The honourable senator congratulates the government in providing \$135,000 for the Luna project, which will match the US \$100,000 that has recently been announced, so there will be two streams of money. The scientific advice the Minister of Fisheries has received is that this is not the right time to do this.

The honourable senator asks who the scientific experts are that the minister has consulted, and I will try and find out for her. However, the information I have been given is that the Minister of Fisheries has received scientific advice indicating that Luna should be reunited with his pod in the spring to ensure maximum success.

Senator Carney: I thank the senator for her answers.

The heart of the problem is that we do not know who these scientific advisers are because the minister's own panel, which includes Dr. Paul Spong of OrcaLab and other distinguished Canadians, has not been consulted. Whoever is giving this advice is not the minister's own scientific panel.

I would also ask that the leader take this matter up with Environment Minister Anderson's office, which has not replied either. I have written to the minister to say that it is on his head if anything happens to Luna, who is so lonely that he is chasing floatplanes and is being abused by tourists and visitors to Gold River. We have been frustrated at the lack of answers.

I would also like to take this opportunity to thank Senator Carstairs and her office for their help in answering these questions, finding this information and helping us convey our concerns to her colleagues. I very much appreciate what she and her staff have done.

Senator Carstairs: I thank the honourable senator for her kind comments about the staff. They are extraordinarily hard-working and feel that their purpose is to represent the interests of not just the leader in the Senate but all honourable senators.

As to the scientific experts, I do not know who they are, but I will seek to find that out this afternoon and get that information to the honourable senator as quickly as I can.

NATIONAL DEFENCE

PURCHASE OF EXECUTIVE AIRPLANES

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate and relates to the Prime Minister's jets. On April 8 federal officials hurriedly flew to St. Louis in one of Bombardier's private jets. The purpose of the trip was to complete the purchase of two Challenger jets from Bombardier for the Prime Minister. The cost of the jets was \$100 million and the contract was untendered. The cost of the trip for the federal officials was \$17,000, an \$8,000 savings for airplanes that usually rent for \$25,000. Federal officials have explained that the government aircraft was not available, hence the use of the private jet.

A federal official further explained, honourable senators, that the reduced cost of the trip was good value for the taxpayer and that the use of the aircraft in no way influenced the aircraft purchase, as it had already occurred. However, an official for Public Works pointed out a few days before the flight that his department does not allow government officials to ride on suppliers' aircraft.

If the purchase of the aircraft had already occurred, what was the hurry in getting to St. Louis? Why did the officials not just wait until the government aircraft became available, seeing as they had bought them already?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, that is a very specific question. I certainly do not sit here with the answer, but I will seek to obtain it for the honourable senator.

Senator St. Germain: Honourable senators, many officials — 10, I believe — went to St. Louis for the purchase that had already been made. Why? Also, did the officials not check out the availability of commercial flights and why were they not used? I gather the minister will have to seek that information as well, if she can.

Senator Carstairs: I will do my best.

HEALTH

PHYSICIAN GRADUATION—SUFFICIENT POSITIONS FOR INTERN-RESIDENT TRAINING

Hon. Wilbert J. Keon: Honourable senators, the leader will recall last week that I asked her about the problem of a lack of positions for medical graduates. Concern continues to be

expressed. Dr. Sunil Patel, President of the Canadian Medical Association, just pointed out yesterday that he felt the federal government should play a leadership role in this matter because provinces are unable to really deal with it on an individual basis. Has any progress been made in bringing people together to try to do something about this?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest respect to Dr. Patel, I do not think he understands the constitutional relationships between the federal department of health and provincial departments of health. The reality is that medical schools fall under the ambit of the provinces. Residency positions, which come as a direct result of the graduation from one of those schools, or from internship programs, also fall totally within the ambit of the provinces. The federal government is well aware of the physician shortage generally and is well aware of the lack of residency positions. They have been negotiating on an ongoing basis for money that has been specifically earmarked for professional education with the provinces; however, I have to say that progress is very slow. The cooperation of all 10 provinces is required, and negotiations are not moving nearly as quickly as the Government of Canada would like.

Senator Keon: Honourable senators, I believe Dr. Patel really does understand the problem, this area being the responsibility of the provincial governments, but the problem is that they seem incapable of dealing with this issue because the ball is just bouncing from province to province. Perhaps somehow this item could be placed on the agenda of federal-provincial ministers. With what is coming up concerning the government, I do not know that the ministers will be meeting. However, perhaps the matter could be discussed at a high-level meeting of bureaucrats because the reality is that there is not very much money involved. With a few agreements between the larger provinces in particular, and a few adjustments, the problem could be solved.

Senator Carstairs: Honourable senators, let me reiterate that the federal government has put money aside. They want the provinces to access that money but cannot do so until an agreement has been reached. Part of the problem, I think it is fair to say, is that a significant number of provincial health ministers have changed in a very short period of time. We have had eight provincial elections, the result being that many governments have been defeated and brand new ministers are occupying their departments of health. As a result, although this issue is on the agenda, it is clearly not sufficiently high on the agenda for genuine progress to be taking place.

• (1410)

CITIZENSHIP AND IMMIGRATION

NEW REGULATIONS FOR IMMIGRATION APPLICANTS—EFFECT ON CONSULTANTS

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate and deals with the regulations for immigration consultants.

Last Friday, Citizenship and Immigration Minister Denis Coderre announced that the federal government would take steps to regulate immigration consultants. The minister said that a regulatory agency will be in place by April of 2004 and that only licensed consultants will be able to do business with the department.

This is welcome news as there have been many cases recently involving immigrants who have been cheated by dishonest consultants, which has damaged Canada's reputation in the process. However, unless potential immigrants in other countries are made aware of these regulations, they may still be deceived. Immigrants may be cheated out of earnings in an effort to come to our country.

Have our embassies and high commissions around the world been instructed as to how they should inform potential immigrants about these new regulations?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the regulatory regime is not yet in place and will not be put in place until April 2004. No, the embassies have not been informed. The regulatory regime, once it is in place, will be set up in such a way that the embassies are not only informed, but they can also, in turn, inform all those potential applicants.

Senator Oliver: Honourable senators, the minister also said that Canadian-based immigration consultants who defraud immigrants would face fines and possibly charges under the Criminal Code. Can the Leader of the Government in the Senate tell us how foreign-based immigration consultants, living outside of Canada, would be dealt with under these new regulations?

Senator Carstairs: Honourable senators, I must repeat my answer: The regulations have not yet been proclaimed. They are not in place. I think the honourable senator shares exactly the same concern I do, which is that those who are located outside of Canada may be able to continue to hoodwink — because that is what has been happening — unsuspecting residents and citizens of other countries.

I will certainly take our combined concern forward that the embassies will have to take extra special care to ensure that applicants know that licensed immigration consultants are the only ones with whom they should deal.

FOREIGN AFFAIRS

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

Hon. Marcel Prud'homme: Honourable senators, yesterday — and rightly so — concerning a question that I had about Mr. Arar, the minister said: "Cabinet was meeting at the time of the press conference, so none of us were able to watch it." Since yesterday, however, the news is getting worse and worse. Will the

government reconsider its decision of today not to allow a public inquiry on the question concerning the deportation from the United States to Jordan and then to Syria of a Canadian citizen?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator has actually put his finger on the problem. The deportation did not take place in Canada; it took place in the United States. The deportation was to Jordan in the first instance and then to Syria. We have no control, as Canadians, over the activities of the United States Citizenship and Immigration Service or that of Jordan or Syria.

Mr. Graham called in the Syrian ambassador yesterday to indicate our grave concern with regard to the treatment that Mr. Arar has indicated he received at their hands. Allegations have been made in the United States that perhaps information may have been provided from Canada. Certainly that will be a part of the Public Complaints Commission investigation. So far, however, I must tell the honourable senator that although these allegations have been made, no one has identified a Canadian official who presumably, according to the allegations, gave that information. It is making any kind of investigation somewhat difficult.

Senator Prud'homme: Honourable senators, I have a supplementary question on this item. There is something I have tried to understand all my life, and that is consistency. On the one hand, we say that Iran, Syria and North Korea are rogue states with no respect whatsoever for human rights. Yes, the minister is right: This saga started in the United States of America, yet this person is a Canadian citizen. On top of that, he is revealing to us that there is another Canadian citizen who is in an absolutely desperate situation. He may be right; he may be wrong. I do not trust our approaching the United States and saying, "It started here. Therefore, there should be an inquiry here."

Just imagine the reverse. If this had been a citizen of the United States of America who had been deported from a Canadian airport to Jordan and then to Syria, where he was maltreated, according to his statement — and I have no reason to believe otherwise, although I do not want to live forever saying "until proven otherwise" — the United States of America would have come down hard on us. We will never know.

Honourable senators, I know that the Senate and House are about to adjourn, but this matter will not die. Canadians want to know the kind of protection they will have from their government.

The Canadian passport is not something that was good only during referendum days in Quebec in 1995, when with great passion and emotion —

The Hon. the Speaker: Honourable senators, I interrupt briefly to point out that only four minutes are left in Question Period. We have several honourable senators' questions waiting to be heard.

Senator Carstairs: Honourable senators, I agree that there is a serious concern here. Clearly we have a situation in which a Canadian citizen was deported from the United States and not returned to the country under whose passport he was travelling, apparently with no consultation with the Canadian consul in New York and with no lawyer being able to provide advice. He was taken from the United States to a country other than the country for which he carried a passport.

This is a serious concern. If information were sent, it would have been sent from one of two agencies. That is why the Public Complaints Commissioner is investigating this complaint.

We have had allegations that some information came from Canada. Who gave that information? What was that information? We need to allow the Public Complaints Commissioner to do the job of that office. Following that investigation, we could make a determination of whether further investigation is needed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, this is a very important matter. Perhaps all honourable senators will want to take note.

The Public Complaints Commission process is limited to only employees under the RCMP Act. Therefore, there is no way that the government can, once again, avoid an inquiry into this matter.

The minister has just told honourable senators that it may involve a second agency other than the RCMP, because the RCMP Public Complaints Commission has absolutely no jurisdiction to enquire into the conduct of anyone who is not employed under the RCMP Act — that means CSIS, Foreign Affairs, or anyone else.

We saw the government try to avoid an inquiry on the APEC scandal by saying that the RCMP Public Complaints Commission process should be allowed to unfold. Only employees under the RCMP Act can be investigated by that process.

• (1420)

Why is the government misleading Canadians by suggesting that an inquiry is ongoing when it knows full well that the only inquiry that can be conducted by the RCMP Public Complaints Commission is one which relates to employees under that act?.

Senator Carstairs: Honourable senators, no one is denying that. That is exactly what that act requires. We also, of course, have the Security Intelligence Review Committee that can oversee the role of CSIS in this matter.

What we need to know, and I understand this is being sought, is the exact nature of that information and who provided it.

SOLICITOR GENERAL

MISSING NUCLEAR MATERIAL FROM MCMaster UNIVERSITY

Hon. J. Michael Forrestall: Honourable senators, there is some suggestion from what we believe are somewhat reliable sources

that an amount of nuclear material — some 82 to 89 kilograms — from the medical facilities at McMaster University cannot be accounted for. Is an investigation underway into the missing nuclear material at that university?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do have no information about any material that may have gone missing at McMaster University.

Senator Forrestall: I would appreciate it if the leader would request her staff to bring any information regarding this situation forward.

I would add that World Net Daily, an electronic news site, has posted a story about a possible al-Qaeda radiation bomb plot against the United States, involving a man named Adnan El Shukrijumah, who was allegedly spotted at McMaster University. Would the leader join that with her earlier inquiry?

Senator Carstairs: Obviously the loss of any form of nuclear radioactive material is a very serious matter. I would be pleased to combine both questions and try to get answers as quickly as possible.

POINT OF ORDER

Hon. Pat Carney: Honourable senators, on a point of order, I have received on my desk a clear plastic lapel ribbon which is part of The Invisible Ribbon Campaign. As part of the campaign, it is stated that wearing a ribbon shows members of the military and their families that you value their contribution to their country and the world.

I have no indication of where this came from, although I did receive a letter in my mail, dated June 12, referencing this ribbon. I am sure it is well intentioned, but because of the proliferation of items that are sent to us, I would ask His Honour to ensure that, when things are placed on our desks, we are informed about who sent them. Otherwise I will deluge the Senate chamber with a Kermode bear pin for the 2010 Olympics.

The Hon. the Speaker: Honourable senators, the distribution of items in the chamber can only be done with leave of all senators. Senator Pépin made a statement under Senators' Statements regarding the pin. During the course of that statement, she asked for and received leave to distribute the pins. That is how it got there.

[Translation]

NATIONAL ANTHEM ACT

BILL TO AMEND—REPORT OF COMMITTEE

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

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

Wednesday, November 5, 2003

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

SIXTH REPORT

Your Committee, to which was referred Bill S-14, An Act to amend the National Anthem Act to reflect the linguistic duality of Canada, has, in obedience to the Order of Reference of Tuesday, June 17, 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?

Senator Losier-Cool: Honourable senators, at the next sitting of the Senate.

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

Hon. Senators: Agreed.

Hon. Marcel Prud'homme: No.

Motion agreed to on division.

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*]

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

FORTY-FOURTH ANNUAL MEETING,
MAY 15-19, 2003—REPORT TABLED

Leave having been given to revert to Tabling of Reports from Inter-Parliamentary Delegations:

Hon. Jerahmiel S. Grafstein: Honourable senators, I have the honour to table the report of forty-fourth annual meeting of the Canada-United States Inter-Parliamentary Group, held in Niagara-on-the-Lake, Ontario, from May 15 to 19, 2003.

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, 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. Anne C. Cools: Honourable senators, I rise to speak in support of Senator Watt's amendment to the motion of the Honourable Senator Carstairs. Senator Watt's amendment to her main motion essentially asks that the message from the House of Commons, dated September 29, regarding Bill C-10B, and Senator Carstairs' motion, itself, be both referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Honourable senators, I rise to support that amendment with great enthusiasm. I would also like to thank Senator Watt and Senator Adams for their persistence, commitment and devotion in their work on Bill C-10B, and to tell honourable senators why I support referring this question to the committee.

• (1430)

Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs, under the chairman, Senator Furey, has studied this issue for close to a year now. However, the question that the committee must now look at is an extremely important one because Senator Carstairs' motion asks the Senate not to insist on its amendments to Bill C-10B.

Honourable senators, what the committee simply has to examine is that the Senate message that was sent to the Commons some weeks ago, the message that originated in Senator Furey's committee, is more than just a simple message. That message was an order of the Senate.

Honourable senators will remember that, back in June, the Commons message and Senator Carstairs' motion were referred to the very same committee. In that committee on June 12, Senator Carstairs' motion was overruled. It was put before the committee and voted down. Then the committee reported on June 12 — having defeated Senator Carstairs' motion — with a recommendation to the Senate that a new message be sent to the House of Commons, and set out the new contents of the message. This committee report was adopted on June 19 in this chamber, and then the message was sent.

What we are dealing with here in Senator Carstairs' motion — her proposal rescinding a Senate decision — is an order of the Senate. This is a fact that has not been grasped and gleaned by many. What is required, honourable senators, under normal circumstances — and I hope that Senator Furey is paying close attention — is that the repeal of any order of the Senate would normally proceed under Senate rule 63(2), which says:

An order, resolution, or other decision of the Senate may be rescinded on five days' notice if at least two-thirds of the Senators present vote in favour of its rescission.

Honourable senators, this matter is a bit more complicated than it appears on the face of things. Senator Carstairs' motion is in fact asking the Senate to change its position, to reverse itself. When Senator Furey spoke some weeks ago on October 7 on this very matter, Senator Carstairs' motion, as chairman of the committee, he upheld the position of the committee as adopted by the Senate.

What has happened here is that many senators have not noticed that the order of the Senate that Senator Carstairs is asking for is an order that rescinds a previous Senate order of June 19. That particular hurdle of rescinding a Senate order has to be navigated.

I am pleased to have the opportunity to support Senator Watt in referring this message and motion to the committee so that Senator Furey's committee, which is seized of the question, will have the opportunity to sort out some of the questions that have now become confounded. Perhaps it will be able to make a recommendation to the Senate as to how to proceed, because the way that Senator Carstairs has proposed is not consistent with the rules of the Senate in respect of the rescission of Senate orders.

Having said that, honourable senators, I am pleased to lend my support to Senator Watt's amendment.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I move the adjournment of the debate.

[Senator Cools]

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I protest the adjournment of the debate, and I would like to know the justification for it.

