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Tuesday, March 23, 2004



THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Tuesday, March 23, 2004

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before we proceed with our business, I would like to draw to your attention the presence in our gallery of a delegation from the Chamber of Representatives of the Oriental Republic of Uruguay. They are Dr. José Amorin Battle, the Speaker of the Assembly; Mr. Gustavo Penades, a former speaker and a member of the National Party; and Mr. Guillermo Alvarez of the Broad Front. They are also accompanied, in the case of the Speaker, by Maria Elia Del Campo de Amorin, and in the case of Ambassador Moerzinger, whom I have not introduced, by his wife, Ana Luisa.

Welcome to the Senate of Canada. We are pleased to have you with us.

Hon. Senators: Hear, hear!

SENATORS' STATEMENTS

TRIBUTES

THE LATE HONOURABLE ERNEST G. COTTREAU

The Hon. the Speaker: Honourable senators, I have received a letter from the Leader of the Government in the Senate, the Honourable Senator Austin, pursuant to rule 22(10) of our rules requesting that the time provided for consideration of senators' statements be extended today for purposes of paying tribute to a former colleague, the Honourable Ernest Cottreau, who passed away on March 7, 2004.

[*Translation*]

Hon. B. Alasdair Graham: Honourable senators, the Honourable Ernest G. Cottreau left us recently, at the age of 90 years. His remarkable contribution to this institution between 1974 and 1989 will long be remembered.

[*English*]

The Ernie Cottreau whom I was privileged to know was a wonderful man with a real commitment to his community in Nova Scotia, his country, this chamber and, of course, his Acadian roots. I believe he would be proud to be remembered in this way in the Senate, particularly in this year which marks the four hundredth anniversary of the arrival of the original 100 or so French families who settled along the shores of what was known as the Baie française, now the Bay of Fundy, in 1604.

Today, over 40,000 Nova Scotia Acadians can be found throughout the Province of Nova Scotia, with some of Canada's most significant and moving historic sites bearing testimony to a proud, yet sometimes tragic, legacy. Over the centuries following the deportation of 1755-63, the Acadian community struggled courageously to survive with its language and culture intact.

Former Senator Ernest Cottreau was one of the great voices in bringing hope and new confidence to the Acadians of my part of the world, most particularly through his distinguished career as an accomplished educator. A teacher affects eternity, it was once said. He or she can never tell where his or her influence will stop. In Senator Cottreau's case, this was particularly true as he instilled a great pride of place and inheritance in his many students.

In his memory, I would like to pay tribute to the four hundredth anniversary of a nation which has fought the vicissitudes of history, followed its flag — ce drapeau, le tricolore étoilé, une marque de fierté nationale — and now basks in the sunshine of proud accomplishment.

In a very important way, the hard work and dedication of fine educators and parliamentarians like the late Ernie Cottreau has helped keep the Acadian dream alive. As such, the lovely land of Evangeline remains a proud and living tribute to those 100 families of so long ago who sowed the seeds of a vibrant, culturally rich nation which has played such an extraordinary role in the development of this great country.

[*Translation*]

To his family, I offer my most sincere condolences.

Hon. Gerald J. Comeau: Honourable senators, I wish to join Senator Graham in paying tribute to a friend and a predecessor here in the Senate, the Honourable Ernest Cottreau of Yarmouth, Nova Scotia.

His colleagues in the Senate will remember his kindness, his courtesy and his calm. He was a highly respected man and devoted to the Acadian people. Senator Cottreau had a very interesting career. He was a professor at the Université Sainte-Anne, the owner of an automobile dealership, a school principal, and a senator.

I had the pleasure of working with Senator Cottreau when I was a member of Parliament.

• (1410)

His office was very close to mine, on the fifth floor of Centre block. We often met to discuss our common interests: Acadian affairs, the fishery, and the economy of southwest Nova Scotia.

He dedicated his life to helping the people in his region and he was, above all, an ardent defender of the Acadians. His interest in the business of this chamber continued even after he retired from the Senate after 15 years of service, from 1974 to 1989. He continued to closely scrutinize *The Debates of the Senate*. From time to time, he would call me to discuss what he had read or offer some advice and, sometimes, to tease me a little, but always with the utmost courtesy.

He was very involved in his community: the Canadian Cancer Society, the Kiwanis Club, the Club acadien, the Knights of Columbus, and the list goes on. He was president of the Liberal Association. He also devoted himself to the Université Sainte-Anne. In 1994, the university awarded him an honorary doctorate and named a meeting room at the university library in his honour.

Honourable senators, he leaves behind his daughter, Simone, and his charming wife of 61 years, Rachael. They should be extremely proud of his legacy and his accomplishments, particularly his role in Canada's development. On behalf of all his friends here in the Senate, I offer his family and many friends our sincerest condolences.

[English]

Hon. Terry M. Mercer: Honourable senators, it is with great respect and humility that I rise to pay tribute to the life of a great man. Senator Ernest Cottleau, who passed away at the ripe old age of 90 in Yarmouth, was the epitome of a great Liberal. Born in Wedgeport, he graduated with honours from the Université Sainte-Anne in 1937, where he remained to teach for a time. His commitment to youth was only rivalled, I believe, by his love of Acadian heritage. He was president of the Liberal Association in 1955, served on many committees and boards and was a devout member of the Knights of Columbus.

Ernie Cottleau was both a hard worker and innovative. His 15-year ownership of Baker Motors showed just how much business savvy he possessed. Many in this chamber did not know of his business background. However, his love of teaching soon prevailed once more and he returned to become principal of a local school.

Senator Cottleau contributed to his community, his province and his country, providing a lifetime of service to his fellow citizens. We will remember him as a dignified, cheerful individual, one who was a very proud Canadian, a very proud Acadian and Nova Scotian, and a very proud Liberal. I offer my condolences to his wife and daughter at this time.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, I believe I have seen all senators wishing to pay tribute to Senator Cottleau.

I have received two requests that tributes be paid to Senators Roche and Robertson on April 1. Rule 22(10) of the *Rules of the Senate* provides that only one tribute be paid per sitting day.

Honourable senators, notwithstanding rule 22(10), is it agreed that on Thursday, April 1, 2004, tributes be paid to the Honourable Senator Roche and the Honourable Senator Robertson?

Hon. Senators: Agreed.

The Hon. the Speaker: Agreed and so ordered.

THE LATE HONOURABLE MITCHELL SHARP, P.C., C.C.

Hon. Marie-P. Poulin: Honourable senators, a sadness and sense of loss enveloped me when I learned of the passing of a giant of Canadian politics, the Honourable Mitchell Sharp. It was an honour and privilege to count him as a friend. In expressing my profound sympathy to his wife, Madame Jeanne d'Arc Sharp, and to his son and family, I find solace, as I sincerely hope they find, in the pride and fond memories of being on the receiving end of his charm of being enlightened by his wit and intellect, and of being reassured by his calm and elegance.

As I read the chronicle of his brilliant career in Saturday's *Ottawa Citizen*, I was touched by my personal recollections that one large coloured picture evoked. The published photograph was taken one year ago in my home at the unveiling of his portrait, which my husband had been commissioned to paint by Ms. Sharp. With Mr. Sharp seated in the foreground, the portrait shows him at his beloved piano against a wall on which are hung the pictures of four Liberal Prime Ministers whom he served over more than six decades — the Right Honourables Louis St. Laurent, Lester B. Pearson, Pierre Trudeau and Jean Chrétien. During the time that Mr. Sharp sat for his portrait, he captivated Bernard with his renowned talent for storytelling, displaying not one iota of self-consciousness at being studied by the artist, so absorbed was he in being the conversationalist.

