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OFFICIAL REPORT  
(HANSARD)

**Thursday, March 25, 2004**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Thursday, March 25, 2004

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

Prayers.

[*Translation*]

### SENATORS' STATEMENTS

#### THE HONOURABLE VIOLA LÉGER

##### CONGRATULATIONS ON BECOMING AN OFFICIER DE L'ORDRE DE LA PLÉIADE

**Hon. Rose-Marie Losier-Cool:** Honourable senators, today I wish to draw your attention to one of our colleagues, one of my friends, and one of New Brunswick's best known and most respected artists, the Honourable Senator Viola Léger, who is about to be officially promoted to the rank of Officier de l'Ordre de la Pléiade.

The Ordre de la Pléiade was established in 1976 by the Assemblée parlementaire de la Francophonie. It honours individuals for distinguished service to la Francophonie's ideals of cooperation and friendship.

The Honourable Viola Léger — or La Sagouine to many people — became a Chevalier de l'Ordre de la Pléiade in 1978. That shows how quickly her French-speaking parliamentary colleagues the world over recognized her worth and her contribution to la Francophonie.

But Viola Léger is more than just La Sagouine. Her influence is felt well beyond this country. Senator Léger is also Évangéline, Albertine, Maude, Grâce, Gabrielle Lévesque and many other unforgettable characters.

Viola Léger is much more than a great artist of theatre, television and film; she has also been a tireless storyteller since 1988, a talented director since 1980, the artistic director of the company bearing her name in Moncton since 1985, and a teacher since 1955.

From her beginnings at the Collège Notre-Dame d'Acadie in Moncton, to her courses in theatre at the Université de Moncton until 1997, Senator Léger has always wanted to give back to her country a part of that culture that enabled her to become what she is today: a beacon of Acadian talent.

Her work on behalf of la Francophonie earned her the Médaille du Conseil de la vie française en Amérique in 1987, the Order of Canada and the Prix Méritas de la Fédération des Acadiens du

Québec in 1990, the rank of Chevalier de l'Ordre français des Arts et des Lettres in 1991, and the insignia of Membre de l'Ordre des francophones d'Amérique in 1998.

Her promotion today to the Pléiade is another milestone in a journey that shows no sign of coming to an end. This promotion is also one of the many ways her friends, colleagues and the international Francophonie can thank her for who she is and what she does.

Thank you, Viola, for defending my language and culture. Thank you, Mme Léger, for promoting French-speaking Canada and thank you, Honourable Senator Léger, for contributing as you do to the success of our institution.

Honourable senators, I would like to conclude by congratulating Monsignor Zoël Saulnier from Tracadie-Sheila, a poet, musician, orator, thinker and great man who will also be awarded the Pléiade this evening. Helping to spread French and Acadian culture has been his life's work.

[*English*]

### WORLD TUBERCULOSIS DAY

**Hon. Marjory LeBreton:** Honourable senators, each year, March 24 is recognized as World Tuberculosis Day. It commemorates the date in 1882 when Dr. Robert Koch announced that he had discovered the cause of this disease, which primarily attacks the lungs before striking other organs. Although that date proved to be a turning point in the global fight against this disease, the United Nations estimates that tuberculosis has killed 200 million people since Dr. Koch made his discovery 122 years ago.

The theme of this year's World Tuberculosis Day is "Every Breath Counts — Stop TB now!" Despite the fact that this disease can be cured if caught early, tuberculosis continues to kill about 2 million people a year. The World Health Organization estimates that, every second, someone around the world is newly infected with tuberculosis. Many factors have combined to keep tuberculosis a major health threat, such as poor health services and the emergence of drug-resistant strains of the disease. Also, while curing normal tuberculosis is fairly inexpensive, drug-resistant strains of TB can require hundreds of dollars' worth of medicine, and often do not provide a cure.

It is the relationship between HIV/AIDS and tuberculosis that is perhaps the most to blame for the current spread of the disease. HIV weakens the immune system, making a person more susceptible to tuberculosis. As a result, it has become a leading cause of death among HIV patients worldwide. African countries, already devastated with rampant HIV/AIDS, have witnessed a dramatic increase in their number of tuberculosis infections in recent years.