I know it is not debatable, but this issue has been before us now since October 2. I do not understand why the government's own recommendation to accept a message from the House of Commons is not being decided upon immediately. Other bills that the government supports are being forced on us. Why has this one, which has been debated ad nauseam and has gone back and forth to the House of Commons at least twice, given such treatment? I protest. I will not accept that at all — unless I can be given a valid reason.

The Hon. the Speaker: I guess it is a matter of house business. There could have been an exchange.

Senator Carstairs: Let me say to the honourable senator that Senator Cools has raised a point today on this particular item that we have never considered. She seems to think that I am in violation of the rules of the house. I do not think I am, but I would like to have the opportunity to review, and I am quite prepared to speak to this matter tomorrow.

The Hon. the Speaker: It is moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud, that further debate be adjourned. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Senator Lynch-Staunton: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion to adjourn will please say "nay."

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. We will have a one-hour bell, unless there is agreement for a shorter bell.

Some Hon. Senators: Agreed.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, if there is agreement that I speak for the whip, I could perhaps come to an understanding with my honourable colleague from the other side that we would agree to a half-hour bell.

The Hon. the Speaker: Is it agreed, honourable senators, that the bells will ring for 30 minutes?

Hon. Senators: Agreed.

The Hon. the Speaker: The bells will ring for 30 minutes, at which time the vote will take place.

• (1510)

Motion agreed to and debate adjourned on the following division:

PARLIAMENT OF CANADA ACT

**BILL TO AMEND—THIRD READING—
DEBATE SUSPENDED**

**YEAS
THE HONOURABLE SENATORS**

Bacon	Kolber
Banks	Kroft
Bryden	LaPierre
Callbeck	Lavigne
Carstairs	Lawson
Chaput	Léger
Christensen	Losier-Cool
Cools	Maheu
Corbin	Massicotte
Cordy	Merchant
Day	Milne
De Bané	Moore
Downe	Morin
Fairbairn	Pearson
Finnerty	Phalen
Fraser	Plamondon
Furey	Poulin
Gauthier	Poy
Grafstein	Ringuette
Graham	Robichaud
Harb	Roche
Hervieux-Payette	Rompkey
Hubley	Smith
Joyal	Trenholme Counsell
Kenny	Wiebe—51
Kirby	

**NAYS
THE HONOURABLE SENATORS**

Andreychuk	Keon
Angus	Kinsella
Atkins	Lapointe
Beaudoin	LeBreton
Biron	Lynch-Staunton
Buchanan	Nolin
Carney	Oliver
Chalifoux	Prud'homme
Cochrane	Rivest
Comeau	Robertson
Di Nino	Sibbeston
Doody	Sparrow
Forrestall	St. Germain
Gill	Stratton
Gustafson	Tkachuk
Johnson	Watt—33
Kelleher	

**ABSTENTIONS
THE HONOURABLE SENATORS**

Nil

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

Hon. George J. Furey: Honourable senators, this matter was adjourned in my name. However, I understand that Senator Grafstein will speak today and I wish to wait until tomorrow to make my few remarks.

Hon. Jerahmiel S. Grafstein: Honourable senators, some senators on this side have heard me before, but it is important, as a member of the Standing Committee on Rules, Procedures and the Rights of Parliament, that we spend a few moments —

Senator Lynch-Staunton: Order!

Senator Robichaud: Order!

The Hon. the Speaker: Honourable senators, some honourable senators are drawing to my attention that it is very noisy in the chamber and we have an important item, as always, to debate. I would ask honourable senators who have conversations to please carry them on outside the chamber.

Senator Grafstein: Honourable senators, I thank you for your indulgence. As a member of the Standing Committee on Rules, Procedures and the Rights of Parliament, which has been seized with this matter for some time, I think that it is important for all senators on both sides to have a clear understanding of why, as a member of the committee, I took the positions that I did on clause-by-clause consideration last Friday.

It is important to begin by looking at the curious and rather unprecedented legislative history of Bill C-34. It does not have, as was suggested, a long and discursive history. In fact, the history of this bill is rather short as it relates to the precision of the rules and the changes to our conduct that are being requested in the bill. It is confusing because of the procedure that we adopted to deal with this measure.

Honourable senators will recall that we had before us the Milliken-Oliver report, which was in the reference to the committee. At the same time, however, we did not have a draft bill, as has been suggested, but only mere proposals. The Leader of the Government in the other place has told us, and those who were the proponents of the bill in its present form on this side have echoed this, that all of the recommendations of that committee in the eighth interim report were adopted. In effect, we were told that the Milliken-Oliver report was incorporated in the bill. However, we have heard from Senator Oliver that that was not the case, and that the heart and core of his recommendations were not accepted.

Let us turn to the interim report to see if the committee that opined on the proposals in the Milliken-Oliver report did incorporate the recommendations. I am confused by the debate thus far in the house and that is why I take such a position. I am hopeful that those who support the bill in this particular form will clarify this for me — that the bill incorporates all of the recommendations of the report.

I would ask honourable senators to turn to the report, keeping in mind that this is not a report in the traditional sense. Rather, the report is a series of recommendations that form an interim report because the bill was not in fact proposed legislation; it was actually made up of proposals that were then drafted into a bill. Our opinion and the heart of the bill did not change. What did the committee unanimously say in its report? I turn to that report, which is in our excellent briefing book, with which we were provided, that is entitled “Government Ethics Initiative.” Again, keep in mind that this is not a bill but an initiative.

I turn now to the interim report of the Standing Committee on Rules, Procedures and the Rights of Parliament. The committee’s order of reference is to consider proposals to amend the Parliament of Canada Act and to consider the Milliken-Oliver report. We are also asked to take into consideration the code of conduct at the U.K. Parliament, on which we had extensive evidence. The committee was then asked, in conjunction with the review, to take into consideration the *Rules of the Senate*, the Parliament of Canada Act, the Criminal Code, the Canadian Constitution, the common law and then to make recommendations required for the adoption and implementation of a code of conduct.

I had no objection to a code of conduct. As a matter of fact, our code of conduct has been evolving because we have had problems in the Senate. In my experience, we have had one major and one not-so-major problem in the past 20 years. The rules were changed to deal with those two situations. They were resolved fairly and appropriately under the *Rules of the Senate*.

The committee’s report also stated that we are required to make recommendations for the adoption of a code of conduct and for such resources as are necessary to do this. The report then makes its first recommendation in paragraph 2, which states:

While considerable work remains to be done, the members of your Committee believe that it would be useful for our colleagues in the Senate and others to have an idea of our current thinking...

• (1520)

We then turn to the heart of the recommendations in paragraph 3 on page 3, which says the following:

A Senate ethics officer shall be appointed after agreement of the leadership of the recognized parties in the Senate, followed by a confirming vote in the Senate.

Senator Oliver has said, the opposition has said, and my colleagues Senators Joyal and Banks have said that that is not so. It is not by agreement, as the committee recommends, unanimously. It is by consultation and an affirming vote. In other words, the heart of that recommendation has been ignored.

Honourable senators can fairly opine on this question: Why is it that there is a need for a so-called ethics officer because of the public debate on the other side? What is the heart of the heart of the debate in the media and in the public about the officer on the other side? That is, he is not independent of the Governor in Council. Therefore we now have a recommendation, and that is the clear and present danger on the other side, and that clear and present danger is now being imported into our rules or our constitution without any public evidence about any misconduct on the part of any senator in this room.

The report then goes on to say, on this very narrow point, unanimously, on page 8:

...it is unacceptable for the Governor in Council to appoint the ethics officer in the manner proposed by the draft bill. There must be agreement of the leaders of the recognized parties in the Senate, followed by a confirming resolution of the Senate itself. Only in this manner —

— says the unanimous committee report —

— can the incoming ethics officer be assured that he or she has the Senators’ respect and support.

Then, in conclusion, on page 10, the report says:

Final decisions must rest with the full Senate. We believe such a system will best serve the public interest.

We then turn to the bill itself. In the bill itself we turn to this officer. I do not like the words “ethics officer,” and I have stated why I do not like the words “ethics officer,” but it is in the bill. I do not like those words, honourable senators, because of the evidence by Mr. Audcent, one of our officers, who told us in the committee that ethics are beyond the law — vague and beyond the law. I add the word “vague.”

Honourable senators, I like the rule of law. I like rules that are clear and understandable, and I feel that is what the public deserves. When we talk about ethics, which is morality, which is above and beyond the law, we establish such standards and high expectations that no individual senator will ever be able to achieve. Then let us be realistic. Let us be fair; let us not be hypocritical and let us not be unethical. Let us set established rules that we can clearly understand and that the public can clearly understand, and no senator will have objection to that.

Turning back to the argument in our committee report, however, we find that the ethics officer will be appointed after consultation by a resolution of both Houses, which is essentially the Governor in Council. By the way, if there is a deadlock, as Senator Bryden suggested and Senator Kinsella concluded, the officer is appointed by the Governor in Council alone. No resolution. If the officer is removed, it is by the Governor in Council on an address, and the Governor in Council pays his bill. However, the public argument for an ethics counsellor has been for an independent officer, independent of the executive.

Honourable senators, I am therefore confused. I have been told over and over again by every proponent of the Senate as a chamber of sober second thought that we must be good legislators. However, the way in which we are good legislators is that we must attend committee meetings and we must carefully look at the legislation in its final form and then, after reasoned judgment and witnesses, come to a conclusion. The committee did that in April of this year.

We then find out, to my amazement, that we now go to a short debate. We have this very invidious intervention by closure at committee stage, when we have only had the bill for a day or two or three to deal with these important points. This is just one of the many important points. I will come to others in a moment. This is the heart of the report, unanimously approved by both sides; everyone is comfortable with it. Then, some months later, there is a different application and we are told that in two or three days we must pass this bill.

Then we go to the next committee meeting for clause-by-clause study and the opposition is not there. I will not speak for the opposition, but on the record in committee I noted that I was very uncomfortable in a democratic legislature, based on democratic principles and the rule of law, to have to deal with the constitution of this chamber in the absence of the opposition. Why, based on what they have told us, were they absent? One reason I know is factual. I cannot opine on the others, which were: We wanted other witnesses, which the committee report recommended. We need other witnesses on a whole raft of matters, such as the Access to Information Act, the Privacy Commissioner, the Federal Court Act — how do all these things apply? There was no evidence of these clauses and issues. There was sketchy evidence of only one issue, and the last witness — if you can believe it — called to support the bill is a distinguished former officer of this Parliament who had not even read the bill.

Yet we are told, when we seek to get witnesses — which we did, to support and help the government and us to understand the ramifications of this bill, which I do not fully understand even though I have read it many times — that we cannot have witnesses. Why? When we call these witnesses, distinguished academics, on a Wednesday or on a Thursday, they have lectures and they cannot attend. Will they attend? Yes, they will, the following week, but we are told we do not have time.

I conclude that this rush to judgment makes me very uncomfortable. However, I do not think it is appropriate to say that the Milliken-Oliver report support this legislation, because it does not. It is to ignore the heart of the heart of that recommendation. Why that recommendation? It is important for all honourable senators to understand why that recommendation. One reason — a reason I have already mentioned — is the public reason, that the public wants independence, free and clear of the executive.

That is fair enough. By the way, we did have a bill in this house, which was my private member's bill, where I had a similar problem. Honourable senators will recall that I wanted to establish a parliamentary poet laureate. I decided when I initiated the bill that the only way I could get it through both Houses was if it was free and clear of the executive. The bill was passed. It establishes an independent parliamentary poet laureate and it is based on a resolution after the Speakers on both sides concurred, independent of the executive, and it will be very successful.

We have a practice of doing things here that are free and clear of the executive. Why? For the second reason, and the most important reason. I resent — and I will say it again — I resent anyone saying that this is an arcane reason. It has been suggested that this constitutional reason is arcane. What is the constitutional reason? The constitutional reason is the separation of powers.

Honourable senators, the heart of the heart of the bill is that recommendations have been ignored by the unanimous committee unanimously, and I share that discomfort. I then say to myself: Let us look further. Are there other problems in the bill? There are. We have not looked at the immunities of the bill. We have not looked at the fact that in the bill the House has provided for itself confidentiality for the commissioner as it relates to members and to cabinet ministers, but not in our bill. We have removed the implications of the bill from the Privacy Commissioner and the access to information. I am not clear about what that means. We had no or very little evidence on those questions that the committee wanted.

I want to do this right. I want to do it lawfully. I want to follow Senate practices and end up with a bill that we understand, that we can live with, and one that is in the public interest.

The Hon. the Speaker: Honourable Senator Grafstein, I am sorry to advise that your time has expired.

Senator Grafstein: May I have leave to continue?

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

Hon. Senators: Agreed.

Senator Grafstein: I am a lawyer. I am a Q.C.

Senator Lynch-Staunton: That is okay, we understand.

Senator Stratton: We forgive you.

• (1530)

Senator Grafstein: I have made the study of the law my life's practice. I love the law and I love the rule of law. I have learned — and I think that every senator who is a member of the bar will agree with this — that when we examine the law, the law acts best when it solves specific problems, one at a time. That is the glory of the common law. We do not come up with ethical problems or theoretical problems; we solve them one at a time and then we codify those views. That is the heart and the joy of the common law.

We have a *lex parliamenti* common law in our rules. We have solved difficult problems one at a time and, at the same time, we have sustained the rights, the privileges and the immunities of each and every senator as we have done it, carefully and cogently.

I urge honourable senators to give us a little more time — not much more time — to examine the ramifications of this bill and to renovate the bill so that we can finally say to those who feel that there is a huge and pressing need to do so, that we have dealt with these problems carefully, consistently and cogently. In that way, I think we can not only enhance the work of the Senate but also modernize the Senate in a careful and cogent way. Caution and second sober thought, that is all I ask.

Some Hon. Senators: Hear, hear!

Hon. Gérard-A. Beaudoin: Honourable senators, I would like to know a bit more about the honourable senator's opinion on the separation of powers. I strongly believe in the separation of the three powers, except that in our parliamentary system, inherited from the United Kingdom, the legislative and the executive is more interrelated than in the American constitution.

Having said that, the question is much more important now in Great Britain, where Tony Blair has set aside the famous officer who was, at the same time, part of the executive, the legislative

and the judicial power, namely, the Lord Chancellor. It is fantastic. It is the best thing that he has done for many months, in my opinion. I am glad to see that.

If an officer — and if the honourable senator does not like the word “officer,” I will use another term, any term he wants. If this office is set up or created, then the person who holds that office will be, in a certain way, part of the executive. I would like to know the honourable senator's opinion. If we create a commissioner or an ethics commissioner, we must define his powers; we must outline them in the bill. He or she will act a bit like a judge. He or she must be impartial, and we must clearly define this position. Why has the honourable senator come to the conclusion that this is against the separation of powers? I think it is.

Senator Grafstein: First, it is not only my opinion; it is also the honourable senator's opinion. Furthermore, all of the members of the committee unanimously agreed with our view that there should be a separate officer. This principle was accepted by the other side. However, the mechanics of the detail were that the position was to be separate in its true sense, which was by resolution after agreement by the leaders on this side. The executive really had nothing to do with it. That was the honourable senator's recommendation and my recommendation to the committee; I agree with that. The committee agreed. I agree with what we talked about. That was based on the evidence. However, the honourable senator now raises another question, which is a theoretical one, and I will deal with it briefly.

If we examine the origins of our Confederation compared to the British model and the American model, honourable senators will see that we were different. The Fathers of Confederation had before them the Civil War. If you read the debates of the Fathers of Confederation, it is clear that they wanted, somehow, to end up with a model that was different from the Parliament in Britain. One of the key differences was the courts. The Fathers of Confederation, quite wisely, decided that they would go more the American way and separate the courts. Hence, the courts were separate from the Senate or the House of Commons, although the appeals ultimately still went to the Privy Council Office. It took us to 1931 before we finally ensured that appeals from our courts were, in effect, before the Supreme Court.

Senator Beaudoin: It was 1949.

Senator Grafstein: I am sorry. The honourable senator is quite right. There was another bill establishing the Supreme Court in about 1908 and this move was an evolution of that. Thank you for that correction, senator.

We followed a different path than that of the United Kingdom. We were more closely concerned with the independence of the judiciary because of the influence of the American system, but we did not buy the American system. We took the responsible government route, but the judiciary was to be sacrosanct and separate. I thought that was a good thing. That is one of the problems that we have here before us: We want to ensure that the vision of the Fathers of Confederation is maintained when it comes to the constitution of the Senate.