Fittingly, a headline in the *Ottawa Citizen's* obituaries declared him "Canada's political gentleman." Indeed, he was. A man of integrity and intellect, Mitchell Sharp became, the newspaper observed, "one of the most powerful, respected and best-dressed figures in Canadian political history." The life of Mitchell Sharp was one from which legends are created.

Born into a struggling family of Scottish immigrants who had settled in Winnipeg, Mr. Sharp started work as a printer's delivery boy to help raise a younger brother and sister. By dint of effort and blessed with a potent mind, he rose into the rarefied realm of the corporate world and could quite conceivably have become a business titan, except for one thing: He found his true vocation in politics. Mitchell Sharp was an economist, a pianist and patron of the arts, a senior civil servant, a cabinet minister, a pillar of strength in times of crises and a statesman who forged diplomatic ties. He was a man for all seasons and a Canadian champion, one who will be missed but not forgotten.

Honourable senators, please join me in extending our condolences to the family of a political icon of both substance and style.

INTERNATIONAL DAY FOR THE ELIMINATION OF RACIAL DISCRIMINATION

Hon. Mobina S. B. Jaffer: Honourable senators, it was on March 21, 1960, that a peaceful protest in Sharpeville, South Africa, against apartheid became a slaughter that saw 69 people murdered in the streets by police. In commemoration of that day, the United Nations, in 1966, adopted resolution 2142 on the elimination of all forms of discrimination and recognized March 21 as International Day for the Elimination of Racial Discrimination.

Canada has long been proactive in fighting racial discrimination and promoting racial harmony both domestically and internationally. The Canadian Multiculturalism Act, 1988, is an excellent example of this kind of leadership. The Canadian Multiculturalism Act commits the Government of Canada to policies aimed at promoting multiculturalism and diversity as fundamental characteristics of Canadian heritage. It also promotes the elimination of barriers to the full participation of individuals and communities of all origins.

These kinds of commitments as well as the designation of a member of cabinet as the Minister of State for Multiculturalism have placed Canada at the forefront of reducing racial discrimination in society.

However, honourable senators, March 21 should remind us that, despite how far we have come, we have not yet succeeded in eliminating racial discrimination within our society. We must continue to move forward and not backward.

• (1420)

In a world now changed by the threat of international terrorism, we have seen a drastic move towards security that sometimes conflicts with our multicultural values. The effects of our Anti-terrorism Act conflict with our treasured values of multiculturalism and diversity, and the new steps threaten to further jeopardize our country's harmony by alienating and discriminating against communities within our society.

Honourable senators, March 21 should be a reminder that, when we consider these issues, we have a responsibility to remember that the elimination of discrimination means making all Canadians feel that they are equal and that they belong in our great country.

Hon. Senators: Hear, hear!

THE LATE HONOURABLE SISTER MARY ALICE (PEGGY) BUTTS

Hon. Aurélien Gill: Honourable senators, I in turn would like to say a few words in the Senate following the death of Senator Peggy Butts. I have lost a dear friend. Senator Peggy Butts has passed away. This brings me to the unwritten rule of memory. It is more than a rule; it is a bond, a friendship, a sacred bond that unites us forever.

I never understood the reasons for our friendship, but if ever the word friendship had a meaning, you exemplified it, Peggy. There is no explaining friendship; it has to do with affinities. We toured the world together, my dear Peggy; having been at the National Defence College, we are now quite capable of continuing the tour.

In your wisdom, my friend, you told me that death does not separate us but, on the contrary, reunites us. We are all mortal. Of that we can be sure. Thus, we say adieu. To say adieu is to say goodbye, goodbye forever. I expect we will meet up again because friendship never dies. For now, we are bereft of your intelligence and sensitivity. Peggy, you have just gone on ahead of the rest of us.

We are not saying goodbye for so very long. Thank you Sister Peggy Butts for having been here. Thank you for crossing my path.

THE LATE HARRISON MCCAIN, C.C.

Hon. Jeremiah S. Grafstein: Honourable senators, I rise to pay tribute to the late Harrison McCain, a strong, bold name for a strong, bold personality.

I was surprised and saddened to learn of his passing. I recall a chat that we had just a few months ago when I called for his political advice. Harrison, in that high, shrill, down-east voice, said: "Now Jerry, give me those arguments again." And I did. He said: "I will get back to you."

A day or so later, he called back and said: "You are wrong. You should not do that. Here are the reasons why. See you later." Boom, and he hung up. That was Harrison McCain: quick, to the point, very effective and no wasted words. He had a sharp political instinct and he had sharp political judgment. He was a great entrepreneur, a great Maritimer, a great Liberal, a great small "I" liberal and one of the greatest Canadians of his generation.

His late sister, Eleanor Johnson, was also a great friend. I recall that when I first went to a rather conservative educational institution with my young son, she saw me cringing at the back of the hall. I was not used to that environment where everyone in the room, except for me, was a Conservative. She called out in that same high-pitched McCain voice: "Jerry, you come right up here with me. Us Liberals have to stick together!" I will never forget that.

Honourable senators, it is with great and deep regret that we witness the passing of Harrison McCain. I will never forget his voice; I will never forget his flashing eyes; I will never forget his puckish humour nor his great social conscience. He will be greatly missed by all who shared the pleasure of his company. My condolences to all members of his family, which is also a great Canadian family. Their extraordinary contributions to our country are yet to be fully measured or fairly applauded.

Hon. Senators: Hear, hear!

**CANADIAN INTER-UNIVERSITY ATHLETIC
UNION BASKETBALL CHAMPIONSHIPS**

CONGRATULATIONS TO CARLETON RAVENS

Hon. B. Alasdair Graham: Honourable senators, this statement may surprise some partisan colleagues, but I want to extend very special and sincere congratulations to the Carleton University Ravens who last weekend won the Canadian university men's basketball championship by defeating the St. FX X-Men with a score of 63-59 before a TSN national television audience and an enthusiastic crowd of 8,000 fans at the Halifax Metro Centre.

In sports jargon, it was a nail biter from start to finish, with last-second heroics from the Ravens who captured their fiftieth consecutive victory through regular season and play-off contests. It was also Carleton's second consecutive national championship, and in that respect we pay special tribute to Raven's head coach Dave Smart.

As usual, Coach Steve Konchalski of the X-Men directed his charges to a stellar never-say-die performance before a home crowd which, while disappointed, was treated to three days of high calibre basketball. The representatives of the participating universities — University of New Brunswick, Laval, Brock, York, McMaster, Brandon, Calgary and the University of British Columbia — all acquitted themselves in exemplary fashion.

Special mention should be made of the organizers of this annual event. Recognition should, as well, be given to TSN commentators Rod Black, Brian Heaney and Paul Hollingsworth for their colourful and balanced coverage.

Again, heartiest congratulations to the Carleton Ravens for capturing their second consecutive national basketball title.

ROUTINE PROCEEDINGS

**BILL RESPECTING EQUALIZATION AND AUTHORIZING
THE MINISTER OF FINANCE TO MAKE CERTAIN
PAYMENTS RELATED TO HEALTH**

REPORT OF COMMITTEE

Hon. Lowell Murray, Chairman of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, March 23, 2004

The Standing Senate Committee on National Finance has the honour to present its

FIFTH REPORT

Your Committee, to which was referred Bill C-18, respecting equalization and authorizing the Minister of Finance to make certain payments related to health, has, in obedience to the Order of Reference of Monday, March 22, 2004, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LOWELL MURRAY
Chairman

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

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

[*Translation*]

THE ESTIMATES, 2004-05

**INTERIM REPORT OF NATIONAL FINANCE
COMMITTEE ON MAIN ESTIMATES PRESENTED**

Hon. Lowell Murray, Chairman of the Standing Senate Committee on National Finance, presented the following report:

Tuesday, March 23, 2004

The Standing Senate Committee on National Finance has the honour to present its

SIXTH REPORT

Your committee, to which were referred the 2004-05 Estimates, has, in obedience to the Order of Reference of February 26, 2004, examined the said estimates and herewith presents its first interim report.