Senator Beaudoin: Obviously, in our system that we inherited from Great Britain, the judicial power is very independent. Once they are appointed, we have many cases to the effect that they are impartial. There is no problem with that. The Supreme Court is clear, and that is our system. This is why, on our side, we have been saying for a few days now that we are going pretty fast with this bill. We are innovating now. We are creating something based on the rules and something that is new in our system.

However, I still think that it is possible to do that. It is for that reason that we should do it. I agree with the honourable senator that we should take the time to think about it and to be quite sure that this commissioner will have adequate powers to do his job, but it takes time to do that.

Someone asked me the other day, “Do you have the names of expert witnesses?” I must confess that we do not have many experts in that precise field. This is not an ordinary case in the Supreme Court; it has to do with the structure of our system and the separation of the three powers. I agree with the honourable senator that we should be quite sure of what we are doing in this case.

I do not object to such a commissioner; I think it is a good idea. However, we should have some experts before the committee — probably the Legal and Constitutional Affairs Committee; I cannot see anything more legal than this issue. We must do it.

Again, I ask the question: Does the honourable senator agree with that point of view?

Senator Grafstein: Again, I return to the committee and to our interim report. I think it was covered amply by that report.

The honourable senator raises another problem, which was touched on by Senator Banks yesterday — and I worry about it. I worry about unfair attacks on the executive. We have put into this bill a methodology by which there can be unfair attacks on the executive. I believe we should question the executive. I believe they should be held accountable, but I also know — having been a chief of staff for a minister — that it is very important to ensure that the minister has the right to defend himself properly.

• (1540)

We have put in this bill something that is really mischievous — the other side has — and that is that a senator may, with reasons, send a letter to the commissioner on the other side for an office-holder, which is any cabinet minister. We are not talking about a cabinet minister who is in our chamber; we are talking about another cabinet minister. Any member, any senator, can send a letter, on reasonable grounds, indicating that that minister has failed to maintain ethical principles — which is vague for uncertainty, if anything. However, it leaves itself open for a mischievous senator — and, by the way, honourable senators can sometimes be mischievous, including yours truly.

Let us start with me, the most mischievous senator of all. I might mischievously say, if there were to be a Conservative government on the other side — I was on the other side and I recall this quite well. If I felt that they were not doing their duty over there, I could now do something really wonderful. I could write a letter saying that the minister over there, the office-holder, has not met my principles, or ethical principles, in the way that I read them. Then I step back. I have smeared him. It is public. The commissioner opines, and that is it. That is not fair. That is not right. That is not appropriate, and I do not think it is parliamentary.

Hon. Tommy Banks: Honourable Senator Grafstein, will you accept a question?

Senator Grafstein: Yes.

Senator Banks: I find everything that the honourable senator is saying most compelling. However, since the bill has already been to committee twice and been reported unamended, how does the honourable senator think that the refurbishment — or whatever he is talking about in addressing the shortcomings of the bill as he sees them — might be addressed? If it is sent to committee again, why would we expect a different result?

Senator Grafstein: It is realistic to understand that we were placed under a timeframe. I think that if the timeframe were removed, we could come to a satisfactory resolution on all of these points. The hammer here is the timeframe, not the substance. We have dealt with a lot of the substance.

I will give honourable senators another example that troubles me about this bill, and that is the removal of the Parliament of Canada Act, which has been in good stead for about 100 years. We have removed it from this bill. We have had no evidence on that. There has been no evidence as to the rationale for why we removed the Parliament of Canada Act regime on parliamentarians, other than to say that there will be another code someplace else. However, there is no rationale as to why it should be removed in this bill now, before the other part of the bill comes to fruition. We have had no evidence on that.

Therefore, we have taken one of the great safeguards that we have had in a parliamentary term to sustain the integrity of Parliament, the Parliament of Canada Act, and we have amended it in this bill. We have deleted it, and we have had little or no evidence on that point. I find that uncomfortable and unsatisfactory.

The Hon. the Speaker: I know that Senator Kroft wishes to speak, but are all senators rising to put questions?

An Hon. Senator: Yes.

Hon. Pierre Claude Nolin: Senator Grafstein, I find your comments quite interesting. I hope all honourable senators were listening to you. The separation of power is quite central to the debate we are having right now.

As Senator Beaudoin said, what you are proposing is quite innovative. Could you explain again the innovation component of your proposal? We are not used to seeing a visible differentiation between the executive and the legislative. It was probably part of the fabric of our Confederation to have a central federal government that was really on top of things. What you are proposing — and I am on your side — is a clear differentiation between the executive and one officer, or an appointment from Parliament.

Do you not think — and I know this is not part of the objective of the bill — that, in the future, Parliament should consider applying your innovative proposal to other types of appointments made by Parliament? I have in mind, of course, the Auditor General and various officers — Chief Returning Officer, Electoral Officer and the like. Do you not think we are mature enough in our federation to start separating from the executive some key players in the quality of the operation of the legislative body of our federation?

Senator Grafstein: Honourable senators, first, the recommendation about the ethics officer is not mine alone. It is not my innovation. It was unanimously considered by the committee, and everyone on the committee — including all the officers on this side who are ex officio members — agreed to that. This is not me. Then the committee went on to say in the report, “It is unacceptable to do other than that.” Why? Because of the separation of powers.

However, the honourable senator raises a deeper question, namely, to what extent should we separate ourselves in practice — not so much from the executive but from the other chamber? When we talk about an officer of Parliament, that is someone who reports to Parliament and not to the executive alone.

I have a problem with this, which came up with respect to the horrible case posed on the order side by Mr. Radwanski. I will not go into that, but it was very unacceptable to me — and to some of us on this side — that that officer, who was appointed by both chambers of Parliament, was removed without this side having one word to say about it. We believe in rights, but we did not give that gentleman a chance to respond — and he was our officer as well as their officer. There is a problem.

Senator Robichaud: He resigned.

Senator Carstairs: He was not removed. He resigned.

Senator Andreychuk: He resigned.

Senator Grafstein: Excuse me. He asked — I just raise this as a problem for this house. I do not want to go further with you. He asked to have a hearing, and he was not given an opportunity.

Senator Prud'homme: He did not ask us.

Senator Grafstein: We, on this side, as best I can recall — and perhaps the government can correct me if I am wrong — did not have an opportunity to deal with that matter prior to the time that he resigned.

My point is not to get into bigger arguments, but just to say that this is a very difficult field, and we must proceed in a very careful way when we deal with this matter.

Senator Nolin: I admit it is difficult. That is why Senator Beaudoin was quite right when he said it is an innovation.

Is it an important and difficult issue because we have not had the proper process to appoint and monitor the work, not only of those officers but also of the employees of those officers?

What we are doing with those various laws that are creating those offices is making all those people employees of the federal government, protected with the various laws of Canada — the same protection we are giving to other employees of the federal government. Perhaps one day we will have to create within Parliament a structure or process to monitor the work on an ongoing basis of those officers, and not wait for those dramatic events that the honourable senator has referred to. We do not want that to happen. What we want is independent and impartial officers. We do not want them to be appointed or paid by the executive; we want them to be appointed and paid by Parliament.

That is why it is quite innovative. I thought it was important for our colleagues who are not familiar with those various concepts that are at the heart of the creation of our country. We are now questioning that and saying, perhaps we should go and innovate, and then go further and be creative. That is why I want you to comment on that point.

Senator Grafstein: Honourable senators, I might have left the impression that this was in reaction to government. I was not critical in any way, shape or form about the government with respect to the Radwanski matter. I was being critical of the House on the other side for not thinking of alerting us to this problem so that we might deal with it. It was not my intention to be critical of the government.

• (1550)

Senator Nolin: For not thinking of us, yes.

Hon. A. Raynell Andreychuk: Honourable senators, I want to follow up on Senator Bank's question.

In this chamber, we are used to knowing that certain bills have been introduced in the House. Some of those bills make it here and some do not. We are constantly asking the government to outline its priorities.

Was the honourable senator aware at any time during the study of the ethics package that we would be facing a deadline of this month?

[Senator Nolin]

As an aside, it seems to me that our committee had already embarked on a study of ethics. We had been alerted that an ethics package would be presented that would require us to consider a code of conduct, modalities and other areas. We had commenced our study. We were alerted that the government was preparing a bill and, therefore, we provided some interim comments. However, nothing was presented in June, and the Rules Committee went on to other business.

When the Senate resumed after the summer recess, a timeline was not signalled. In fact, the only timetable we heard of was the fact that the Prime Minister would probably be leaving in February. Therefore, no changes were made to our agenda or timetable so that we would sit through September in such a way that would have given us a full opportunity to study this matter.

Was the honourable senator on his side aware — we certainly were not — that the committee would be required to complete its work by last Friday? I believe that the committee understood that the date for completion of its study was December 18.

The opposition, by way of a point of order, has already put on the record the reasons for their absence from the committee on Friday. In reading the draft minutes that I received, it appears that the chair indicated in response to a question by a senator that opposition members were canvassed and that some replied that they could not attend. Others, I presume, could not express an opinion. I presume that staff of the senators' offices were contacted and that they could not express an opinion as to whether the senator could attend.

I am interested in the opinion of the honourable senator. What led him to raise concerns on the record because the opposition members were absent? The honourable senator mentioned that, had we heard witnesses, we could have had a fair and adequate hearing. I would like to hear the views of senators on having an all-party resolution of this in committee.

Senator Grafstein: Honourable senators, on the first point, I have no special knowledge about this other than what we are given to understand in the press, from the other side, and from our leader.

As to the work of the committee, I believe that we are making slow but steady progress. I want to commend all members, including the chairman, who had to endure the important questions that many of us raised.

As Senator Nolin has said, we are moving into new territory here and we want to proceed cautiously. The chairman of the committee has had to endure many of us pushing the envelope further and further because, as we opened each folio, new problems presented themselves.

The interim report was a fair assessment of all the problems we had identified at the time. We sought to come to a unanimous

view on some issues and to set out the arguments on other issues. Clearly, the report states on page 2, "...considerable work remains to be done.." and on page 3 we see the following:

For greater certainty the Committee intends to give further consideration to the relevance of the *Privacy Act*, the *Access to Information Act*, the *Federal Court Act* to the activities of the Senate ethics officer under the *Rules of the Senate*.

Senators Nolin and Beaudoin pointed that out. We did not do that. We did not complete our work. It was uncomfortable for me at the clause-by-clause stage that, all of a sudden, we were dealing with amendments to the Privacy Act and the Access to Information Act. I believe that there is a proposed amendment to the Federal Court Act. I became very confused. We had heard little or no evidence about any of those amendments. We were chopping the bill, amending the bill and changing things at the clause-by-clause stage without having heard any evidence.

I wanted to hear more evidence on these points, and I thought we could do that expeditiously. Some of us made efforts to reach out. I believe it was Senator Beaudoin who told us that there are not many experts in this area. We would have to get experts from a small pool.

Efforts were made to contact at least two outstanding experts. Although I did not speak with them myself, I believe those two were prepared to come but, because they were teaching that week they could not attend. I asked, "What's another day or two? We will be back on Monday or Tuesday." As it turns out, we could have come back on Monday, Tuesday or Wednesday to deal with this. However, the majority on the committee chose not to do so.

I will conclude with this comment. I am and have been a partisan Liberal, and I am proud of it. I believe that the Liberal governments have been great for this country, greater than any other governments. We are all agreed on this side that we had great governments.

Senator Kinsella: We were with you for a while.

Senator Grafstein: This government is a great government, I think you will agree. I have no problem saying that. However, having said that, the reason the Liberal party is one of the great political institutions of the century is because we believe in principles.

Senator Lynch-Staunton: You believe in what things?

Senator Grafstein: Principles.

The principles are very simple. I want a strong opposition.

Senator Stratton: You cannot say that with a straight face.

Senator Nolin: The honourable senator was saying that to get our attention. He has it now.

Senator Grafstein: I want a strong opposition because I can beat them every time.

Senator Prud'homme: Senator Grafstein, sit down here with me and we will run this place.

Senator Andreychuk: I take it that the honourable senator had no reason to believe that this was a partisan issue. It was a Senate issue. It would have been better to have allowed the time not only to hear the witnesses but also for the opposition to be heard.

Senator Grafstein: Honourable senators, I agree with that. I will give you one insight about the question of convention versus the Constitution. The honourable leader opposite raised the question of convention, of rules. Quite frankly, I agree with him.

There are traditions and conventions here that are not in the rules. The rules are meant to deal with certain things, but there are traditions in Beauséjour and so on that are not contained in the rules. We have to look at not only the rules but also the underpinning of the rules.

One of the strong conventions is that, when we come to constitutional issues dealing with the constitution of the institutions, the opposition must either agree or disagree. I am not suggesting that we will be unanimous on all issues. Why should we be unanimous? We disagree on many things.

However, in this instance we are dealing with fundamental issues and I thought we were proceeding on a bipartisan basis. I heard some members of the opposition agreeing with the government and disagreeing with some on this side on details. We were making progress. We were educating ourselves as we went along. As Senator Beaudoin said, we are moving in a new direction. Therefore, the best direction is to be patient, cogent and get the job done.

Honourable senators, I think the public wants us to do this. They want clarity. I do not think that this bill, quite frankly, is as clear as it could be with a bit more work on our side.

The Hon. the Speaker: Honourable senators, I must draw your attention to the fact that it is four o'clock and, pursuant to the order adopted by the Senate on November 3, 2003, the Senate must now suspend proceedings until eight o'clock this evening.

Is it agreed, honourable senators, that the Speaker do now leave the Chair until the sitting is resumed at eight o'clock, the mace remaining on the table?

Hon. Senators: Agreed.

The sitting of the Senate was suspended.

• (2000)

The sitting was resumed.

HOLOCAUST MEMORIAL DAY BILL

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons to return Bill C-459, to establish Holocaust Memorial Day, and to acquaint the Senate that the Commons have agreed to the amendment made by the Senate to this bill, without amendment.

[*Translation*]

SEX OFFENDER INFORMATION REGISTRATION ACT

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-23, respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts.

Bill read first time.

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

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

[*English*]

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-46, to amend the Criminal Code (capital markets fraud and evidence-gathering).

Bill read first time.

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

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

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING— 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., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Hon. Gerald J. Comeau: Honourable senators, I have a question for Senator Grafstein, if the honourable senator would accept it.

Hon. Jeremiah S. Grafstein: Yes, I will.

Senator Comeau: From reading the bill, my understanding is that the ethics officer will be a government appointee, owing his appointment and reappointment to the Prime Minister. Also, his salary will be paid by the executive. This sets up an employee of the executive working in the Senate. As per proposed section 20.7, he would report to the Speaker of the Senate and not to the senators, unless I am reading this section incorrectly.

Many new members of this chamber who have not been around for a long time have always sat on the government side of the house. It is a much more comfortable side to be on. Every once in a while, however, it does happen that you sit on the opposition side. Picture yourself in the opposition, having to open your private books, and possibly your spouse's private books, financial and otherwise, to a person who is appointed by the Prime Minister and owes his or her reappointment and salary to the Prime Minister, and who reports to the Speaker of the Senate.

Can Senator Grafstein tell me whether I am reading this correctly, and whether it has been explained to the new senators on that side who have never sat in opposition that this could suddenly be the situation in which they find themselves when there is a change in government?

Senator Grafstein: I thank the honourable senator for that question.

Senator Comeau is correct, and this is again contrary to the conclusion in the interim report of the committee. As I recall the discussions in the committee, there was a strong consensus that the Senate officer would report to a committee, most likely the Internal Economy Committee and/or the Rules Committee. That was the extent of the discussion. I would have to confirm that with the transcript because the discussion took place some months ago. Other members of the committee might correct the record on that.

Senator Rompkey: Yes, to report to a committee.

Senator Grafstein: Senator Rompkey is agreeing with me that the officer was to report to a committee. As I said, there was consensus in the committee that this officer was to be, in effect, an officer of the Senate.

Honourable Senator Comeau is quite correct. The bill itself says at proposed section 20.4(7):

Prior to each fiscal year, the Senate Ethics Officer shall cause to be prepared an estimate of the sums that will be required —

— for the offices.

The bill states further:

(8) The estimate referred to in subsection (7) shall be considered by the Speaker of the Senate and then transmitted to the President of the Treasury Board, who shall lay it before the House of Commons...

There is a step missing and there is a missing link of control because we wanted — and I think there was wide consensus about this — to ensure that this officer reported, and felt that he had to report in all of his aspects, to a committee of the Senate.