Respectfully submitted,

LOWELL MURRAY
Chairman

(*For text of interim report, see today's Journals of the Senate, p. 346.*)

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

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

[English]

PARLIAMENT OF CANADA ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Lorna Milne, Chair of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented the following report:

Tuesday, March 23, 2004

The Standing Committee on Rules, Procedures and the Rights of Parliament has the honour to present its

THIRD REPORT

Your Committee, to which was referred Bill C-4, to amend the *Parliament of Canada Act* (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, has, in obedience to the Order of Reference of Thursday, February 26, 2004, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LORNA MILNE
Chair

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

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

• (1430)

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

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

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

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 3 p.m. on Thursday, April 1, 2004, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA—PRESENTATION OF PETITION

Hon. Lowell Murray: Honourable senators, pursuant to rule 4(h), I have the honour to table petitions signed by another 24 people asking that Ottawa, the capital of Canada, be declared a bilingual city and the reflection of the country's linguistic duality.

The petitioners pray and request that Parliament consider the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;

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

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

HUMAN RIGHTS

STATUS OF STUDY ON 2002 BERLIN RESOLUTION OF ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE PARLIAMENTARY ASSEMBLY

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is to the Chair of the Standing Senate Committee on Human Rights, the Honourable Senator Maheu.

Honourable senators will recall that an order of reference was given by the chamber to the Standing Senate Committee on Human Rights to study the resolution of the parliamentary wing of the OSCE concerning anti-Semitism. Given the fact that acts of anti-Semitism have plagued us these past few days in Canada, might we obtain a verbal indication as to how the work is going and when we might expect a report from the committee?

Hon. Shirley Maheu: Honourable senators, we have all been touched by the desecration of synagogues in the past few days.

The committee was to meet two weeks ago, but Senator Grafstein was not available. However, we will be meeting at our next session, which is scheduled to be held April 19, after the Easter break. We have no other chance to meet before then, and we will start the discussion at that time.

CITIZENSHIP AND IMMIGRATION

APPOINTMENT PROCESS TO IMMIGRATION AND REFUGEE BOARD—INFLUENCE OF MINISTER

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. It deals with the IRB appointments process.

Last week, the Minister of Citizenship and Immigration announced that there will be changes in the way judges will be appointed to the Immigration and Refugee Board. Like so much else about the Liberal government lately, this announcement gives the impression of change while actually maintaining the status quo.

Despite the promise of an independent nominating committee and new testing requirements for candidates, the minister will still have the final say in all appointments to the board. How will the board be free of patronage if the nominating process is not completely separated from the influence of the minister?

Hon. Jack Austin (Leader of the Government): Senator Oliver asks an important question. Under our model of government, we are committed to ministerial responsibility. Ultimately, the government and the minister must be held accountable for the decisions that are taken. However, we are putting in place an objective nominating process and a set of transparent criteria to be followed. The advice with respect to nominations will be understood and open. Therefore, if the minister refuses to make a recommended appointment, he does so on his or her responsibility, which is the appropriate system for the Westminster model that we follow.

Senator Oliver: Honourable senators, given the new system of ministerial responsibility the honourable senator just explained, it may result in better quality judges, but it does not address the board's current patronage appointees. Will the selection criteria be applied retroactively?

Senator Austin: I do not believe a retroactive process is desirable. We are trying to go forward with a new system. I do not accept the implied allegation that because the current system does not have a consultative process we have in any way failed to appoint appropriate people to the IRB, nor was such an allegation made with respect to the Mulroney government.

However, we are at a point of time in the development of Canadian public policy when the Canadian public is asking for a more open and transparent process, and we are in the process of modernizing our system to implement that process.

IMMIGRATION AND REFUGEE BOARD— OFFICIAL'S ALLEGATIONS THAT DECISIONS WERE WRITTEN FOR BOARD

Hon. Donald H. Oliver: Last week, an official with the Immigration and Refugee Board revealed that he wrote decisions for judges in four different cases, including a decision involving a recent case of a North Korean refugee, Mr. Song Dae Ri. Selwyn Pieters, a Refugee Protection Officer with the board, said that one judicial officer offered him a cottage vacation in exchange for writing a ruling.

Honourable senators, that is the equivalent of a Crown prosecutor being asked to write a ruling for a judge in a criminal case. Needless to say, this is a clear violation of board rules that raises very serious questions about the legitimacy of its decisions.

Will the cases in which Mr. Pieters wrote rulings or decisions be reopened or reconsidered as a result of this revelation?

Hon. Jack Austin (Leader of the Government): Senator Oliver is right that the allegations made by the official, if true, would indicate an egregious situation. I know that steps are being taken to determine what in fact took place. After that determination has been made, naturally, the minister will decide on an appropriate course of action.

HERITAGE

AUDITOR GENERAL'S REPORT— SPONSORSHIP PROGRAM—COMMENTS BY MINISTER

Hon. David Tkachuk: Honourable senators, the Minister of Canadian Heritage said that the sponsorship scandal was just another dossier that the opposition parties are using to attack the Prime Minister. Minister Scherrer also said the sponsorship scandal in which \$100 million was given to Liberal-friendly advertising firms was overblown, and she did not agree with the size of the fiasco. Does the Leader of the Government agree with the sentiment, and is this the opinion of the cabinet?

• (1440)

Hon. Jack Austin (Leader of the Government): Honourable senators, I have not seen that statement, but it is very clear that the government is deeply concerned with the report of the Auditor General and has taken major steps to deal with it. Senators are quite familiar with the appointment of the inquiry commissioner, the appointment of a special prosecutor, the activities of the Public Accounts Committee and the investigation by the RCMP.

While I am on my feet, I would like to repeat my thanks to Senator Tkachuk for his Senator's Statement yesterday on anti-Semitism.

PRIME MINISTER'S OFFICE

AUDITOR GENERAL'S REPORT— SPONSORSHIP PROGRAM— COMMENTS BY FORMER PRIME MINISTER

Hon. David Tkachuk: Honourable senators, the Prime Minister has made a great effort to show that this government is new and different from the Chrétien administration; yet, two years ago, then Prime Minister Chrétien said that maybe a few million were stolen in the process of setting up this sponsorship program.

Did present Prime Minister Paul Martin condemn or inquire about Mr. Chrétien's remarks at that time, and did he take any action to determine if there was any truth to the remarks and any wrongdoing in the sponsorship program?

Hon. Jack Austin (Leader of the Government): Honourable senators, the processes now underway will deal with those issues if they are proven to be relevant.

PUBLIC WORKS AND GOVERNMENT SERVICES

AUDITOR GENERAL'S REPORT—SPONSORSHIP PROGRAM—COMMENTS BY FORMER MINISTER

Hon. Marjory LeBreton: Honourable senators, last week Alfonso Gagliano testified before the Public Accounts Committee and said that he met with Mr. Chuck Guité, the head of the sponsorship program, three or four times a year.

Today, *The Globe and Mail* reveals that, in fact, Mr. Gagliano met with Mr. Guité more frequently, according to a long-time public servant, Huguette Tremblay, who also presented testimony last week to the committee. Both witnesses were testifying before the same committee and both would have received the same warning from the chair that the refusal to answer questions or the failure to reply truthfully could give rise to a charge of contempt of Parliament or, indeed, a charge of perjury.

Can the Leader of the Government in the Senate tell us which version was the correct version, that of Mr. Gagliano or Ms. Tremblay?

Hon. Jack Austin (Leader of the Government): Honourable senators, it must be obvious to all that I am not in a position to make any comment with respect to evidence given before the Public Accounts Committee by any witness.