We must deal with estimates; there is no question about that, but I assumed that the estimates would be part of the general estimates that would be referred from the Senate to the other place as part of the appropriations, not drawn out in this particular fashion and focused on in this particular fashion, and this is why we are concerned.

Proposed section 72.03 reads:

(1) The Ethics Commissioner shall be paid the remuneration set by the Governor in Council.

What we see here is distinctly different from, and quite contrary to, the interim report. Why the change? By the way, there was no evidence and no explanation. There was no discussion in the clause-by-clause study on this point. There was no evidence brought by the government to support this change.

• (2010)

My point is this: How can we be good members of the committee, reach a consensus and a unanimous decision one month and, then, several months later, be asked to reverse it quickly with no collateral evidence? There may be a good rationale here, but I cannot see it and, obviously, other senators cannot see it. Here we are, put in the position of having to vote on a bill about which our committee concluded exactly the opposite for good, rational, parliamentary and senatorial reasons.

Senator Comeau: Honourable senators, the bill well establishes that the ethics officer will be a government appointee. There may be consultation with the leader, of course, but that may take the form of a phone call, saying, "Look, I have decided to consult," and that might be it.

Senator Rompkey: And a vote.

Senator Comeau: A vote which, incidentally, will be based on the will of the majority. Judging by the way the other side has been voting on bills, it appears that senators follow the whip's orders as if they would lose chairmanship of their committees were they to vote against the wishes of the whip.

Senator Rompkey: Oh, oh!

Senator Lynch-Staunton: When he is here.

Senator Rompkey: Is that a question for Senator Grafstein?

Senator Comeau: Throwing the weight of the majority around does not earn brownie points, for the time being. Let us just say that the majority has been voting on the government's side for quite a while.

Senator Lynch-Staunton: We never did that.

Senator Comeau: And we know where they are going now.

Let me get to my real question, honourable senators. We will have what is called an ethics officer who will be hired and appointed by the Prime Minister, as sanctioned by his majority, whose salary will be dependent on the decision of the Prime Minister and who, ultimately, must get his budget through the Speaker who, dare I say it, is appointed by the Prime Minister.

As a senator, I will have to go before this person and lay completely bare, for all to see, my personal finances and my spouse's personal finances, as will be determined by the Rules Committee, which can hold meetings without opposition members being present.

Will this not cause people like myself, who have believed in parliamentary privilege for a long time, to question whether I still have parliamentary privilege, if there is a person appointed by the Prime Minister's Office to whom I must report all this information and with whom I have to start consulting? We have seen what can happen when a lapdog is appointed. We see it every day. Look at the response he gave to —

Senator Robichaud: The senator is asking a question and answering it.

Senator Lynch-Staunton: Senators are allowed to comment.

Senator Comeau: I am preparing the stage for the question.

My question to Senator Grafstein is this: Would I not be justified in saying to the ethics officer, "I do not want to divulge to you and your hired staff everything that is in my books because I do not trust you"?

If the appointment were to be agreed upon by the Leader of the Opposition —

Senator Smith: Is this a question?

Senator Comeau: — who will look after the interests of those on this side, then that would be a different matter. However, if it involves reporting to a person appointed by the Prime Minister, then that is a different matter. Would the honourable senator agree with that?

Senator Grafstein: Honourable senators, it is fair to say that when I look at this bill it reminds me of one of the most successful plays in Toronto. It is called *The Little Shop of Horrors*.

This is a collective bill. It is a bill that comes from the constitution of the Senate and which comes from a committee of the Senate.

By the way, honourable senators, I wish to set the record straight as to why I disagreed with some of the clauses of this bill. It was for all the reasons I have suggested, which is part of the reason I stand up at third reading to explain my position. My colleagues on this side, who are not on the committee, are entitled to understand why, on division, I opposed a number of these clauses.

Senator Cools: Good for you!

Senator Grafstein: At the end of the day, I abstained on the report. Why did I abstain on the report? It was because I felt there were principles with which I agreed. I do not disagree with the fundamental principles underlying the bill. The devil is in the detail.

The honourable senator has raised a series of horrors, and I have agreed with them. How could I fail but to agree with them? That was the essence of our recommendation in the unanimous report of the committee. We said it was unacceptable. The word we used was "unacceptable." In diplomatic terms, the word "unacceptable" is as harsh a word as one can use. The committee concluded unanimously, and I referred to it earlier today, that it was unacceptable to go other than by agreement of the two leaders to ensure the confidence that you wanted to have in that officer. It turns out that this officer is a different phenomenon.

Honourable senators will recall that we started by saying that we wanted a juriconsult. That was Senator Oliver's recommendation.

Senator Prud'homme: No, it was ours.

Senator Grafstein: Please, Senator Prud'homme, my memory only goes back to the Milliken-Oliver report. I am struggling with that report. I am trying to remember that report. Do not press my memory too far. It is fragile and it is late.

Let us remember what happened in the last few months. We went from the idea of a juriconsult. Everyone was sort of caught. We did not like the word in committee because we wanted to make sure that it was a counsellor, an adviser, and there would be solicitor-client privilege to protect senators in the circumstance that was suggested as senators balanced their private interests against their public interests.

That is not the case. The honourable senator has raised a series of fears that I think are justified on the face of the bill. However, my fear goes even deeper than that.

I turn to my colleagues on this side to say: Wait a second. What happens if, on the other side, this officer is a member of — and forgive me if I say this — the Alliance, who believes in the abolition of this place? Let us, for the moment, consider this horrible scenario. What would happen if the leader on the other side — and believe me, honourable senators, this should not go from my mouth to God's ear — were a member of the NDP?

Senator Cools: Worse still.

Senator Grafstein: The honourable senator will recall that they wanted to abolish the Senate. They said that the Senate was useless. However, when we were opposing the GST, they joined us and applauded what we were doing because they felt we were upholding parliamentary privilege and principle. Remember that, honourable senators. Yet they still say, "Let's abolish this place."

If they cannot abolish this place constitutionally — and we know the problems with abolishing something constitutionally — what can they do? They can appoint an officer who will establish ethical principles, as set out in the bill, that will be so high that no one can reach them. As a result, they will be targeted here.

There is a real concern, honourable senators. How do we remove all those doubts? We follow the committee report. The committee report states that there should be an agreement on an officer by a resolution of this place, an officer who, in effect, will be paid by this place and who will come under our Senate budget and be controlled by a committee where the opposition and the independents will have a voice in the decision. That would be fair, objective and democratic.

Hon. Anne C. Cools: Honourable senators, will the honourable Senator Grafstein take another question?

Senator Grafstein: Yes.

Senator Cools: I would ask the honourable senator to reflect again on the proposed section 20.4(8), about which the honourable senator was speaking, which concerns the submitting of the estimate of the Senate ethics officer to the Speaker of the Senate, Dan Hays. Did the committee, in its deliberations, make any effort whatsoever to adduce any evidence from the Speaker of the Senate in respect of this particular proposal? The honourable senator has already asserted that this particular measure is somewhat unusual in that this will be a situation where this Senate officer's estimate will not be submitted to a Senate committee, as is everyone else's, but it will be submitted to the Speaker.

• (2020)

Were the chairman of the committee and the committee members able to enlist any opinions from the Speaker of the Senate on the propriety and the desirability of such a measure, and were the opinions of the Speaker considered at all?

Senator Grafstein: First, I do want to correct an earlier response, and that is I want to refer all honourable senators to proposed section 20.5(3) where it says:

The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established...

That does not ameliorate my earlier comments about the question of budget versus the clutch of control, because I think money follows control and the two are indistinct.

The honourable senator, however, touched on another point about this officer that came to mind and that is, again, we had the view that this officer would be, in the form of the Milliken-Oliver report, a juriconsult, which is essentially not too different from the register of interests in the House of Lords, who would opine and advise senators how to conduct their affairs. That information would be confidential and they would arrange their affairs in such a fashion to meet the code of conduct. Here we have an officer who also is not only, in effect, a consult in some general terms, but there is confusion in his office because he is also an investigator.

Senator Cools: That is right.

Senator Grafstein: Therefore we would be in a position where a senator would go in and lay bare, as Senator Robichaud says, his or her situation. A senator would have nothing to hide, but would be entitled to say, "I still am entitled to privacy under the Privacy Act if I conform with the conflict of interest guidelines. All of a sudden you would find that you had laid it all out and then another issue would arise not directed to all that, and then the senator would find himself under a cloud. He would then find that the place where he thought he could comfortably and carefully lay out and arrange his affairs, in such a fashion to ensure that he can conduct his business pursuant to the rules of this place, is a place where that same person to whom he has made disclosure is also a quasi-investigator.

In Canada we do not yet have the French system, but we are getting there. The French system, which, as you know, even Quebec has moved against, is one where you have an officer who is a judge and a jury. We do not have that. We do not have an adviser, a judge and a jury. That is the French administration system and we chose not to adopt that. In Quebec they chose not to adopt that in many respects as well for all of the various reasons that we need not go into. Again, there is confusion in the concept here as well — not in the principle but in the concept.

Honourable senators, with a few more days, another month, we could clear up these ambiguities and have something that everyone would understand. I thought clarity was preferable to confusion.

Senator Cools: I am impressed by Senator Grafstein's answer. It answers many important questions. However, it did not answer the question that I posed, which I think is also important. My question was on the sense of the propriety, the advisability and the wisdom of the Senate ethics officer submitting his or her estimate to the Speaker of the Senate for approval and not to the Senate as a whole or to a Senate committee. Honourable senators, this is extraordinary. For senators who do not pay any attention to this, this is a mechanism that will send the estimate of the Senate officer beyond the Senate chamber.

I do not think many senators understand what this means. The Speaker's own estimate has to come before this chamber for a vote. This is incredible. This particular measure in this bill exempts the Senate ethics officer's estimate from a Senate committee and from the Senate chamber, and sends it directly to the President of the Treasury Board via the Senate Speaker.

It is interesting that, in this chamber, the Speaker does not now have the power to do that for the estimate for his own office. This is an exceptional situation. In terms of accountability, quite frankly, this particular measure blasts a hole right through the whole phenomenon of accountability of the public purse.

Has Senator Grafstein given this some thought?

Senator Grafstein: The honourable senator raises a valid and important point of principle. When I read that provision, I said to myself that what we are doing here is putting our honourable Speaker in an invidious position. I will not go into the detail of that. However, think about the nature of his appointment, think about the nature of his responsibilities here, and then think about this particular question. The Speaker does not need that.

Senator Cools: I agree.

Senator Grafstein: The Speaker does not need that for this officer to be effective. This is not to be in any way, shape or form disrespectful to His Honour because I think His Honour is an adornment to this chamber.

Senator Cools: Can Senator Grafstein tell us whether the opinion of the incumbent of the office, in other words the current Speaker of the Senate, has been solicited? I should think that, in the matter of us passing such a clause in the bill, the opinion of the incumbent, Senator Dan Hays, the Speaker of the Senate, would be paramount in considering the constitutional question of the relationship between the Speaker, the senators themselves, the Senate itself and this new office that is being created called the Senate ethics officer. Has Senator Grafstein wrapped his mind around that?

Senator Grafstein: In a nutshell I will say this: It is important that the committee and the house deal with this question before we put the Speaker in an uncomfortable position. It is our duty, quite frankly, to establish rules and regulations that are consistent with the practice and the procedure of the house, and to avoid as best we can any type of question about the role of His Honour, a role that is necessary in order to conduct this business and to represent this place.

My view is that this is another problem. I am not sure I would go to the extent that the honourable senator has about how deep the problem is, but it is a problem. The problem for all of us is obviously this: We have had no evidence on this.

Senator Cools: My point, honourable senators, is that we have not adduced any evidence. In other words, let us visualize a situation such as Mr. Radwanski, former Privacy Commissioner,

found himself in where, for example, the Senate ethics officer were to find himself in conflict with the senators. Taking the example of Mr. Radwanski, what would be the position of the Speaker of the Senate, then, if the Senate of Canada would have tacitly if not overtly approved the expenses and the budget of the Senate ethics officer? What would be the position of the Senate Speaker in those circumstances?

Honourable senators, it is most important that when we pass bills we conceptualize and we conceive of every single eventuality that might occur, because we must understand that this will be cast in law, and its execution and administration will operate in a state of practical politics on a day-to-day basis.

Has the honourable senator, in his wisdom, wrapped his mind around this?

Senator Grafstein: The short answer to that, honourable senators, is that we have raised the issue. It is for each honourable senator now to look at this and ask himself or herself whether he or she agrees with the conclusions of the honourable senator or others.

• (2030)

Hon. Herbert O. Sparrow: Honourable senators, after this discussion about the ethics officer, will we need an ethics commissioner to check on the ethics commissioner? Who will do that? Can the honourable senator add something to that?

Senator Grafstein: The answer is clear. Again, Honourable Senator Sparrow, the pre-eminent and longest-serving senator in this place, puts his finger on the heart of the issue, which is that the commissioner would be accountable to the other place because he is a Governor-in-Council appointee. Therefore, the issue would come up in the other place. If there were somebody to account for an Order in Council, it would not be here; it would be there. Hence, the rationale for going back to the fundamentals is, again, to keep it here, to separate the two Houses.

The honourable senator raises the heart of the heart of the problem. We say "separation," and then we do not separate. Then we leave ourselves open to a situation where, if we are unhappy with the role of the counsellor or the officer, we can do very little about it because it is a question of an Order in Council of the other place. We would have to have our government leader pass on a message to the cabinet. Otherwise, unless some honourable senator has some other constitutional means of addressing that issue directly to the other chamber, other than by address, I do not understand how we could get at that particular problem and confront the government on the other side or defend the officer on the other side.

Why would you want to have the government defend an officer of the Senate for deeds done in the Senate? All progress is by an upward-winding staircase. Descent is also by a downward-winding staircase. This is a downward step, not an upward step.

[Senator Cools]

Senator Sparrow: One other issue that concerns me is that we have not decided what code of conduct we require, and we are putting in an ethics officer before we know what his job is. That concerns me a great deal. It seems that we are ass-backwards — and that is not a dirty word here.

Senator Cools: Just backwards.

Senator Andreychuk: In Saskatchewan, it is not a dirty word.

Senator Sparrow: We are putting the horse — I will not use that expression. This is not funny. The chicken crossed the road because the colonel wanted him to.

Senator Stratton: Yes, colonel.

Senator Andreychuk: Spoken like a true owner.

Senator Sparrow: If we can develop a code of ethics, then we can decide later what we require to oversee that code of ethics.

Senator Cools: I agree.

Senator Sparrow: We are not doing that. We are saying we will put in an ethics officer. We do not know what he will do yet. We will allow him to set up a structure, a bureaucratic structure with employees and so on, without any rules to decide what he will do. That is probably the most improbable aspect of what we are doing here.

Would the honourable senator agree that we should look at the rules that we want first? Then, if the ethics are not covered — and I do not like the word “ethics,” either — or the *Rules of the Senate*, the Criminal Code, the Parliament of Canada Act or the common law is not sufficient, or something — and it may be only a small part — is missing, we can say, “Yes, our ethics officer can be one of the Table Officers here without additional cost or additional effort of any description made by our Table Officers here in the Senate.”

That is what we must look at. Why would we put the Senate, Parliament or the country in a position where we will legislate because of some political repercussions or because of political backlash one day? That concerns me. If we are doing it right, then we have to withstand that backlash.

There were one or two questions there. Would the honourable senator answer them, please?

Senator Grafstein: The honourable senator raises a very important question. I will try to deal with just one question of the many comments as best I can.

The question is a good one. Again, it is in conflict with what we have been told by the House leader on the other side. What we and the other side have been told was, “Do not worry. We will

have an officer, and then you will set the rules. Do not worry.” We were told that, and the other House was told that: “Do not worry because you will set the rules. All we are dealing with is the officer.” Both Houses were told that.

Let us now look at the bill. When you turn to the bill, proposed section 72.07(c), it says:

The mandate of the Ethics Commissioner in relation to public office holders...

— in other words, cabinet ministers —

... is to provide confidential advice to a public office holder with respect to the application..

— of those ethical principles, rules and obligations, which are established in 72.06(1) by the Prime Minister.

The Prime Minister establishes ethical principles, rules and obligations for public office holders. There is no problem with that. Then it goes on to provide that that commissioner can provide confidential advice to a public office holder.

Then when it turns to the puisne members on the other side, the ordinary members of the Commons, it says, in clause 72.08(6):

The Ethics Commissioner may not include in a report any information that he or she is required to keep confidential.

Then it goes on to say, in effect, that there is a form of confidentiality.

If the rules will cover you on the other side, why was it necessary, as far as members on the other side are concerned, to have a confidentiality provision? On our side, we have said that we will be all rules-based, and we have discussed in committee that certain information should be kept confidential in the public interest, as well in the private interest. Those rules are yet to come, but we do not have a statutory protection. The reason for that is, I believe, from a drafting standpoint — if you think about the legislative history here — that there was a change in the bill to remove the ethics officer from the other side and set up another one, but they did not do the rest of it. They did not cleanse it. They did not make it consistent. The House on the other side gets greater protection from a statutory standpoint than we do.

Can we clarify that in the rules? Maybe we can. Is it a good way to go? No, it is not. It is just not good drafting practice.

Again, all I am saying to the honourable senators here who are convinced that this is the best bill ever, because that is what we are being told, is that it will provide serious problems for us immediately, to try to understand where we draw the line here and how we properly protect what already seems to be partial protection.

On the other side, they have already put in a code and, if you read that code, it is now fuzzy about what is confidential and what is not. It is quite confusing.

As far as I am concerned, I do not mind if the confusion is on the other side. That is their constitution. I prefer it not to be. Our job is to make sure that when they miss something, we pick it up. However, let us at least be clear in that confusion as best we can. That is why some of us have agreed with the committee recommendation — this did not come from the government — to keep our officer separate and distinct with his or her duties, offices and rules all protected by the proceedings of Parliament so that we can ensure that we provide clarity and consistency about these issues.

• (2040)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I do have a number of questions that I would like to ask of Senator Grafstein. I would like to walk through these questions. I will start at the beginning.

Senator Bryden: That is a good place to start.

Senator Kinsella: Is there not a specific difference between the House of Commons and the Senate of Canada?

Senator Grafstein: Yes.

Senator Kinsella: Is part of what creates that specific difference between these two Houses not the fact that the House of Commons, and the House of Commons only, can introduce legislation that affects the raising of public monies?

Senator Grafstein: Yes.

Senator Kinsella: Honourable senators, given the fact that we cannot do anything in this house that affects drawing money from the people of Canada, that, in and by itself, should speak to the specific difference between this house and that House.

Senator Grafstein: To be absolutely fair, it is true that, under our constitutional provisions, money matters are left to the other place, so that we can only vote them up or down. However, there is an exception. The exception is the money that this house requires to conduct its affairs. That is different. To my mind, that is what I thought we were doing. We were trying to separate ourselves from the constitutional issue that the senator is obviously implying so that we would keep this matter within the boundaries of our house budget, hence a house officer accountable to a Senate committee on this side.

Senator Kinsella: That leads me to the next question: What exactly are we fixing that is broken, as it applies to something that is broken in the Senate of Canada?

[Senator Grafstein]

Senator Grafstein: What is clear is that there is a desire amongst all sides to have an easy and clear place in our rules, to put them all in one place so that they are easy to get at, read and understand. That is what I call evolution and modernization. I have no objection to that. I do not think any honourable senator has any objection to that. This would be part and parcel of having a code of conduct under our rules, in one place, clear, understandable and comprehensible.

Senator Kinsella: Would the honourable senator not agree that the logical first step is to establish the norm of the ethics; in other words, establishing the code of conduct, rather than starting off with establishing the machinery for the enforcement of that code of conduct?

Senator Grafstein: Honourable senators, I thought we had reached a consensus in the committee by saying that if we had an officer appointed under our rules, we could then adjust the rules to suit that particular officer, and vice versa. This way, we cannot.

Senator Kinsella: Continuing with that development of what I find to be a logical progression of analysis, if we do not have a code of conduct but we have a machinery, and the machinery is set in place because of the pressure of the government of the day, we will be trying to develop a code of conduct to insert in an *a posteriori* fashion — and God knows whether or not the machinery would be appropriate to the enforcement of that code of conduct — and then going to the next step.

What sanction is in the present bill if, notwithstanding that there is no code of conduct, there is a “transgression” by an honourable senator in the eyes of the ethics officer? What sanction is in place in the bill as it is before us now?

Senator Grafstein: Honourable senators, I am not clear about that. Since I am not clear, it is another question of lack of clarity.

I will answer this briefly: There is one way to remove a senator; that is under the Constitution. That does not disappear. That remains the only way to remove a senator. The rest, to my mind, is admonitions, penalties and so on. We have come up with a series of penalties that are already in our rules to deal with an errant senator.

Senator Kinsella: Then following it in a logical, step-by-step analysis, this clearly is the constitutional question. What we have before us, honourable senators, is a matter of a serious constitutional nature. Would the honourable senator agree with that?

Senator Grafstein: I agree that it is a constitutional issue, and I agree that we have no evidence about it one way or another.

Hon. Marcel Prud’homme: Briefly, I was involved in this subject so many years ago. We invented the word “jurisconsult.” It was so limited in scope and so clear. Public opinion was very happy with it. Now I see a monstrosity in the making, an immense bureaucracy.

I always read both French and English in a text. I am not talking about the bill itself. I just wish to refer Senator Grafstein, who has knowledge of both, to page 4 of the bill. If I read clause 35 in English and in French, it seems as if I am reading two different clauses. I may be wrong. As I said in the Banking Committee earlier, if I am wrong, I want to be told. If I am right, I want somebody to look into it. There is something in English that does not appear in French, or vice versa. I will leave it to the linguists to address before the end of the debate. I know Senator Carstairs will make sure that someone in her office will double-check what I am saying. That is all for the moment.

Hon. Douglas Roche: Honourable senators, I wish to make a few short remarks — and I emphasize “short” — about the ethics bill.

I support this bill and the principles behind it — that legislators should be subject to a transparent set of ethical guidelines and that their adherence to those guidelines should be independently verifiable. By creating the position of a Senate ethics officer and enshrining that position in statute, this bill will bolster public confidence in and respect for the important work that we do both in this chamber and in the committees. Honourable senators, that will greatly assist us to continue to have a significant role in the shaping of legislation.

While there have been various objections advanced against the bill, I see nothing that would prevent it from fulfilling its basic objective — that is, the establishment of an independent mechanism to ensure and verify the ethical conduct of parliamentarians.

Under Bill C-34, the Senate will maintain authority over the actual formulation of the ethical guidelines governing members of this chamber, thereby setting the basic terms of reference that will guide the conduct of investigations. Furthermore, the Senate will have the power to confirm or, alternatively, to deny the appointment of a Senate ethics officer.

• (2050)

Most important, however, is the process by which the officer is appointed and the ethics guidelines created will be an open and transparent one. If there are remaining weaknesses that the current bill does not address, this transparency will act as a check on any temptation to abuse those weaknesses for personal or partisan advantage. We have seen how effective public attention to ethics issues can be in the way that the former Privacy Commissioner was dealt with following his indiscretions.

Finally, we should note that the government consulted relevant committees, both here and in the other place, on the draft version of this legislation and has taken seriously the recommendations made by committees by incorporating them into this bill.

Honourable senators, the Canadian public is looking to us to confirm our intention to take seriously our role as legislators and to commit to upholding ethical standards in the conduct of our

business. I submit that we have nothing to hide in this chamber. The age of political transparency has arrived. That is a key point that should govern our actions on this matter. Let us not delude ourselves that we are being watched closely on how we will conduct ourselves in this matter.

In *The Hill Times* this week, in an article entitled “Ethics bill bogged down in Senate,” Aaron Freeman writes:

If Senators can't manage to pass Bill C-34, and a meaningful code to go with it, this display of self-interested arrogance should encourage the rest of us to finally re-think the value of the unelected Upper Chamber.

We should, therefore, welcome this opportunity to add public credibility to our work by creating an independent mechanism of verifying that ethical guidelines are being respected without exception.

Honourable senators, we have a choice. We can stall this bill with all sorts of objections to peripheral aspects, completely lost on a public that has grown rightly sceptical of the integrity of the political process and who will cast aspersions on the Senate for putting self-serving interests before the public interest; or we can pass this bill, which is, in essence, a good bill, and give reassurance to the Canadian people that the Senate of 2003 does indeed care about the public interest and pledges itself to govern the ethics of senators' conduct, to give vibrant witness that we are putting the public interest first.

Some Hon. Senators: Hear, hear!

Senator Cools: Honourable senators, I was very interested in what Senator Roche had to say. Most of his intervention had to do, I think, with reading from a newspaper clipping.

Some Hon. Senators: Oh, oh!

Senator Cools: Is that not what happened?

Stand and speak. I will defer. Speak, my dear. Speak. She has an objection. I thought I was describing a fact that he was reading from a newspaper clipping. I made no comment on the substance of the clipping, neither did I adopt a position.

The honourable senator seems to posit — if I could read behind his mind — that Bill C-34 will somehow create ethical people, senators. I wonder about that assumption. Could the honourable senator give me some hard evidence from the past to show that senators here have not been ethical? That is my first question. My second question is, if honourable senators have not been ethical, will this bill somehow make them ethical?

Senator Roche: First, honourable senators, I did quote one paragraph from the article in *The Hill Times* this week to make my point that there is a growing body of public opinion concerning this bill of which we should be aware.

Second, nothing in my speech would cast, in the slightest way, any aspersions on any member of this chamber. That is not what I am talking about. I am talking about the perception of how we conduct our business in an age of not only increasing democratic values but increasing transparency. It is how we are perceived that is extremely important for us to consider as we move forward with this bill.

Some Hon. Senators: Hear, hear!

Senator Cools: I would like to put another question to the honourable senator. The previous question had to do with how this bill might create ethical behaviour. As the honourable senator was speaking, he has now moved the question from actual conduct and actual behaviour on to perception. I shall join him on his ground of perception. How does this bill correct the perception of which he speaks, unless, of course, the bill is itself a perception? Think about that.

Senator Roche: Honourable senators, good behaviour or ethical behaviour cannot be legislated, as such.

Some Hon. Senators: Hear, hear!

Senator Roche: What is being legislated here is a process of checks and balances that will ensure that the public understands that there are guidelines and rules and ethical values being brought into play by a Senate ethics officer that can give assurance to the public.

Senator Cools: Honourable senators, I must be sadly mistaken then. The honourable senator has just told us that the ethics officer will bring these guidelines and rules into operation. I was under the impression, according to the bill, that the rules of conduct would be brought into existence by the Senate itself, not by the Senate ethics officer.

Senator Nolin: He knows more than you.

Senator Cools: Perhaps the honourable senator has inner information or outer information, I do not know. Perhaps he has information that I do not have. I wonder if he could clarify the difference. Quite frankly, the difference is quite profound. Remember, I am trying to deal not in perceptions but in reality. I wonder if the honourable senator could comment.

• (2100)

Senator Roche: I suspect that many members feel as I do, that this debate has gone on quite long enough. Nitpicking can go on forever. We must consider the essence of what we are attempting to consider and to vote on here — that is, the construction of a Senate ethics officer under the guidelines of this bill. It is time, in the progress of this country, to take that step.

Hon. Senators: Hear, hear!

[Senator Roche]

Senator Cools: Honourable senators, I would like to ask the honourable senator another question, namely whether or not he believes that the business of principles, integrity, honesty, probity and propriety are far more important than illusions and perceptions?

Senator Roche: This debate is deteriorating into a sideshow.

Senator Lynch-Staunton: Liberal contribution talk.

Senator Roche: We should stay on the principles of this bill.

Senator Cools: I am getting the impression —

The Hon. the Speaker: Senator Roche, you can clarify if you wish, but I take it you do not wish your time to be used for further comments or questions?

Senator Lynch-Staunton: He has not said that.

Hon. Pierre Claude Nolin: Honourable senators, I will be brief. I agree with Senator Roche that we need a code of conduct — a code of ethics. We can ask our committee to decide on the proper wording. We need that definitely. What we need more, however, is a process that will be transparent, workable and efficient, in which I will have confidence, you will have confidence, we will all have confidence. Do you not think that would be more proper than to be driven by perception?

I have been here for 10 years. Do you think I am preoccupied by perception? Every day when I look at my e-mails, if I were driven by perception, I would probably change jobs.

An Hon. Senator: Go to the House of Commons.

Senator Nolin: Let us do our job properly. Our burden is not only to vote for a law that will give a shot to someone else. No. We must do it ourselves. We must be in charge, but we must be in charge of a process that will be efficient, transparent and credible.

Some Hon. Senators: Hear, hear!

Hon. Donald H. Oliver: Honourable senators, I was moved after listening to Senator Grafstein earlier tonight to say a few words about Bill C-34. It is really an enactment that amends the Parliament of Canada Act, and it provides intrinsically for the appointment of a Senate ethics officer. In this framework legislation, this act of creating an officer for a code of conduct should not be punitive and scary.

As I listened to the debate — and, when I have not been here, read the debate — I find a lot of senators are nervous and afraid of some of the impacts of this legislation. That is why we are having this debate. The debate has, in fact, not gone on too long because the issues are fundamental. Honourable senators, a code of conduct, a code of ethics or a code of conflict of interest should not be punitive. It should be user-friendly.

I must say that I agree with a lot of the remarks made tonight by Senator Grafstein. What he was trying to address, among other things, were ways to overcome some of the fears and fundamental basic concerns that many honourable senators have about this particular bill.

I am a strong advocate for a code, but it is not something that should unduly tie the hands of honourable senators. I agree that the time has come to have a code of official conduct. Part of the need for implementing a code is to recognize that service in Parliament is a public trust. As such, we should have a code in order to maintain public confidence and trust in the integrity of parliamentarians individually. A code would also help to maintain the respect and confidence that society places in Parliament as an institution.

However, this does not mean that we must be tied up in knots. The Milliken-Oliver report sets out to reassure the public that all parliamentarians are held to standards that place the public interest ahead of our own. The report also states that the code will provide a transparent system by which the public may judge this to be the case. We are not speaking of setting up criminal or quasi-legal regimes, but just a code of conduct — not even a code of ethics.

Another reason for adopting a code is that, from time to time, as we senators or individuals are called upon to serve our communities or to serve in business, occasionally there will be circumstances where we would like to inquire whether or not the act of accepting those requests might, by some, be construed as placing us in a position of conflict. In such a circumstance, it would be wonderful to have a place to go and a person to ask for advice for greater certainty and guidance on how to reconcile certain private interests and public duties.

As stated on page 13 of the Milliken-Oliver report, the Senate ethics officer would be used:

To provide advice on a confidential basis to individual Parliamentarians;

— and —

To prepare guidance and to provide courses for new Parliamentarians on matters of conduct, propriety and ethics.

At present we do not have this.

The fact that there is a request for a code in no way implies that there is an evil to be corrected. It is my view, having been here for 13 years, that all honourable senators act in the best interests of Canada, and place the public interest ahead of their own parliamentary or private interests.

In the debates before this chamber, there have been a number of concerns expressed by honourable senators that the code and the draft bill before us will unduly tie the hands and restrict the

activities of senators outside this chamber. The Milliken-Oliver report was never intended to be restrictive or onerous. Indeed, on page 4, under “Application,” we read:

3) Nothing in this Code is intended to prevent or impede Parliamentarians from carrying out activities in which they ordinarily and properly engage on behalf of constituents;

5) It is recognized that maintaining a wide variety of activities outside of Parliament in addition to their parliamentary duties enables Parliamentarians to reflect better the communities from which they come and to maintain their expertise in their chosen fields. Therefore, nothing in this Code is intended to prevent a Parliamentarian who is not a public office holder from:

a) Engaging in employment or in the practise of a profession;

b) Carrying on a business;

c) Being a director, a partner, or holding an office,

So long as the Parliamentarian, notwithstanding the activity, is able to fulfil the obligations under this Code;

6) Nothing in this Code affects the privileges of Parliament or Parliamentarians, or the powers of the Speakers of each House;

Honourable senators, there is a huge difference between the principles in the Milliken-Oliver report and the bill that is before us today for study. That is the point that Senator Grafstein was making, and that is what prompted me to rise this evening. Bill C-34 invokes a statutory regime for our ethics officer. As Senator Nolin just said, it behooves us to have our own representative for our officer for code of conduct.

Margaret Young, from the Law and Government Division of the research branch of the Parliamentary Library states, on page 11 of her May 6, 2003 legislative summary on Bill C-34, the following, which is noteworthy because many senators have said that this bill clearly tracks what the Senate committee decided and clearly tracks what the Milliken-Oliver report said. Ms. Young said:

It is noteworthy that the Senate committee report on the draft Bill did not reflect consensus as to whether the office of the Senate Ethics Officer should rest on a statutory base, or should be non-statutory and completely internal to the Senate.