AUDITOR GENERAL'S REPORT—SPONSORSHIP PROGRAM—COMMENTS BY OFFICIAL

Hon. Marjory LeBreton: Thank you for that answer.

The Globe and Mail also notes that Ms. Tremblay asked questions about the 2000 audit conducted by Public Works and Government Services into the sponsorship program. Ms. Tremblay questioned the fact that more than \$3 million was awarded to agricultural fairs and hunting and fishing shows, with no evidence in the files to explain why the money was paid out. She was told: Don't ask.

Can the Leader of the Government in the Senate give us his opinion of who would have given instructions regarding questions that should not be raised about missing files?

Hon. Jack Austin (Leader of the Government): Honourable senators, I do understand that Senator LeBreton wants to put certain allegations on the record in the Senate, and I am very pleased that Question Period permits that.

HERITAGE

PROTOCOL FOR FLYING FLAGS AT HALF MAST

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate. It is the easiest question I could ask him, and it is about protocol with regard to flags on the Hill. I am not sure whether I should be asking the

government leader, but a flag has been flying at the top of the pole on the Peace Tower, while another has been flying at half-mast on the West Block and I believe on another building. Is there a protocol that applies to this scenario?

As I say, to be fair, I am not sure that I am asking the right person this question. Perhaps I should be asking His Honour, but given that the Leader of the Government represents the government in this place, I will start there.

Hon. Jack Austin (Leader of the Government): Honourable senators, I am sure there is a protocol, but I do not know what it is.

Senator St. Germain: Could the honourable leader possibly find out and come back to us with a response? I would like to understand the protocol, and I am sure every senator is interested. I see heads nodding. Could the leader get back to us about when and for whom the flags are flown at half-mast? Does the protocol apply to Privy Councillors?

An Hon. Senator: When you die, Gerry.

Senator St. Germain: When I die? I do not think so.

Senator Austin: I will make those inquiries and report back tomorrow. I am under the impression that the flags flying at half-mast, which do not include the flag on the Peace Tower, for protocol reasons, relate to the tragedy in Madrid.

FOREIGN AFFAIRS

KOSOVO—RESPONSE TO CIVIL UNREST—APPOINTMENT OF MR. BHUPINDER LIDDAR AS CONSUL GENERAL TO CHANDIGARH, INDIA

Hon. A. Raynell Andreychuk: Honourable senators, I have a two-part foreign policy question for the Leader of the Government in the Senate.

Over the last number of days, horrific events have been taking place in Kosovo. To remind honourable senators, Canada intervened in Kosovo without the approval of the United Nations. We did so on the basis that we were committed to stopping ethnic cleansing. Last week's events in Kosovo are not isolated, as there have been sporadic incidents for quite some time. They have produced a reverse ethnic cleansing that was occurring at the time we intervened.

What steps is Canada taking in light of the fact that we intervened in Kosovo, changed the balance in that country and said at first that we would not support the KLA? Of course, the organization is now pervasive in the Kosovo area.

What other steps is Canada taking to protect civilians in Kosovo beyond what NATO and the United Nations are doing? Are we intervening with humanitarian aid or support for civil structures?

The second part of my foreign policy question is this: I was under the impression that all heads of mission were appointed by the Prime Minister. With respect to Mr. Liddar, is it the case that the previous Prime Minister made the appointment and now the current Prime Minister has revoked it?

Hon. Jack Austin (Leader of the Government): Honourable senators, with respect to the situation in Kosovo, Honourable Senator Andreychuk clearly understands that Canada is participating as part of a decision taken by NATO. The NATO agreement includes that geographic area within its mandate, and NATO is an organization that is authorized by the United Nations to act in a regional capacity.

With respect to what the Canadian mission is doing beyond its K4 responsibilities, I will make inquiries. If Senator Andreychuk has a suggestion about some special role that should be performed, I would be delighted to carry her representations to the Minister of Foreign Affairs.

With respect to the question of appointments of heads of mission, those appointments are the responsibility of the Governor in Council, and I have no further information with respect to her question.

Senator Andreychuk: Honourable senators, I have supplementary questions on both points. NATO did not intervene under its own authority, as the Leader of the Government has stated. Article 5 of the North Atlantic Treaty clearly states that invading one country is an invasion of all countries; defence of one country is a defence of all others. Article 5 was not particularly invoked. Our foreign minister at that time made the clear point that we were intervening, for humanitarian purposes, to stop ethnic cleansing.

Much has been said about interventions in Afghanistan and Iraq, and the moral and legal responsibility of the interveners. In regard to Canada having made the statement that ethnic cleansing would not be tolerated, what efforts have we made to ensure that last week's events do not repeat themselves? Surely, we have a responsibility beyond NATO because we took a decision as a member of NATO to put a new humanitarian twist on the interpretation of NATO's intervention.

• (1450)

Other NATO countries said they moved into Kosovo because it was affecting their security with the outflow of immigration, which was not our problem. Ours was humanitarian, and there is a humanitarian crisis looming and continuing in Kosovo.

What special and particular efforts can Canada make? I can certainly give my own opinion, but I would hope that my government would give some leadership and would have been thinking about this, having taken the serious step of moving into that country.

Senator Austin: Honourable senators, I thank Senator Andreychuk for her statement. The situation in Kosovo is not one in which it would appear that there was a deliberate effort by specific groups of a quasi-governmental kind to foment difficulty. It appeared to be a spontaneous reaction. Senator Andreychuk is aware of how combustible human feelings are in that historic area.

With respect to the government's leadership, I will be happy to report what the government is doing. I always take Senator

Andreychuk's interventions as having substantive value, so if there are specific steps that Canada should take unique to the mission in Kosovo I would be happy to carry her representations to the government.

Senator Andreychuk: Following up on the second question, did the Prime Minister personally involve himself in the cancellation of the appointment of Mr. Liddar?

Senator Austin: My information is that no cancellation has taken place but that the implementation has been deferred pending an inquiry, but into what I do not know.

Senator Andreychuk: Then are the newspapers incorrect when they say that the appointment has been cancelled and the position has been frozen?

Senator Austin: I have not seen a newspaper report that says the appointment has been cancelled. The report that I saw in the newspapers said that it has been suspended pending further investigation. However, if Senator Andreychuk is right, I will report to the chamber tomorrow.

Hon. Marcel Prud'homme: Honourable senators, on the same question, surely inquiries must have been made before Mr. Liddar was appointed. Second, we have to know that he sold, immediately after being appointed, a prosperous magazine that was bought by someone related to the *Ottawa Citizen*, a magazine entitled *Diplomat & International Canada*. He let his very popular television program go, for which he interviewed ambassadors from around the world, from Arab countries to Israel to all, and he treated everyone equally.

To the best of my knowledge, he has worked intimately with some of the most prominent members of the House of Commons, some of whom became senators — not me, but some became senators. One passed away, one is still here.

For the last 20 years, there has been a problem somewhere. Some of the establishment — security services, I would dare say publicly — in my view may be trying to right a wrong that was made years ago, by refusing the gentleman knowledge about what he is going through at the moment.

He has been duly appointed. The entire diplomatic community is wondering what we are up to here. Mr. Liddar was appointed, received congratulations from the Chief Clerk to Her Majesty, the Queen of Canada.

I will come back to this later this week, thereby giving the government leader, who I trust is a fair man, time to seek the answer to Senator Andreychuk's question. I will pursue with the Leader of the Government in the Senate, either privately or publicly, the absurdity in which Mr. Liddar finds himself at the moment — that is, an office in Foreign Affairs waiting for him but being told that something is wrong. If something is wrong, why was Mr. Liddar appointed?

I will leave it at that, for today.

Senator Austin: Honourable senators, I thank Senator Prud'homme for his intervention.

I also want to refer to three newspaper headlines: The *Globe and Mail*, "Envoy's appointment on hold;" *Ottawa Citizen*, "Posting frozen;" *Ottawa Sun*, "Chrétien pal stripped of plum posting." In the latter case, the *Ottawa Sun*, in its last paragraph, says:

Foreign Minister Bill Graham...saying only that there are "unresolved" administrative issues surrounding the appointment.

That does not suggest that anyone was stripped of anything.

I have no doubt that this is very difficult for Mr. Liddar and everyone else involved. Again, I have no information on why the appointment has been put on hold. He is, as Senator Prud'homme said, occupying an office and is on full pay.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour of presenting two delayed answers to oral questions. The first delayed answer is in response to an oral question raised in the Senate on February 3, 2004, by the Honourable Senator LeBreton, on the report on former private business dealings with government tabled in the House of Commons.

The other delayed answer is in response to an oral question posed in the Senate on February 18, 2004, by Senator Rivest, regarding the appropriateness of the RCMP investigating VIA Rail's involvement in the sponsorship program after senior officers received free passage on VIA Rail in 1998.

PRIME MINISTER

REPORT ON FORMER PRIVATE BUSINESS DEALINGS WITH GOVERNMENT TABLED IN THE HOUSE OF COMMONS

(Response to question raised by Hon. Marjory LeBreton on February 3, 2004)

- The review of the original answer to question 37 was initiated by the former Government House Leader, the Member of Parliament from Glengarry—Prescott—Russell.
- There will be increased departmental oversight of responses to written questions. The Government House Leader has been given assurances by the Clerk of the Privy Council that new measures will be taken to ensure that errors of this kind do not occur again. Specifically, these steps are the following:
- Designated senior officials will now be required to submit proposed responses to Ministers.

- Senior officials will now be required to sign a written statement that they are accurate and complete as well as a description of the steps taken to provide a comprehensive response.
- Where information is available from more than one department or agency, and there is a danger of duplication or less than full inclusion of information, one department or agency will be designated by the Privy Council Office to ensure that the information provided is accurate and complete.

SOLICITOR GENERAL

ROYAL CANADIAN MOUNTED POLICE— POSSIBLE BREACH OF CODE OF ETHICS

(Response to question raised by Hon. Jean-Claude Rivest on February 18, 2004)

The RCMP has confirmed that complimentary VIA Rail transportation was offered to its senior officers to travel from Québec City to Montréal to attend the RCMP "C" Division's 125th Anniversary Ball held on June 13th, 1998. The Commanding Officers were in Québec City to attend their annual conference. The majority of Commanding Officers had alternate arrangements for transportation; however, three officers and their spouses accepted the offer and were provided with complimentary transportation from Québec to Montréal on VIA Rail to attend the Anniversary Ball.

After a review of the available information, the RCMP has determined that VIA Rail was a sponsor of the RCMP "C" Division's 125th Anniversary Ball and the offer of complimentary tickets was in compliance with existing RCMP policy on Sponsorship. The Anniversary Ball was a RCMP community relations event that supported a local charity.

The RCMP accepts the overall findings of the Auditor General's Report on the RCMP's management of its 125th Anniversary activities and has implemented measures and controls to ensure policies, procedures and regulations are clearly understood, monitored and enforced within the RCMP. At the request of the RCMP, the Surêté du Québec has agreed to assume responsibility for that portion of the criminal investigation that touches upon entities involved with the RCMP's 125th celebrations.

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, before going to the Orders of the Day, I am pleased to have this opportunity to introduce visiting pages from the other place. First, I wish to introduce Anthony Carricato, who is studying International Studies and Modern Languages at the Faculty of Social Sciences of the University of Ottawa. Anthony is from Sault Ste. Marie, Ontario.

[Translation]

Marie-France Dupuis is studying English at the Faculty of Arts of the University of Ottawa.

Marie-France is from Cornwall, Ontario. Welcome to the Senate.

[English]

ORDERS OF THE DAY

LIBRARY AND ARCHIVES OF CANADA BILL

BILL TO AMEND—THIRD READING—
DEBATE ADJOURNED

Hon. Yves Morin moved third reading of Bill C-8, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence, as amended.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. David Tkachuk: I move the adjournment of the debate.

On motion of Senator Tkachuk, debate adjourned.

• (1500)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
ORDER STANDS

On Order No. 2:

Second reading of Bill C-22, to amend the Criminal Code (cruelty to animals).

Hon. Terry Stratton: Honourable senators, may I ask why we continue to stand this item?

Hon. Bill Rompkey (Deputy Leader of the Government): We are standing this item because the honourable senator who wishes to address the bill is still working on a speech, doing some research, and requires more time.

Senator Stratton: When will that honourable senator be ready?

Senator Rompkey: I am given to believe that the senator will be ready to speak soon.

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

Hon. Senators: Agreed.

Order stands.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—SPEAKER'S RULING—
ORDER WITHDRAWN

On the Order:

Resuming debate on the motion of the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton, for the second reading of Bill S-7, respecting the effective date of the representation order of 2003,

And on the motion of the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton, that the original question be now put.—(*Speaker's Ruling*).

The Hon. the Speaker: Honourable senators, on Thursday, March 11, 2004, Senator Kinsella raised a point of order to have his Bill S-7 struck from the Order Paper, citing first the British parliamentary authority Erskine May and then subsequently a precedent that had occurred in the Senate some years ago.

Senator Kinsella explained that when a decision has been made with respect to one of two bills on the Order Paper dealing with the same subject matter, it is not possible to proceed with the second bill. In this case, Bill C-5, setting the effective date of the representation order of 2003, received Royal Assent on March 11, 2004. Bill S-7, dealing with the same subject as Bill C-5, still remains on the Order Paper, and Senator Kinsella has now proposed that I as Speaker discharge the bill.

[Translation]

For his part, Senator Robichaud suggested that it would be just as effective to vote on his motion of the previous question that he had moved to the second reading motion of Bill S-7. If the previous question were to be defeated, he said, it would lead to the discharge of the bill. Senator Rompkey then proposed to follow up on Senator Kinsella's point of order by agreeing to provide unanimous consent to withdraw Bill S-7 from the *Order Paper*, an offer that Senator Kinsella declined.

[English]

According to Senator Kinsella's understanding of the Senate precedent and the procedural literature, it is the responsibility of the Speaker to discharge the bill. In the view of Senator Kinsella, unanimous consent is not the appropriate means to meet this procedural step. Senator Robichaud again intervened to express a concern that, by discharging Bill S-7, the Senate might establish a precedent that could, in the future, block consideration of a government bill based on a prior decision taken with respect to a Senate bill on a similar subject.

[Translation]

It was at this stage that I agreed to review the authorities and the precedent and come back with a ruling. In the interval between March 11 and today, I have considered the references that were provided by Senator Kinsella. I have also reviewed the relevant *Rules of the Senate* and am now prepared to give my ruling.

[English]

Let me begin by addressing the concern that was raised by Senator Robichaud. The senator indicated that the request of Senator Kinsella to discharge Bill S-7 might create a precedent that could lead to the blockage of consideration of any future bill coming from the House of Commons. As Senator Robichaud explained it on March 11:

...if Senator Kinsella's bill had been defeated...the government would not have been able to introduce its bill because a ruling would already have been made on the issue.

I have considered the matter carefully, but can provide no simple answer.

It is useful to explain how the different parliamentary authorities and our own rules operate in circumstances where the house is confronted with bills that are substantially the same. The passage at page 499 of the 22nd edition of Erskine May that Senator Kinsella referred to in raising his point of order states:

There is no general rule or custom which restrains the *presentation* of two or more bills relating to the same subject, and containing similar provisions. But if a decision of the House has already been taken on one such bill, for example, if the bill has been given or refused a second reading, the other is not proceeded with if it contains substantially the same provisions...