There was no agreement on that whatsoever.

In brief, those favouring the non-statutory approach maintained that using a statute would create a significant risk of judicial intervention into the activities of the Officer. Those favouring a statutory Officer wished to emphasize the independence of the office...

• (2110)

When I read that language, “wished to emphasize the independence of the office,” I wondered how it is that you cannot emphasize the independence of an office if the office is created by resolution of this chamber? Are you saying that anything that this chamber does by resolution would not lead to independence or would be the opposite of independence?

She goes on to say:

Those favouring a statutory Officer wished to emphasize the independence of the office and noted that most Canadian provinces had proceeded by way of legislation in this area and had not run into difficulty.

That does not make it right. We are our own chamber and we can make our own rules. She said:

Bill C-34, of course, bases the office of the Senate Ethics Officer in a statute.

She then says that all of the other recommendations made by the Senate committee are reflected in Bill C-34.

Honourable senators, the way in which the officer for a code of conduct or ethics is to be put into place runs at the very heart and is the basic principle of this bill that is before us. The committee was unable to reach a consensus. The committee did not do its job. It did not do its job on something that is so fundamental that it goes to the heart and to the root of what is before us today.

I have already made remarks based on the difference of opinion. Earlier, I said that we should be careful about the method by which the ethics officer is appointed. If we do not do it right now, it is my view that it may well result in the privileges of honourable senators and the activities of the ethics officers, whose rules over conduct and privileges are the subject of this debate, being the subject of court adjudication. That is not something that most of us would like to see. This is one reason why, in 1997, our report called for the appointment of an ethics officer — we called him a juriconsult — by resolution of this chamber.

Several senators opposite have stood up and said that Bill C-34 carefully tracks the language of the Milliken-Oliver report. I respectfully submit that it does not on this one material principle point. The juriconsult was to be appointed by resolution.

It is clear to me that the refusal of the government to yield on this issue and appoint an ethics officer by resolution is the one big stumbling block that alone may produce legislation that a number of us would like to see, but it may lead to its defeat. The government would be wise to revisit this issue one more time, but this time with an open mind. What can be wrong with reverting to the principle of an officer appointed by resolution of this chamber? What is wrong with that model? I can tell you now, as I said before, that this particular model and this particular code

are already in effect in Poland and, guess what. It works extremely well. I would remind honourable senators that the report said “a juriconsult shall be an officer of Parliament.”

Margaret Young, in her report to the committee, said that although there is no explicit reference to the Senate ethics officer being an officer of the Senate as requested by the committee, the intent of such a title is no doubt captured by the various references to the status of the officer and the privileges, et cetera, of the office. In other words, it is not even here that this ethics officer shall be an officer of Parliament.

After consultations with the leaders of the recognized parties, and the Speakers will table that nomination, a resolution will be passed by the Senate. Then our officer will be in place to do the job that we would like to have done.

Honourable senators, this is the fundamental difference between the Milliken-Oliver report and the draft bill before us. Bill C-34 invokes a statutory regime for an ethics officer, an issue that may challenge the very privileges of members of this chamber.

Honourable senators, for the reasons that I have just outlined, Bill C-34 should be returned to committee for further study before it is further debated in this chamber. The committee should have been afforded an opportunity to come to a resolution of this one most fundamental point. I repeat what the Library of Parliament said:

It is noteworthy that the Senate committee report on the draft Bill did not reflect consensus as to whether the office of the Senate Ethics Officer should rest on a statutory base or should be non-statutory and completely internal to the Senate.

I cannot think of anything more fundamental to this proposed legislation, Bill C-34. This says that the committee did not do its job and it should be afforded an opportunity to do it. That is why we are in this quandary. Imagine what it would be like if they had come in with a clear recommendation, but they failed to do it. They did not do their job.

Hon. Thelma J. Chalifoux: I am not a lawyer, but I have read an awful lot of by-laws and legislation. I should like to ask Senator Oliver about proposed section 20.1. I might be wrong, but I read it differently from the senator. I read it to mean that the Governor in Council shall, by commission under the Great Seal, appoint a Senate ethics officer after consultation with the leader of a recognized party in the Senate and after approval of the appointment by resolution of the Senate.

I am getting mixed messages from the honourable senator. He says that is not what the Milliken-Oliver report says, but I read that it is, because in my opinion the ethics officer cannot be appointed until after a resolution by the Senate. I would like his response to that, please.

[Senator Oliver]

Senator Oliver: The honourable senator is correct on that as far as it goes, but I was talking about the way in which the officer is actually appointed. The appointment in this particular case is by amendment to a statute, the Parliament of Canada Act, so that the officer becomes a creature of a statute and not a creature by resolution. That is the difference.

The honourable senator is quite correct that there are to be consultations and that the matter has to come here and that there be a vote. It is the process that is different. One has a statute, and one does not. That is the difference.

Senator Chalifoux: What is the difference between the statute and the appointment? A statute is more relevant, in my opinion, because that is a law. I would like more explanation on that, if you do not mind, please.

Senator Oliver: It is a huge question, and it is a huge topic. The answer to the honourable senator's question has best been given in this chamber by Senator Joyal. He gave a very learned discussion on what happens when you use a statute, what happens to privileges, and what the courts have said here and in other jurisdictions. As a result of Senator Joyal's very persuasive argument about the dangers of using a statute, I was persuaded that the resolution approach that was recommended six years ago and tabled in both this chamber and the House of Commons is the proper, the correct and the safe way to go.

On motion of Senator Kroft, debate adjourned.

CANADIAN FORCES SUPERANNUATION ACT

BILL TO AMEND—REPORT OF COMMITTEE

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

Hon. Jane Cordy, for Senator Kirby, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Wednesday, November 5, 2003

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

FIFTEENTH REPORT

Your Committee, to which was referred Bill C-37, *An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts*, has, in obedience to the Order of Reference of Monday, October 27, 2003, examined the said Bill and now reports the same without amendments.

Respectfully submitted,

JANE CORDY
For the Chair

• (2120)

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

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

CHILDREN OF DECEASED VETERANS EDUCATION ASSISTANCE BILL

REPORT OF COMMITTEE

Hon. Jane Cordy, for Senator Kirby, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Wednesday, November 5, 2003

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

SIXTEENTH REPORT

Your Committee, to which was referred Bill C-50, *An Act to amend statute law in respect of benefits for veterans and the children of deceased veterans*, has, in obedience to the Order of Reference of Wednesday, October 29, 2003, examined the said Bill and now reports the same without amendments.

Your Committee appends to this report certain observations on the Bill.

Respectfully submitted,

JANE CORDY
For the Chair

(For text of observations, see today's Journals of the Senate, p. 1329)

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

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

[Translation]

APPROPRIATION BILL NO. 3, 2003-04

THIRD READING

Hon. Joseph A. Day moved the third 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.

Motion agreed to and bill read third time and passed.

[English]

**BILL RESPECTING THE EFFECTIVE DATE OF
THE REPRESENTATION ORDER OF 2003**

SECOND READING—MOTION IN AMENDMENT—
VOTE DEFERRED

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. Pierre Claude Nolin: Honourable senators, I will try to be brief. We have heard many comments about Bill C-49. The government is asking us to reduce the period of 12 months that is already fixed in law. We are being asked to put into effect a decree of representation.

The decree was printed in the official *Gazette* in August. A year after that time, the new riding will come into force. An election after that date will be organized under the new decree of representation.

It was a good system. We have been convinced by various chief returning officers for the past 20 or 30 years — and Senator Prud'homme can correct me — that 12 months was a good and fair time for the chief returning officer to make the proper changes. There is a lot of printing involved. Appointments and training of returning officers in the new ridings must take place.

Honourable senators, we are now asked, on a one-shot deal, to reduce that 12-month period to seven months. I will not go through all the information that you have heard from various colleagues who have explained what happened a few years ago when the other place asked to postpone the delay. Some senators have explained how we are getting to that decree of representation. I will not go through that.

What is behind this bill? We need to be clear. Why are we asked to do this? We are asked to do it to give all the freedom necessary for the new Prime Minister, Paul Martin, to call an election under the new boundaries any time after April 1, 2004.

That is a political wish. He is quite entitled to do that. However, while we are asked to accommodate him, we are creating a perception — we heard about perception earlier — that is bad for Canada. It is up to us again, the Senate, to protect that.

When Paul Martin becomes Prime Minister, it will be up to him, and only him, no one else, to decide when to call an election. Do not fall into the trap that those who do not support Bill C-49 will object to the new ridings. That is false. The new ridings already exist. They were published in the decree last August. They

are already in existence for an election to be called after August 25. It will be up to Paul Martin, the new Prime Minister, to decide if he wants that election to be fought under the new boundaries, meaning an election after August, or fought under the current boundaries, meaning an election prior to August 25.

We are being asked basically to give him an option. It is almost a gift.

Perhaps the majority in this chamber wants that, but at least you have to hear the truth. It is gift to the new Prime Minister. In doing that, we would be doing the country a disservice.

[Translation]

As we have done several times in the past — always in debates on legislation concerning the electoral process — we must protect this process against any perception of political manipulation. Senator LeBreton reminded us yesterday that this process dates back to the days of Prime Minister Pearson. At the time, the manipulation of the electoral boundaries readjustment process was the purview of members of Parliament. Mr. Pearson put an end to that practice, which brought the entire federal political community into disrepute, and he was wise to do so. We must make sure to protect the other place against any temptation it might have to manipulate — and even be perceived as wanting to manipulate — that process.

• (2130)

It is our duty to protect the integrity of election officials, including the Chief Electoral Officer and elections officials in each riding. We must provide a good example for the many countries that look up to us. Protecting our international reputation is our most sacred duty.

Recently, the Chief Electoral Officer took it upon himself to publicly comment on the entire legislative process necessary to hold a general election in April instead of August. It was unfortunate of him to get involved in a political debate, but he did and we must protect him from that unfortunate statement. Let us take him at his word. New technology, the efficiency of the Chief Electoral Officer's staff, the identification and training of new presiding officers mean that this 12-month period can be cut in half.

Honourable senators, we are being asked to amend the act just for this election. This is a one-time thing. In order to improve people's perception of this bill — and to get the Chief Electoral Officer off the hook for an unfortunate remark he has apparently made — it would be appropriate to revisit the principle of the bill, to refer it back to the committee, and to examine the possibility of making it a permanent measure, not a one-time thing. Let us protect the credibility of the system. I would be delighted if the appropriate authorities could convince me that we can in future reduce the period from twelve to six months any time there is a representation order.

MOTION IN AMENDMENT

Hon. Pierre Claude Nolin: For these reasons, honourable senators, I move:

That Bill C-49 be not now read the second time, but that the subject-matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs; and

That the order to resume debate on the motion for the second reading of the bill remain on the Order Paper.

[*English*]

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Those in favour of the motion will please say “yea.”

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will please say “nay.”

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the “nays” have it.

And two honourable senators having risen:

Hon. Terry Stratton: The vote should be tomorrow at 3 p.m., with a half-hour bell.

Senator Carstairs: They want to defer the vote to 5:30 p.m.

The Hon. the Speaker: The opposition whip has asked to defer the vote, which he may do. The vote will be at 5:30 p.m. tomorrow, honourable senators, with the bells to ring at 5:15 p.m.

Hon. Fernand Robichaud (Deputy Leader of the Government): On a deferred vote, it is a 15-minute bell.

Senator Stratton: Very well.

Senator Robichaud: Honourable senators, I believe we have agreed.

Senator Lynch-Staunton: We will go by the rules, whatever the rules may say.

The Hon. the Speaker: We are now setting the time for the bells to ring to call in the senators before a deferred vote, the vote having been deferred at the request of the whip of the official opposition party.

I refer honourable senators to our rule 66(3):

When, under the provisions of any rule or order of the Senate, the Speaker is required to interrupt the proceedings for the purpose of putting forthwith the question on any business then before the Senate or when a standing vote has been deferred pursuant to rule 67, the Speaker shall interrupt the said proceedings not later than fifteen minutes prior to the time provided for the taking of the vote and order the bells to call in the Senators to be sounded for not more than fifteen minutes immediately thereafter. These provisions shall apply, in particular, to the disposition of non-debatable motions and any motion for which a period of time has been allocated to the disposition of the debate.

Accordingly, the bell to call in the senators for the vote at 5:30 p.m. tomorrow will ring at 5:15 p.m.

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.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, Senator Keon was in the middle of his initial response and he has a certain number of minutes left of his 45 minutes. I move the adjournment of the debate in the name of Senator Keon, for the remaining amount of time that he has.

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

• (2140)

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 wish to speak on this order tomorrow. I have been working hard to limit my remarks to my allotted time for debate, which is unlimited, and I think I can do it.

The Hon. the Speaker: Is it your pleasure, honourable senators to stand the matter?

Hon. Senators: Agreed.

Order stands.

NATIONAL ANTHEM ACT

BILL TO AMEND—THIRD READING—ORDER STANDS

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, to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Prud'homme, P.C.*)

Hon. Vivienne Poy: Honourable senators —

The Hon. the Speaker: Honourable senators, there was a request from the house leader that this item stand.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, Bill S-3 is not a House of Commons bill; it is a bill that comes under Other Business. I did not ask for it to stand. Senator Poy wanted some information about what was going on. I did not say that it should stand.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a point of order because a minimum degree of fairness must prevail in this place. When the item was called, I observed Senator Poy stand. I believe that His Honour did not see Senator Poy stand. Therefore, if there is a problem with that, pursuant to rule 33, I move that Senator Poy be now heard.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, it may not be necessary to proceed with the motion. Senator Kinsella is quite right in that I did not see Senator Poy stand. If I am not mistaken, I was looking at my notes and I noted that Senator Prud'homme had stood the order. I believe that Senator Prud'homme said "stand."

Hon. Marcel Prud'homme: I did say "stand."

Senator Cools: We agreed.

Senator Lynch-Staunton: It is the Honourable Senator Poy's bill.

The Hon. the Speaker: I did not see Senator Poy, and I will see her now.

Senator Poy: Honourable senators, Senator Prud'homme did say yesterday that he would speak this evening. That is on the record. Would the honourable senator please indicate when he might speak?

Some Hon. Senators: Tonight!

Senator Poy: It is on the record.

Senator Prud'homme: First, would the honourable senator sit down? I am polite but either I have the floor or she has the floor.

Senator Poy: Yes, I will sit down so that the honourable senator may speak.

Senator Prud'homme: I rose to say "stand" and why should I say more? You have stood everything else so why would I not say "stand"?

We have sat all day and I asked that this order stand until tomorrow. If the honourable senator wants to know the precise moment, I can say only that it will be tomorrow. I am not obliged, honourable senators; and it is my privilege to say "stand." If honourable senators do not agree, there are other ways to disagree. I said, "Stand." Bill C-13 was stood for Senator Keon and Bill C-17 was stood for the Leader of the Opposition. I said, "stand" and that is it. Why should I make a deal when I am not a wheeler-dealer?

Senator Poy: Honourable senators, I would simply like an indication from the honourable senator whether he intends to speak to Bill S-3.

Senator Prud'homme: Absolutely, I will speak to the bill before the week is over. There are only two or three days left, and I assure you that I will speak.

Senator Poy: There are two days remaining.

Senator Prud'homme: I will speak because you are a fine lady. Sit down, please.

I will do the unusual and I will speak tomorrow.

Order stands.

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 Banks*).

Hon. Tommy Banks: Honourable senators, I do not believe that any person in this chamber would be opposed to the purported — if I may put it that way — intent of this bill. When I make my remarks, I am hopeful that honourable senators will remember that I am the senator who stood yesterday to suggest on a point of order that if Senator Spivak spoke to a bill that I moved, it would constitute the last speech on that bill; that is how much I know.

However, notwithstanding my agreement with the thrust of this bill, I am not certain that it has been drafted properly or that it is in the right place. As I understand from the title of the bill, it has to do with hate propaganda. Hate propaganda is referred to in section 319 of the Criminal Code that speaks to offences of publicly inciting hatred. I think that is what Bill C-250 wants to do. I could not agree with that more.

I understand the mechanical difficulty because the definition of the term “identifiable group” occurs only at section 318(4) of the Criminal Code. However, section 318 has to do with advocating genocide, not with an offence that would have to do with inciting hatred. They are both reprehensible but they are quite different.