This passage closely resembles citation 624(3) in the sixth edition of the Canadian authority, Beauchesne.

[Translation]

The Australian Senate authority, Odgers, provides a much narrower interpretation. As it explains at page 203 of the 9th edition:

... the same question rule, is seldom applied, because it seldom occurs that a motion is exactly the same as a motion moved previously. Even if the terms of a motion are the same as one previously determined, the motion almost invariably has a different effect because of changed circumstances and therefore is not the same motion. There may be different grounds for moving the same motion again.

[English]

The principle of the same question rule also forms a part of the *Rules of the Senate of Canada*. Rule 80, for example, provides:

When a bill originating in the Senate has been passed or negatived a new bill for the same object shall not afterwards be originated in the Senate during the same session.

In addition, rule 63(1) states:

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

[The Hon. the Speaker]

[Translation]

The purpose of rule 80 is to prevent the consideration of a Senate bill that has substantially the same object as another Senate bill that had already been adopted or rejected during the same session. Rule 80 applies strictly to bills that originate in the Senate. It does not apply to bills that come from the "other place." Rule 80, therefore, does not apply to the present circumstances since Bill C-5 did not originate in the Senate.

[English]

Erskine May, unlike Odgers, does not seem to observe the distinction provided in Senate rule 80. In fact, it may be that neither Erskine May nor Odgers is an appropriate guide to our practices. It is worth noting that the *Companion to the Rules of the Senate of Canada*, published in 1994, on page 247 cites section 42(2) of the Interpretation Act, which specifically allows:

An Act may be amended or repealed by an Act passed in the same session of Parliament.

There is nothing to suggest that a proposed amendment or repeal of an act could not be similar in substance to the earlier act that was already adopted by Parliament in the same session.

How can we sort out these conflicting provisions and statements? I am not really sure that we can. It may not be possible to square the circle. The role of the Speaker is to ensure that best practices are followed while at the same time protecting the interests of the Senate. This is what the Speaker strives to do through rulings. If, at any time, the Senate disagrees with that judgment, with a decision, any senator can challenge the ruling and the Senate will decide what the outcome will be by either accepting or overturning that ruling. In any case, it might be prudent to follow the advice of Hatsell, who is also cited in the *Companion* at page 190, as follows:

...the good sense of the House must decide, upon every question, how far it comes within the meaning of the [same question] rule.

• (1510)

With respect to this point of order, the Senate has adopted a C-bill and it is now left with the task of discharging a similar S-bill from the Order Paper. Senator Robichaud's concern, however, has to do with the possibility of the Senate taking a decision to adopt an S-bill that might block consideration of a C-bill. A solution for the future might be to propose the withdrawal of the S-bill in order to allow unimpeded consideration of the C-bill. The Senate did something similar to this in October 2001 when it unanimously agreed to withdraw Senator Lynch-Staunton's bill on Royal Assent in order to permit the introduction of a similar bill sponsored by the Leader of the Government. Alternatively, it could be argued that rule 80 recognizes an implicit exception and that C-bills do not come under the same question prohibition if it thwarts the Senate's ability to fulfil its obligation as the chamber of sober second thought to review the legislation that comes to it from the other place.

In the end, the boundaries of the same question rule can be drawn only when the Senate is confronted with a concrete event. During discussions on the point of order on March 11, reference was made to a Senate precedent. On February 27, 1991, the Speaker ruled that a bill sponsored by Senator Haidasz, coincidentally also Bill S-7, entitled "An Act to amend the Criminal Code (protection of the unborn child)," should be removed from the Order Paper following a substantial decision on Bill C-43, entitled "An Act respecting abortion," since both bills sought to amend section 287 of the Criminal Code.

As the Speaker noted in the ruling:

Although Bill S-7 and Bill C-43 have different objectives and represent alternatives on the subject of abortion, the Chair feels...a strong case may be made that they are "the same in substance."

This impression was strengthened by the fact that Senator Haidasz had moved amendments to Bill C-43 that resembled the objectives and provisions of Bill S-7, all of which were rejected by the Senate.

The case that is now before the Senate is broadly similar to the precedents of 1991. In both instances, the Senate completed consideration of a government-sponsored bill received from the House of Commons before voting on the second reading motion of a Senate bill.

Bill S-7 was introduced or presented February 4 and debate on its second reading began on February 11. The Senate received a message from the House of Commons concerning Bill C-5 on February 11 and, following our usual practice, the bill was read the first time immediately. Second reading debate commenced on February 13 and ended February 20, when the bill was subsequently referred to the Standing Senate Committee on Legal and Constitutional Affairs. After it was reported without amendment, Bill C-5 was debated and passed at third reading on March 10. Royal assent was given on March 11. At the same time, I note that no further action was taken with respect to Bill S-7 until the point of order was raised.

In passing Bill C-5 at third reading, the Senate did pronounce itself on the effective date of the representation order of 2003. As such, it would be inappropriate to now proceed on Bill S-7 since, in my view, it does deal with the same object as Bill C-5. Based on this assessment, I agree with Senator Kinsella and it is my ruling that Bill S-7 be discharged from the Order Paper.

SPAM CONTROL BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Gustafson, for the second reading of Bill S-2, to prevent unsolicited messages on the Internet.—(*Honourable Senator Stratton*).

The Hon. the Speaker: Honourable senators, before I recognize Senator Oliver, I would inform honourable senators that if Senator Oliver speaks now, his speech will have the effect of closing debate on this bill.

No other senator rising, I recognize Senator Oliver.

Hon. Donald H. Oliver: Honourable senators, Ipsos-Reid has done a survey of unsolicited commercial e-mail messages. It has determined, among other things, that, as a percentage of respondents, the number of spam messages Internet users in Canada received each week from January 2004, 17 per cent received 101 plus, and 10 per cent received between 51 and 100.

Although most Canadians are annoyed with spam, according to a recent research study their level of annoyance is 4.5 out of 5, which is not quite as high as how annoying Canadians find telemarketing, which is rated 4.6 out of 5.

Honourable senators will recall that researchers estimate that 2.3 billion spam messages are now broadcast daily over the Internet and that this will rise to 15 billion by 2006 unless we do something about it.

Anti-spam legislation usually falls into one of three categories: opt out, opt in or do nothing at all. Canada is close to being in this last category. Today, no new laws have been passed to protect citizens and businesses from this growing problem. That is why Bill S-3 is so important.

Each day, I receive several e-mails, telephone calls and faxes encouraging me to proceed quickly with this bill. Senior bureaucrats here in Ottawa have encouraged me to proceed with the bill. Legislation is, in fact, useful.

I would remind honourable senators that in October the United States Senate passed a bill by a vote of 97 to zero to outlaw spam and to set up a do-not-spam registry similar to the do-not-call list. Under the U.S. legislation, spammers could face millions of dollars in fines and jail time. The U.S. bill focuses on fraudulent and deceptive messages, that is, those with falsified return addresses and misleading subject lines.

As honourable senators will know, a number of cases under this new law have already been commenced against spammers.

In the United States, many states, such as California, have passed their own laws. It is my view that a federal statute that would apply to all Canadians and all provinces is much better than having 10 or 11 individual rules, all different.

Later this week, I am meeting with the Minister of Industry Canada to discuss my bill with her and ways in which we can work with the government in finding ways to protect Canadians from the scourge of spam.

Honourable senators, a number of individuals and companies have phoned me, indicating that they would like to appear before a Senate committee to give evidence on ways in which spam affects their productivity, their business and their profit margins. Honourable senators, the time is now right to have this matter go to committee so that a committee can commence its study on one of these most important subjects.

I will therefore move, honourable senators, seconded by the Honourable Senator Di Nino, that this bill be referred to the Standing Senate Committee on Transport and Communications for further study.

Hon. Senators: Question!

The Hon. the Speaker: I will put the question on the bill before going to the motion to move to committee.

It was moved by the Honourable Senator Oliver, seconded by the Honourable Senator Gustafson, that this bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Oliver, bill referred to the Standing Senate Committee on Transport and Communications.

• (1520)

COPYRIGHT ACT

BILL TO AMEND—SECOND READING

Hon. Joseph A. Day moved second reading of Bill S-16, to amend the Copyright Act.

He said: Honourable senators, Bill S-16 deals with a very narrow issue and is the same as a bill that was before us in the last session of Parliament. At that time, the bill was given second reading and referred to committee, but was not dealt with by the Standing Senate Committee on Social Affairs, Science and Technology before Parliament was prorogued.

Bill S-16 amends the Copyright Act. It is the result of the efforts of many people, particularly the Canadian Photographers Coalition, which is one of the groups that has urged honourable senators to consider this issue.

In the past, there have been several reports and commissions by the government, including one in 1984 entitled “From Gutenberg to Teledon” and another as recently as 2002. Both of those reports, and others, have recommended that the legal fiction in the Copyright Act that applies to photographers be amended so that photographers are treated like all other artists, and that photography is treated like the artistic work that it is.

The historic anomaly comes from the British Copyright Act of 1911 that Canada copied many years ago. In Britain, the act has been changed to remove the anomaly. The rule has been changed in the United States and in Australia to allow photographers to be

treated in the same way as any other artist. Canada is one of the few countries in the world that still has the legal fiction of treating photographers differently from other artists.

[*Translation*]

This legislation seeks to eliminate the exception to the general rule on ownership of copyright that currently applies to photographers in Canada. Under that exception, the owner of the initial photograph is deemed to be its author, even though the owner of the photograph is not actually its author.

Since copyrights relate to authorship, under the current act, photographers are being denied the rights normally enjoyed by the authors of a work. The purpose of this bill is to give photographers the rights and privileges already granted to all other authors of works protected by the Copyright Act.

[*English*]

During the previous legislative session, this bill was introduced as Bill S-20 and was spoken to by a number of senators, including now retired Senator Setlakwe. In his remarks on June 19, 2003, Senator Setlakwe noted that the time had come for photographers to be recognized as authors and to be entitled to copyright in the same way as other authors and artists.

Senator Setlakwe listed members of his family; George Nakash from Montreal, Joseph Karsh from Ottawa and his brother Malak Karsh, as examples of photographers who would benefit from the adoption of this legislation. These sentiments were echoed by other colleagues including Senator Corbin, and Senator Nolin asked questions.

I will not go into the technicalities in great detail. When I spoke to this matter on September 17, 2003, I spoke of Freeman Patterson, a well-known photographer in the province of New Brunswick. I recommend that those honourable senators who have an interest in this area review the *Debates of the Senate* of that day.

In a studiously prepared review of Bill S-20, Senator Beaudoin cited Supreme Court of Canada decisions to prove that this bill recognizes in a fair way the commercial value of a photograph while not putting photographers at an economic disadvantage. There are economic values with respect to copyright that are important to recognize. Following these comments, Senator Banks pointed out that the adoption of this bill would allow the Government of Canada to remain consistent with the international conventions to which our country is a signatory in relation to copyright.

Honourable senators, this amendment to the Copyright Act is long overdue. It has been recommended by many government departments and by independent commissions but, because it deals with one small item in an area where there are so many amendments required, it is continually put aside. We could deal with this item expeditiously if we could agree to have it sent to committee for review.

[Senator Oliver]

As I have previously noted, there has been a desire for these changes for well over 20 years. However, no change has occurred to date. We have considered these changes for long enough. We know that the current law is outdated and that we are out of step with the rest of the world in regard to this narrow issue of ownership of copyright by photographers. It is long overdue that the law reflect the view of society and recognize photographers as the artists they are.

Honourable senators, I urge you to support this bill and to send it to committee for further consideration.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, I had the opportunity to express my views on this bill and I have not changed my mind. I want to state very clearly that I would like to see this legislation referred back to the committee. I have nothing to change or to add.

[*English*]

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question!

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

• (1530)

HAZARDOUS PRODUCTS ACT

BILL TO AMEND—THIRD READING—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Munson, for the third reading of Bill C-260, to amend the Hazardous Products Act (fire-safe cigarettes).—(*Honourable Senator Kinsella*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I am pleased to rise to speak at third reading of this bill and to indicate that I support the principle of this bill. It is an important principle and an important issue.

While I would have preferred to have made my points when we were debating the bill at second reading, honourable senators will

recall that the bill had been sitting on the Order Paper for eight sitting days. Then all of a sudden one day, it was moved at second reading and spoken to, and then spoken to by another honourable senator. Then, not having my notes before me at that time, and wanting to have at least one member of the opposition rise and express views on the bill at second reading, I moved the adjournment of the debate. However, my request was denied by the house. I regretted that, because it did go against the tradition of at least allowing the opposition the opportunity to hear what a proponent of a bill has to say, then giving the opposition at least a day to study those remarks and participate in the debate. This was not even a government bill. This was a private member's bill from the other place. Honourable senators, I support the principle of the bill, but I must place on the record my dissatisfaction with the manner in which the bill was handled.

The bill went off to committee and has been reported back to the Senate without amendment, but let us examine, honourable senators, what happened in committee. In committee, a witness from the tobacco industry had an opportunity to make his — or, rather, their — points, and then the proponent in the Senate was heard from. Several members of the committee examining the bill indicated that we should hear from officials of the Department of Health because there had been concerns expressed by officials from that ministry when the bill was being examined in the other place.

Without any notification having been given ahead of time that there would be clause-by-clause consideration, immediately after the witness was heard a motion was made to go right into clause-by-clause consideration because, “We do not need to hear from the Department of Health, nor do we need to hear from those who might give evidence as to a technical problem in the wording of the bill.” Therefore, I am of the view that, while on the one hand I support the bill, on the other hand I think it is in the public interest that we in this place do the work we are sent here to do, namely, give careful review to legislation.

I wrote a letter to the Minister of Health and I would like to place on the record what I said to Mr. Pettigrew. My letter is dated March 17, and reads as follows:

Dear Minister:

Bill C-260, *An Act to amend the Hazardous Products Act (fire-safe cigarettes)*, is currently before the Senate of Canada at 3rd Reading. This bill was reintroduced on February 2 and immediately sent to the Senate pursuant to Standing Order 86.1, at which point the normal legislative process resumed, with the bill receiving first and second reading after which it was referred to the Standing Senate Committee on Energy, the Environment and Natural Resources. The Committee did not hear from the Department of Health.

Last session, when this bill was before the House of Commons Standing Committee on Health, your officials expressed some reservations about the toxicity of fire-safe cigarettes as well as behaviour patterns of smokers that

could conceivably increase the risk of fires. On October 7, 2003, Mr. Denis Choinière, Director, Office of Regulations and Compliance, Tobacco Control Program, Healthy Environments and Consumer Safety Branch, Department of Health, stated:

After reviewing the results of the toxicological studies conducted by both Philip Morris and Brown & Williamson in the U.S., we concluded that although there were changes in the smoke chemistry, namely a significant increase in carbon monoxide levels, they did not translate into any overall meaningful changes in toxicity. However, caution must be exercised, as these tests performed were quite limited. Health Canada feels that this is still an important concern, and is considering requiring that manufacturers perform adequate toxicity testing before and after modifications are made to the cigarettes.

Another issue we paid attention to was consumer behaviour. A concern expressed by the tobacco industry here was that consumers, believing their cigarettes to be fire safe, would thus become more careless. To examine this, we've undertaken two major steps. First, we're conducting a survey right now to establish a baseline of consumer behaviour. Second, we're looking in detail at a database on fires that have occurred in Ontario, which is maintained by the Ontario fire marshal.