I understand that it might be convenient to make the amendment in section 318, although it may belong in section 319, because that is where the definition is given. Otherwise, it becomes a drafting problem, which I think might have occurred if one had to put into section 319 a different listing of a definition of “identifiable groups” to which this offence would apply.

I have not heard — and it may simply be ignorance — of anyone actually advocating genocide against another of a particular sexual persuasion, even against sexual persuasion other than that which is intended by this bill. Nevertheless, I do not think that the point of Bill C-250, which has to do with hate propaganda according to its title, properly belongs in a section of the Criminal Code that speaks to advocating genocide.

• (2150)

In short, when this bill moves to committee for study, which I hope it will soon, I hope that the committee will consider whether creating a criminal offence for the advocacy of hate propaganda directed against persons on account of their sexual orientation ought not properly be an amendment to section 319 of the Criminal Code rather than to section 318.

I hope, honourable senators, that we will complete second reading and move this bill to committee very soon, because it deserves to be studied.

Hon. Jeremiah S. Grafstein: Honourable senators, I should like to comment historically on the matter of sexual orientation and plans to exterminate those of a specific sexual orientation. Part of the master plan that was enunciated in the documents following out of Nazism was precisely that. There was some discussion of that in our debate on the bill memorializing the Holocaust. There was a clear plan to exterminate those who were disabled by means of two methodologies: by scientific experiment and by extermination if they were to survive those experimentations. There was also a clear plan to rid society of this element, and they used much harsher language than that. Therefore, this is not something that is unknown to the 20th century.

An historical analysis will demonstrate that that also applies to a number of other autocratic regimes.

Senator Banks: Honourable senators, that is a well-known historical fact. I am not sure, however, that it is part of what was contemplated in a bill, the purpose of which is to stop hate propaganda. The bill may be described wrongly or incompletely. If the bill means to include making an offence the advocacy of genocide against people because of their homosexual association, or whatever other sexual orientation they might have, then it ought to say so, and then it would be properly in both places.

As I said, honourable senators, I am not competent to pronounce on these questions. I believe it is a question that ought to be looked at when the bill is studied in committee, because one or the other of those things is wrong.

Hon. Pierre Claude Nolin: Is the honourable senator questioning why the definition is in a section that refers not to hate but to another crime?

Senator Banks: That is correct. Bill C-250 modifies subsection 318(4) of the Criminal Code. Section 318 of the Criminal Code deals with the advocacy of genocide. I understand that that section contains the list and that makes it easier to interpret, but I think that the intent of Bill C-250 is to make the offence under the act apply to section 319 of the Criminal Code. That is what I read to be the stated intent of the bill, although I may be wrong. However, if so, that is where it ought to be.

The answer to Senator Nolin's question is yes.

Senator Nolin: The criminal infraction already exists. It refers to a group or identifiable group, and the definition of those groups is there. That is why the sponsor is proposing to change a definition that applies to other infractions. The infraction already exists; it is only the list that needs to be amended.

Senator Banks: I understand.

Senator Nolin: Is that the only concern?

Senator Banks: Yes.

Hon. Joan Fraser: I am sure that Senator Banks knows how much respect I have for Senator Gustafson and for his freedom to speak on all matters in this chamber. Nonetheless, does Senator Banks agree with me that the basic principles of this bill have been discussed in this chamber and that, if there are questions about it, the best thing to do now would be to move on to the committee study phase, with respect for all senators?

It seems to me that we are reaching the stage in this debate where the kinds of questions that are being raised would be best addressed in a committee study. It is no secret to any honourable senator that I support this bill. I have just signed another 50 letters to people who wrote to ask my views about it. Whether or not I support this bill, would Senator Banks agree that second reading and committee study are where we should be going now?

Senator Banks: I can only reiterate what I said when I was putting forward the idea of the question, that being that I hope the bill will be studied in committee and that it will be referred to committee as fast as possible.

Hon. Leonard J. Gustafson: Honourable senators, I move the adjournment of the debate.

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those in favour of Senator Gustafson's motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to Senator Gustafson's motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it, although it was rather soft.

Senator Cools: Do it again!

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. It is a one-hour bell.

Hon. John Lynch-Staunton (Leader of the Opposition): I admit that I am not as alert as I could be because we have had late evenings for too long. Yet I should be more alert.

I ask respectfully: Was Senator Gustafson's motion to adjourn the debate agreed to?

The Hon. the Speaker: It is not clear to me. I said that it was not agreed to and two senators rose, which is the signal for a division. Perhaps they were rising for reasons other than to request a division.

Is it your wish, honourable senators, that I follow Senator Cools' request and ask again for the "yeas" and the "nays"?

Hon. Senators: Agreed.

The Hon. the Speaker: I will do so.

• (2200)

It is moved by the Honourable Senator Gustafson, seconded by the Honourable Senator Oliver, that further debate be adjourned to the next sitting of the Senate.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe 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 there is unanimous agreement to a shorter bell.

Hon. Bill Rompkey: Would it be agreeable to have a 15-minute bell?

Senator Cools: No.

Senator Lynch-Staunton: You have no say. It is up to the whips.

Hon. Terry Stratton: We are not certain of what is happening over in the Victoria Building. What about a 20-minute bell?

Senator Rompkey: Agreed.

The Hon. the Speaker: Honourable senators, is it agreed that we have a 20-minute bell before the taking of the vote?

Some Hon. Senators: Agreed.

Senator Cools: No.

The Hon. the Speaker: There being a dissenting voice, it is a one-hour bell.

Senator Lynch-Staunton: No, it is between the whips.

• (2300)

Motion negated on the following division:

YEAS
THE HONOURABLE SENATORS

Angus	Lynch-Staunton
Beaudoin	Moore
Cochrane	Oliver
Cools	Robertson
Forrestall	Sparrow
Gustafson	St. Germain
Kenny	Stratton—14

NAYS
THE HONOURABLE SENATORS

Bacon	Losier-Cool
Banks	Maheu
Carstairs	Milne
Chalifoux	Nolin
Chaput	Pearson
Christensen	Pépin
Cordy	Prud'homme
Downe	Ringuette
Fairbairn	Robichaud
Fraser	Roche
Gill	Rompkey
Grafstein	Smith
Graham	Trenholme Counsell
Hubley	Watt
Joyal	Wiebe—31
Kroft	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Resuming debate.

Senator Lynch-Staunton: Honourable senators, I want to make a few comments. I support this bill. I do not think it is necessary, but I support it. If it gives reassurance to a certain segment of our society, so be it. However, I think that segment of society is protected by other legislation.

What I deplore is that Senator Gustafson was not given the time needed to carry on the debate tomorrow. What I cannot understand is why we are, again, in this rush to get things through. What I cannot understand is why the government cannot tell us why we are here this evening, why this bill cannot, when it goes to committee, be studied thoroughly and be reported back in due course.

Are we here only until Friday?

Senator Smith: Probably.

Senator Lynch-Staunton: And then what?

Senator Smith: I cannot speak for the government.

Senator Lynch-Staunton: No one is speaking for it. That is a problem with the Senate right now. No one is speaking to our schedule and our agenda. We want to know.

Why is Senator Gustafson being refused the right to give his views on this bill tomorrow? What is so important that this bill must be dealt with now? Can no one answer me?

After what has happened, I am very tempted to move the adjournment of the debate, but I will not because I have too much respect for the individuals in this place who are getting as tired as I am. However, I still feel that we are being manipulated and used for one purpose. I do not accept the purpose, unless it is confirmed by the other side.

I do not understand why we have to rush Bill C-34 through. I do not understand why we have to be here on Friday morning to do whatever.

According to our calendar, we are to be called back on November 17. As far as I know, that is our calendar. It runs until December 20, 21 or 22, when we are to be here.

This place is being operated, or manipulated, in such a way that we are supposed to do everything the government wishes within the next 72 hours. Can someone confirm that I am right or wrong?

Meanwhile, I find it deplorable that Senator Gustafson will not be allowed to speak tomorrow on a bill about which he feels strongly and on which he is being forced to speak tonight.

If someone else has any respect for this place, they will adjourn the debate after he has spoken.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Does any honourable senator wish to respond on house business?

Hon. Marcel Prud'homme: Honourable senators, Senator Lynch-Staunton has made a valid point. I should like to ask Your Honour a more precise question. If I understood correctly, the result of the vote which was just taken means that Senator Gustafson, who would have preferred to speak tomorrow, must either speak tonight or not speak at all.

Senator Lynch-Staunton said that he has too much respect for this institution to move a motion to adjourn the debate. I could call for the adjournment motion. I know that at midnight we will no longer be allowed to sit. Therefore, if someone were to say, "I move that the Senate do now adjourn," we would rise at midnight. As a result, for all practical purposes, the rights of Senator Gustafson to speak tomorrow would be protected, since we would have to reconvene tomorrow.

I would ask Your Honour to rule if I am correct in my interpretation. I may then decide, as unpopular as it may be, to do what Senator Lynch-Staunton wanted to do but did not do.

I have been pushed enough. I ask Your Honour for direction, if there were to be such a motion. I do not have the rule book, and it is late.

I want to know, if there were a motion to adjourn and a vote, at what time that would be.

The Hon. the Speaker: As far as I am aware, there is no motion to adjourn. We have just voted on such a motion put by Senator Gustafson. Senator Lynch-Staunton had what I am interpreting as a question on house business. The floor then goes to Senator Gustafson to speak if he wishes. I now recognize him. It is very dangerous for me to speculate on what happens after that, honourable senators.

• (2310)

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: However, I would invite senators to consult the Table if they need answers to questions on procedural matters.

Senator Gustafson: Honourable senators, I am pleased to be given the opportunity to speak. If I have caused any problems, well, I have caused problems. However, I feel strongly about this bill and I want to make some brief points.

First, we in Canada are all equal under the law. As far as I am concerned, under the code, Revised Statutes of Canada 1985, we are equal before the law. Why do we have to start adding to the list? If we start adding to the list, where will it end? If honourable senators look at section 318(4), it says "colour, race, religion or ethnic origin." That is pretty straightforward. We are equal before the law, which is the main point I want to make here tonight.

I am receiving volumes of mail in my office, as are all honourable senators. This afternoon I read letter after letter from good, honest Canadian people who have strong feelings about

this piece of legislation, Bill C-250. They are very concerned about this legislation. They are from all denominations, backgrounds and different areas of the country, and they are very concerned about this bill.

Should we just take this bill for granted and railroad it through this house without giving it some consideration? I think not. That is wrong. I do not like to give other examples, but there is the gun control bill, for instance. If we had just taken a little time to deal with the registration of firearms, we would have saved this country tremendous cost — roughly \$1 billion — and embarrassment.

This is probably a much more important issue than gun control, because the issue of the \$1 billion will get straightened out somehow. Someone will give and take, even though it did not work very well. We would have been better off not to railroad that bill through, but to take more time to deal with the legislation.

I remember going up North with the native people. They were not heard, the farmers were not heard, and we railroaded through some bad legislation. Let us not do that with this bill. When it does go to third reading, let us look at it carefully. Let us consider the position of the Canadian people and what they are saying.

I sat in the House of Commons for 14 years. I was privileged to serve the people. I never saw it as "my riding." I saw it as the riding I served. We are here in the Senate to serve the people of Canada. When we get volumes of mail on our desks, we can be sure that there is something of concern in the conscience of the Canadian people.

I said that I would not go on too long, and I will not. I will make three points, honourable senators. We stand equal under the law as Canadians, and I am very proud of that. We should consider the conscience of the Canadian people and the volumes of mail we receive on an issue, and especially on this Bill C-250. Let us stop railroading through legislation without giving it a proper hearing in this assembly here in the Senate.

I have great respect for this place. I have great respect for the people who are sent here. I have said many times, from my experience of sitting in both Houses, that the calibre of the appointed people in the Senate is far above the calibre of those who have been elected. I believe that. I have seen it.

Senator Forrestall: We are not too bad.

Senator Gustafson: You are not bad.

Senator Forrestall: You are not bad yourself.

Senator Gustafson: I thank honourable senators for the opportunity to say a few words on this bill tonight. I hope that each senator will take into consideration what our people are telling us, what our consciences are saying and whether this is really necessary legislation at this time.

Some Hon. Senators: Hear, hear!

Hon. W. David Angus: I move the adjournment of the debate.

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

All those in favour of the motion will please say “yea”?

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion please say “nay”?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the “yeas” have it.

Motion agreed to and debate adjourned, on division.

HAZARDOUS PRODUCTS ACT

BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

Hon. Colin Kenny moved the second reading of Bill C-260, to amend the Hazardous Products Act (fire-safe cigarettes). —(*Honourable Senator Robichaud, P.C.*)

He said: Honourable senators, the hour is late and I will be brief. This bill is about cigarettes and it is about cigarettes that do not go out easily. You could call it the fireman’s bill. It is designed to protect people who have fallen asleep in bed and have been killed when their mattresses have caught on fire.

The figures are somewhat startling. It is estimated that the number runs as high as 350-odd people a year; 1,500 injured and \$200 million in property damage. It is a worthy cause and it is a concern that all of us should have to protect ourselves.

The bill, as honourable senators will see, is a short bill. It is a page and a half and it is very simple. The bill asks for the Minister of Health to come forward by June 30, 2004, with regulations that would specify how these cigarettes should be manufactured. If the minister does not come forward by June 30, 2004, the minister is then required to prepare a report and cause a copy of the report to be tabled in both Houses, and that each House would refer the report to the appropriate committee. The report would include an explanation as to why the regulation has not been made. The report would list the safe cigarette legislation that is in force in North America and summaries of scientific studies on the subject.

This bill is very straightforward, honourable senators. There are no regulations in the bill. There are no details beyond that in the bill. It is a simple request to the minister: Make the regulations or come before both Houses and explain why you have not made the regulations.

I am sure all members of this chamber share the objective of having cigarettes on the market that will be safer, and this is simply a process that would ask the minister to come forward with regulations that would describe how that could happen, or tell us why they are not doing that.

• (2320)

That is a brief summary of the bill, and that concludes my remarks.

Hon. Mira Spivak: Honourable senators, I am supportive of this simple and eloquent bill that will undoubtedly save lives, reduce injuries and prevent needless destruction of homes and property. Perhaps it will even reduce the incidence of forest fires, something we would all like to see after the horrific damage to our forests in British Columbia this year, followed by the devastating scenes in California and Mexico.

Fire-safe cigarettes sound like an oxymoron, but that is only because for more than a century governments everywhere have allowed manufacturers to produce cigarettes that continue to burn when they are left in an ashtray, fall on a couch, or are carelessly tossed from the car to the highway.

By altering the density of tobacco in their products and the quality of paper, manufactures can produce cigarettes that extinguish themselves when left unattended. The first patent on a fire-safe cigarette was issued in the U.S. in 1889. It is certainly time that we joined other jurisdictions, such as New York State, to give legal incentives for manufacturers to produce them.

The promise of this bill — scores of lives and millions of dollars saved every year — is so great that one can only wonder why the government has not already amended the act and its regulation. The fact that it has not done so is yet another example of the regulatory powers beyond the direct reach of Parliament that has such a direct and pervasive impact on the lives of Canadians. We have this bill that would not automatically force the minister to change the regulation, and, as Senator Kenny has explained, the minister has a choice.

It is certainly a bill that deserves our support, and one that I hope we would dispatch without delay.

Hon. Marcel Prud’homme: Honourable Senator Spivak has touched all the points I wanted, and she did it in a more eloquent way than I could do it. I have spoken about that with Senator Kenny. I share your opinion.

Hon. Lucie Pépin: I move adjournment of the debate.

The Hon. the Speaker: It is moved by the Honourable Senator Pépin, seconded by the Honourable Senator Rompkey, 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.

The Hon. the Speaker: The motion is passed, on division.

Do honourable senators want a standing vote? I will ask the question: Those in favour of the motion to adjourn will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion to adjourn will please say "nay."

Some Hon. Senators: Nay.

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

Motion agreed to and debate adjourned, on division.

STUDY ON ISSUES AFFECTING URBAN ABORIGINAL YOUTH

REPORT OF ABORIGINAL PEOPLES COMMITTEE—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Chalifoux, seconded by the Honourable Senator Milne:

That the sixth report of the Standing Senate Committee on Aboriginal Peoples be adopted and that, pursuant to rule 131(2), the Senate request a complete and detailed response from the Government, with the Ministers of Indian Affairs and Northern Development, Justice, Human Resources Development, Canadian Heritage, Health, and Industry; the Solicitor General; and the Federal Interlocutor for Métis and Non-status Indians being identified as Ministers responsible for responding to the Report.—(*Honourable Senator Johnson*).

Hon. Landon Pearson: Honourable senators, this item was standing in the name of Senator Johnson, and it will go back into her name when I finish speaking tonight.

I wanted to say what a privilege it has been to serve on this committee. Senator Chalifoux was an extraordinary chair. Her vision has shaped the whole process of this positive action plan for urban Aboriginal youth. It was exciting to be able to talk to so many young people who are doing quite well, and we got many ideas about how to do better.

I believe we came out with some excellent recommendations that I want to commend in particular because we heard so much from these young people about the importance to them of sports and of the arts. I felt that this was an extremely gifted community

that has lots of opportunity. I would like to commend them to the attention of all the people who took part in that study and who are here in the Senate. I would ask them to read that report attentively to see how we can build on it, and to have an action plan that makes a difference for young Aboriginals.

On motion of Senator Pearson, for Senator Johnson, debate adjourned.

[*Translation*]

STUDY ON PUBLIC INTEREST IMPLICATIONS OF BANK MERGERS

REPORT OF BANKING, TRADE
AND COMMERCE COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the Sixth Report of the Standing Senate Committee on Banking, Trade and Commerce entitled "Competition in the Public Interest: Large Bank Mergers in Canada," tabled in the Senate on December 12, 2002.—(*Honourable Senator Lynch-Staunton*).

Hon. Marcel Prud'homme: Honourable senators, I want to thank the Honourable Senator Lynch-Staunton for having taken the adjournment on this item. I will just say a few words and speak again to this issue at a later date. I was a member of this committee. I was opposed to the mergers. The committee was said to be unanimous. I will speak in due course, but tonight is not the right time. I take a particular interest in this issue as member of the banking committee. I would like to pursue this debate at a later date, in November or in December.

[*English*]

The Hon. the Speaker: You wish to speak before Senator Lynch-Staunton, I gather?

Senator Prud'homme: He is a senior officer of the house, so if he wants to speak, he will speak first. However, he does not mind if someone else speaks. He will take it back under his name, will he not?

Senator Kinsella: We are all equal. There are no senior members.

The Hon. the Speaker: The best thing is to let the order stand in Senator Lynch-Staunton's name. Then, if you wish to speak, you may do so. Otherwise, you have used up your speech now.

Senator Prud'homme: I will leave it under the honourable senator's name. I just wanted to show my great interest in this matter, because he saw things that I did not see.

HUMAN RIGHTS

FACT-FINDING TRIP—OCTOBER 10-17, 2003— REPORT OF COMMITTEE—DEBATE SUSPENDED

The Senate proceeded to consideration of the seventh report of the Standing Senate Committee on Human Rights (fact-finding mission), tabled in the Senate on November 4, 2003.—(*Honourable Senator Maheu*).

Hon. Shirley Maheu: Honourable senators, I rise tonight to speak on the seventh report of the Standing Senate Committee on Human Rights, regarding its recent fact-finding mission to Geneva, Switzerland and Strasbourg, France from October 10 to 17.

Honourable senators, the purpose of this mission to the United Nations was to help committee members to better understand Canada's international obligations within the UN and to get a bird's-eye view of the structure of human rights protection and promotion at the international level.

Canada has ratified a number of international instruments, the aim of which is to protect human rights, and it plays a primary role in protecting these instruments. Canada's courts, the Supreme Court of Canada in particular, increasingly consider Canada's international obligations when interpreting the provisions of the Canadian Charter of Rights and Freedoms and provincial charters and statutes for the protection of human rights.

Today, I am proud to say that this visit to the human rights bodies in Geneva and Strasbourg has allowed the committee to expand its knowledge of the international human rights system. Indeed, the mission was very educational.

• (2330)

[*Translation*]

Honourable senators, our delegation consisted of Honourable Senators Laurier LaPierre, Gérald Beaudoin and myself and we were accompanied by Line Gravel, our clerk.

In Geneva, we spent three days in intensive consultations with the Office of the High Commissioner for Human Rights, the International Parliamentary Union, the United Nations High Commission for Refugees, the International Labour Organization, the World Health Organization, and the International Committee of the Red Cross, and met with the Human Rights Committee over a working lunch. The delegation also met for round-table discussions with several non-governmental organizations that work on human rights at the international level.

[*English*]

At the office of the UN High Commissioner for Human Rights, the delegation learned about the general operation of the seven treaty monitoring bodies. These seven treaties are the International Convention on Economic, Social and Cultural

Rights, the International Convention on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families.

During its visit to the Geneva office, the delegation inquired about Canada and the compliance with the provision of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The delegation was informed that Canada's record is quite good, despite a few cases that they have had before them. We also learned that Canada's cooperation in all cases has always been good.

[*Translation*]

In Strasbourg, we spent two days at the Council of Europe and the European Court of Human Rights. The delegation had the privilege of seeing the Court in action and talking to leaders at the institutions about issues of the day.

For instance, we met with the Director General of Human Rights, the head of the division for equality between women and men, the head of the execution of judgments of the European Court of Human Rights, and the administrator of the European Committee for the Prevention of Torture.

The delegation was informed about the role of the Parliamentary Assembly within the various instruments for the protection of rights in Europe and about the creation of the European mechanism for the protection of human rights.

[*English*]

We also inquired into areas of application of the European Social Charter as a model in Canada. After discussing this issue with European experts, we concluded that the Standing Senate Committee on Human Rights should request, in the future, permission from the Senate to study this question in greater detail.

Honourable senators, it is clear that the United Nations recognizes Canada as a world leader in the promotion and protection of human rights. Canada's leadership in the international forum, both regional and universal, speaks loud and clear about our country's commitment to human rights.

In order to continue this leadership, I believe that it is important that all parliamentarians learn about international human rights bodies. This is why I strongly recommend that the committee undertake to send small delegations on an educational visit every year, or at least every session. This would allow all members to expand their knowledge on human rights issues.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, Senators Maheu and LaPierre and myself were in Geneva on October 13, 14 and 15, and in Strasbourg on October 16 and 17. In our report, we indicated that Canadian courts, the Supreme Court of Canada in particular, take into consideration the provisions of the Canadian Charter of Rights and Freedoms intended to protect people's rights. This principle comes from the Supreme Court in *Baker*, and I am glad of it.

Our days in Geneva and Strasbourg were very full. We met with a number of very important people. Among them were Maria Francisca Ize-Charrin of the Office of the High Commissioner for Human Rights, and VIPS from the International Parliamentary Union, the UN High Commission for Refugees, the World Labour Organization, the World Health Organization, the International Committee of the Red Cross, and the Human Rights Committee. Our report contains a complete list. We received a great deal of assistance from Ambassador Sergio Marchi in Geneva and Ambassador Jean-Paul Hubert in Strasbourg.

We spent two days at the Council of Europe in Strasbourg at the European Court of Human Rights, and attended one hearing. I particularly enjoyed that. We also spoke with the President of the ECHR, Luzius Wildhaber, and his Registrar, Paul Mahoney. President Wildhaber is familiar with Canada because he was asked to provide an opinion on the clarity bill. He is also well known in Canada. We were able to spend some 30 or 40 minutes with this excellent jurist.

The second part of the mandate the Senate assigned to the delegation concerned the European Social Charter. The delegation gathered information on this and discussed it with the European experts. The conclusion we reached was that the Standing Committee on Human Rights ought to seek leave of the Senate to go into this in greater depth in the near future.

At the request of my colleague Senator Noël Kinsella, I asked the following question relating to education: Is it not true that article 13 of the International Covenant on Economic, Social and Cultural Rights stipulates that education must be provided free of charge at the primary, secondary and university levels?

The answer I received was that this seems to be a controversial issue. In our report, we state:

[*English*]

Delegation members believe that the subject is open to debate and that there is a considerable gap between theory and practice in this area.

[*Translation*]

I should provide some clarification. I would have preferred us to say that the subject of education remains to be debated, but

that we hope that education will be free at the primary, secondary and university levels. That is what I said. In my opinion, the wording of article 13 of the Covenant is very clear. This is what article 13 says:

1. The States Parties to the present Covenant recognize the right of everyone to education.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

• (2340)

I do not see why the question is considered debatable. The question is very clear, and so is the response. Education at the primary, secondary and university levels should be free. But we are a long way from that ideal in North America, as tuition fees keep rising. We need to look more thoroughly at the response Canada gave in its report on the subject of article 13 of the Covenant.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Would Senator Beaudoin answer a question for clarification?

Senator Beaudoin: Of course.

Senator Kinsella: The honourable senator said that the delegation went to Geneva. I tried to get a copy of the report that is before us, but we do not seem to have one around here. However, I was told that I may get one tomorrow. Did I understand the honourable senator to say that your delegation's report states that it is debatable whether article 13 of the International Covenant on Economic, Social and Cultural Rights requires that states parties are obliged to take steps to progressively introduce free education at the higher education level?

[*Translation*]

Senator Beaudoin: Honourable senators, I believe my colleagues share my opinion that primary, secondary and postsecondary education must be free. From having worked for many years in postsecondary education, I realize that the opposite has happened in Canada and the United States, where it costs a fortune to become a lawyer, doctor or professional in another field.

This concerns the wording, but, in my opinion, if the international covenant declares that primary, secondary and postsecondary education shall be free, than Canada should act accordingly. Everyone seems surprised at this, but making each of these three levels of education free, overnight, will cost the state a great deal. However, Canada signed the covenant. We must respect our commitments.

Someone commented that this was up for discussion. I say it is not, since it clearly states in black and white, in both French and English, that education is less expensive in Quebec. Primary, secondary and postsecondary education must be free. In France, with the exception of certain basic fees, education is free. But postsecondary education in Canada or the United States, be it at McGill or Harvard, is extremely costly.

How is it that, in North America, the land of plenty, there is no such thing as a free education? I was shocked to learn this. I cannot wait to see Canada's report on its efforts, if any, to make the education system free at all three levels. We must follow through on our commitment under the International Covenant on Economic, Social and Cultural Rights — and I greatly respect such rights.

We must make education free. We have held a debate on this. I had a duty to speak about this and, in my report, I mentioned that education in Canada must be free. That is democracy. A great democracy like Canada should be able to do this.

[*English*]

Senator Kinsella: Honourable senators, I do now have a copy of the report. At page 3 of the English version, at line 12, the report states as follows with reference to the question that was asked by Senator Beaudoin as to the meaning of article 13 of the International Covenant on Economic, Social and Cultural Rights.

The answer was yes as to whether or not article 13 provides that higher education is to become progressively free. Then the report states that the delegation members believe that the subject is open to debate and that there is a considerable gap between theory and practice in this area.

Have I understood the honourable senator correctly to say that that is not his position? His position is that the covenant is quite explicit?

Senator Beaudoin: Yes.

Senator Kinsella: Two other members on the delegation believe that the covenant is open for debate. I do not know how we should deal with this, honourable senators.

Honourable senators can believe whatever they wish to believe, I suppose, but we have a report from a committee. I am sure that our friends in Geneva would have found it rather strange that a delegation from the Senate of Canada would be saying this about a provision of an international treaty that was ratified by Canada with the written agreement of every province in Canada in 1976. We have had a lot of experience with this international treaty and, by the way, this is a real treaty. It is governed by the Vienna Convention on Treaty Law.

The treaty provides that there is a progressive obligation for the states parties to provide for freer post-secondary or what they call higher education. In this report, we say that here are members of the delegation from the Senate of Canada saying that that is open to debate.

I respectfully submit that they are absolutely wrong. At least there was a divergence of view in the delegation that went there. My question is this: Did the honourable senator raise that question with Mr. Bertrand Ramcharan? Did he meet with Mr. Ramcharan at the human rights office in Geneva?

Senator Beaudoin: Yes, I asked the question. The third member of our report will make a presentation on this report, probably tomorrow. I believe that is how it is written. I do not think that we disagree on the point that education should be free. We did agree on that. I will ask the secretary of the committee to redraft that sentence.

● (2350)

I was very pleased by the answer that was given, because for the first time I realized that we have an international obligation to provide free education at the three levels. That is wonderful. Formerly that applied only to the primary level of education. It may also have applied at the CEGEPs in Quebec. I do know that university-level education is expensive. That should also be free. As a result of this debate on the drafting of the sentence referred to, the sentence should be corrected.

[*Translation*]

The Hon. the Speaker *pro tempore*: Honourable senators, the honourable senator's time has expired. Do you seek leave to continue?

[*English*]

Senator Beaudoin: One more minute.

The Hon. the Speaker *pro tempore*: Is it agreed?

Hon. Senators: Agreed.

Senator Beaudoin: This is the first time that I have had an opportunity to debate free education in Canada at three levels. It is extraordinary.

We should redraft the paragraph because I am sure that we do not disagree on the question. Who is against free education at the university level? The Americans who attend Harvard and Yale, at the Faculty of Law, certainly know that that costs a lot.

Senator Prud'homme: How much?

Senator Beaudoin: It costs many thousands of dollars.

Canada and United States are great democracies. We are rich enough to implement our international obligations. This is why I put my finger on that paragraph of the report.

I agree with my colleague that the wording is inadequate. It should be redrafted. I do not think that we disagree on this. We certainly all agree that, if it is in the international pact, we must provide free education. I think we should do it. I wish it to be stated clearly that education should be free. All students in Canada would be very happy to see that sentence in our report.

Hon. John Lynch-Staunton (Leader of the Opposition): There is no such thing as free education. There is no such thing as free medicare. Would the honourable senator tell me how we would support thousands of university students whose education costs millions of dollars if they were to suddenly be allowed to attend the university system free of charge? Theoretically, it is a marvellous idea, but how can we afford it?

Senator Nolin: We have signed this convention.

[*Translation*]

Senator Beaudoin: The International Bill of Human Rights states:

We must actively pursue the development of a school network at all levels, establish a suitable scholarship system and continually improve the material conditions of the teaching staff.

At the international level, they recognize that this is a long process. However, since there is money for other needs, why not for education? This even appears in the Constitution. Section 16 of the charter says that English and French have equality of status. We must do everything in our power for this to continue. The same is true of education; this takes time. If a country such as France can do it, I do not see why countries such as the United States and Canada cannot.

This will not happen overnight. The international covenant is very well written. It says that this will be attainable by the progressive introduction of free education. We will probably not live to see the day, but at least our children and grandchildren will one day be able to benefit from free education.

I agree with the Leader of the Opposition that this will not happen overnight.

[*English*]

Senator Kinsella: I would congratulate our honourable colleagues who did take the initiative to visit Geneva and

Strasbourg and to, first, advise those international centres that are the key centres in the world that deal with human rights development of our advances here in Canada. However, I must say the subject of our debate now is this report. There is an error in the report on page 3, line 12.

The international convention has been ratified by Canada. Canada has accepted this programmatic right to education, and the provinces have agreed in writing that we would take steps to progressively implement health rights, labour rights and educational rights. Article 13 paragraph 2 is explicit. It says that higher education will become progressively freer. Those are the words in the treaty.

The earlier article says that "being a social right," it operates in terms of enforcement, on the basis of a social audit. There is absolutely no debate as to the objective. It is clear-cut, to use the expression of my honourable colleague.

Senator Beaudoin: Yes.

Senator Kinsella: The report states that our delegation believes that the subject matter is open to debate. There is no debate. It is in black and white, signed off by every province in Canada and by the federal government.

When the Privy Council passed the minutes that Canada would deposit the instrument of ratification, it did so accepting the treaty as is. All I am suggesting — and perhaps we might get agreement — is that we would simply delete the sentence where it is stated that the delegation members believe that the subject matter is open to debate, and that there is a considerable gap between theory and practice in the area.

If that were deleted, I would vote in favour of the report. However, with that sentence included in the report, I believe the report is quite inaccurate.

Hon. Tommy Banks: Will the Honourable Senator Kinsella accept a question?

Senator Kinsella: Yes.

Senator Banks: It is not entirely frivolous. I do not know what the translated words would be in the treaty, but in referring to the lexicon, if the treaty states, "progressively freer," that will not work, because "free," like "unique," is something that cannot be modified. It either is or it is not. Perhaps the use of the word "freer" should be reconsidered.

Debate suspended.

• (2400)

The Hon. the Speaker *pro tempore*: Honourable senators, pursuant to rule 6(1), it being twelve o'clock midnight, I declare that the motion to adjourn the Senate has been deemed to have been moved and adopted.

The Senate adjourned until Thursday, November 6, 2003, at 1:30 p.m.

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