It would be appreciated if you could advise as to whether or not your department is now fully satisfied that the toxicity level of fire-safe cigarettes will cause no harmful health effects beyond those that already exist. As well, has the department completed the survey to establish the baseline of consumer behaviour and has the analysis of the database on fires in Ontario been completed and if so can I be provided with a copy of the reports.

Mr. Minister, this legislation is clearly intended to help prevent injury and harm. It is imperative that the Senate be given your assurance that the Department of Health is fully satisfied that this bill will, at the very least, do no harm and that it will overall work in concert with the department's efforts to protect the health of Canadians.

With every good wish,

Yours sincerely...

Honourable senators, that, clearly, was the line of questioning that we ought to have put to the officials in the Department of Health, or to the minister if he had been able to attend.

I am awaiting the reply from the minister and wish to move the adjournment of the debate.

The Hon. the Speaker: It was moved by the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton, that further debate be adjourned to the next sitting of the Senate for the balance of his speaking time.

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

[Senator Kinsella]

Some Hon. Senators: Agreed.

Hon. Yves Morin: Honourable senators, I would like to ask —

The Hon. the Speaker: I am sorry; I did not see Senator Morin. I know it means going back, but Senator Morin wanted to ask a question. Would you take a question? We need unanimous consent to return to Senator Kinsella.

Senator Kinsella: I do not want to compromise the time I have to complete my address because I need to have the data back from the minister. Therefore, I think I will decline. However, I would be happy to do so if there is time when I complete my speech.

On motion of Senator Kinsella, debate adjourned.

FISHERIES AND OCEANS

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—REPORT OF COMMITTEE ON STUDY OF MATTERS RELATING TO STRADDLING STOCKS AND FISH HABITAT ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Fisheries and Oceans (budget—study on straddling stocks and fish habitat) presented in the Senate on March 11, 2004.—(*Honourable Senator Cook*).

Hon. Joan Cook moved the adoption of the report.

Motion agreed to and report adopted.

HUMAN RIGHTS

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—REPORT OF COMMITTEE ON STUDY OF LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP ADOPTED

The Senate proceeded to consideration of the third report of the Standing Senate Committee on Human Rights (budget—study on the division of on-reserve matrimonial real property), presented in the Senate on March 22, 2004.—(*Honourable Senator Maheu*).

Hon. Shirley Maheu moved the adoption of the report.

Motion agreed to and report adopted.

• (1540)

PRIME MINISTER'S TASK FORCE REPORT ON SENIOR CITIZENS

INQUIRY

On the Order:

Resuming debate on the inquiry of the Honourable Senator Ferretti Barth calling the attention of the Senate to the report of the Prime Minister's Caucus Task Force on Seniors.—(*Honourable Senator Rompkey, P.C.*)

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have had discussions with Senator Ferretti Barth and I think this debate has been concluded. I thank her for her intervention and for bringing to our attention the good work done by the group of which she was a part. We particularly give her credit for that. I suggest, Your Honour, that debate has been concluded on this item.

The Hon. the Speaker: I see no honourable senator rising. Accordingly, this inquiry will be considered debated.

STATE OF CANCER

INQUIRY

Hon. Sharon Carstairs rose pursuant to notice of February 25, 2004:

That she will call the attention of the Senate to the state of cancer in Canada — its care, treatment and expectations for the future.

She said: Honourable senators, many of us in this chamber have had direct experience with cancer. I am no exception. My husband has prostate cancer. I know others in this chamber have had similar experiences, either themselves or with their spouses. Fortunately, most of those cases are in remission. I also know of senators in this chamber and senators' spouses and senators' family members who have had breast cancer.

My seatmate, to whom tributes will be paid tomorrow, has had a difficult few years. He lost one daughter-in-law, Norah, to cancer, and now he has another daughter-in-law, Sheila, going through the difficulties of cancer. It was his experience that led me to meet with cancer specialists across the country and to make this representation to you today.

Senator Graham, I will not be able to join in the tributes tomorrow because there are just too many, so this is my own special tribute to you.

One in three Canadians will develop cancer during their lifetime. Cancer is the disease that most Canadians fear. Long waiting lists for treatment and sending patients out of the country for care just add to the fear of those who receive this diagnosis.

Honourable senators, we must provide all Canadians with effective prevention programs, regular screening, early detection, access to high-quality treatment and care, guidance, support and rehabilitation close to home, and the ability to live without fear that our health care system will turn away from those who need it the most.

I tell you this, honourable senators, because if current trends continue, the incidence of cancer in Canada will increase by as much as 70 per cent over the next 15 years. In 2003, there were 139,000 new cases. One Canadian dies every eight minutes. Without a new strategy that is national in scope, the future looks bleak.

I want to talk this afternoon about cancer control. Cancer control aims, first and foremost, to prevent cancer and, second, to cure cancer. Third, it aims to increase survival rates and the quality of life for those who develop cancer.

The facts about cancer are the following: Incidence rates have risen only slightly over the past few decades but the number of Canadians diagnosed each year is steadily rising. Cancer is primarily a disease of older Canadians. Seventy per cent of new cases and 82 per cent of deaths occur in those 60 years of age and older. These factors mean that by the year 2015, the number of new cases could be 70 per cent greater than at the present time.

By the year 2010, cancer will have become the leading cause of death in Canada. In terms of the economic cost, in 1998, cancer cost Canadians about \$14.5 billion — \$2.8 billion in direct costs and \$11.7 billion in indirect costs. That is an increase of 11.1 per cent in five years.

Honourable senators, that is why I would argue that we need a national strategy. We have limited resources. Canadians can afford to spend only so much on health care and on cancer care without jeopardizing other priorities. If we are to deal with cancer effectively, it cannot be achieved by one single organization. If we are to achieve equity for all Canadians who get this disease, all Canadians must have reasonable access to care, and it must not depend upon where you live.

Honourable senators, we need clear leadership because without clear direction we will not achieve our goals. Above all, honourable senators, we need a vision because all the good work that will be done will fail to meet the significant challenges that lie ahead if we do not have vision.

What should be the priorities for action? First, we should have national standards and guidelines. Now they are by region or by province. It is critical, if we are to truly understand the impact of this disease, that they be national in scope. We need much better coordinated prevention programs. At the present time there is provincial and federal overlap, and also local program overlap. None of these consistently work together. Overlap creates a lack of focus and results in poorly spent dollars and tremendous gaps in the prevention process.

We must, in my view, rebalance our focus. We must ensure that treatment is given as close to the home as possible. We need much more in the way of human resource planning because there are simply not enough physicians, nurses, pharmacists and X-ray technicians in the field of cancer or in other fields at the present time.

Honourable senators, we need clear research priorities. There is emerging technology. We must keep abreast of new knowledge if we are to keep our leading-edge status.

Honourable senators, we need a nation-wide strategy. I am not speaking of one dominated by the federal government because, in my view, that will not work. I am calling for the federal government to bring to the table the players — provincial,

territorial and regional — so that the dialogue can begin. I am asking the federal government to listen to what these players have to say so that federal funds and programs can be coordinated with those of the provincial and territorial authorities in order to get the very best value from the dollars spent.

• (1550)

Honourable senators, I am suggesting that the time is now. Wasted time will mean that we will not be ready for 2010, when cancer will be the number one cause of death in this country. By working together, we may be able to push back this rising tide.

Honourable senators, I think that if we bring this message strongly to all levels of government in this country, we can meet the unfortunate rise in the number of cancer incidents, and we will be there to make sure it is treated effectively.

The Hon. the Speaker *pro tempore*: If no other senator wishes to speak, this inquiry is considered debated.

The Senate adjourned until Wednesday, March 24, 2004, at 1:30 p.m.

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