There are bright spots, however, in the fight against this disease. The Global Fund to Fight AIDS, Tuberculosis and Malaria has distributed millions of dollars for grassroots treatment and prevention initiatives all over the world. For example, the Global Fund reports that a grant given to Sierra Leone has rebuilt 70 per cent of the tuberculosis clinics that were destroyed during that country's civil war. It has been recommended many times by different groups, including the House of Commons Standing Committee on Foreign Affairs, that Canada's contribution to the Global Fund should be at least triple its current amount.

• (1340)

Honourable senators, we should not assume that tuberculosis is primarily a crisis in the underdeveloped world. An American study released earlier this month has pointed to complacency as the reason diseases like tuberculosis are still infecting people in industrialized countries. Closer to home, a report released last month by the Canadian Population Health Initiative found that Aboriginal people in our country have 16 times the rate of tuberculosis than do other Canadians.

In recognition of World Tuberculosis Day, I urge the federal government to recommit itself to the fight against this disease, both at home and abroad.

### THE HONOURABLE B. ALASDAIR GRAHAM

#### TRIBUTE ON RETIREMENT

**Hon. Marie-P. Poulin:** Honourable senators, saying goodbye is never easy when you hold someone in affection and esteem, as we do Senator Al Graham. He served his region, his country and the Liberal Party for over 30 years as our colleague in this chamber, and when we learned of his impending retirement, so many of us said, "Already? He is too young." Apart from his political acumen, his knowledge and respect of political traditions and procedures, and his dedication to his commitments, Senator Graham is, above all, a generous man with one healthy sense of humour. Let me give you an example.

After I was called to the Senate in 1995, Senator Graham and I struck up a habit. Whenever we were in the chamber, one of us would say to the other, "Did you let the cat out?" The other one answered "No, isn't that your job?" There are those among you who raised your eyebrows when you heard the remarks, perhaps wondering whether we were harbouring some sort of political secret, or maybe something more than a collegial relationship. Well, Senator Graham, it is time to let the cat out of the bag. It is time to own up. It was pure mischievousness — on his part, of course, not mine. Senator Graham, it has been educational, inspiring and fun working with you, and, like our cat, you will live nine lives.

[*Translation*]

Honourable senators, yesterday evening, a reception was held to celebrate the many accomplishments of our colleague, and to raise money for the Nova Scotia Cancer Treatment Centre. The event was one of good taste and good humour — like our

[ Senator LeBreton ]

colleague. After many touching tributes by representatives of his family, the government, the Liberal Party, the Conservative Party and the international community, and after his speech at the end, we all learned the secret of his eternal youth. Yes, it is a prayer by Cardinal Marty:

On the path to heaven,  
we never age,  
we continue to grow,  
and become ever younger.

Good luck Senator Graham.

[*English*]

### LIBRARY AND ARCHIVES OF CANADA BILL

#### CONSEQUENCES OF REMOVAL OF CLAUSE 21

**Hon. Pat Carney:** Honourable senators, the Writers Union of Canada is concerned about the removal of clause 21 from Bill C-8, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain acts in consequence. Clause 21 of the bill would have extended copyright protection for the unpublished works of many Canadian authors, such as Lucy Maud Montgomery, Stephen Leacock and World War I poet John McCrae.

Senator Kirby has explained that this section of the bill was removed because the copyright protection that was to be extended expired on December 31, 2003. Had the bill passed through Parliament prior to this date, the copyright extension provided in clause 21 would have remained. However, the failure to pass the bill before this deadline meant that the clause had to be removed and copyright protection lapsed.

Senator Kirby also explained that allowing clause 21 to remain would have attempted to place copyright upon works that had already entered the public domain as of December 31, 2003. I can empathize with the many families of authors who have been affected by Parliament's inefficiency in dealing with this matter.

Senator Kirby has advised that no national or international copyright regime has successfully retroactively imposed copyrights on works that have already entered the public domain. The Writers Union of Canada argues that this is not the case and has provided me with two examples where copyright has been retroactively applied after works have reached the public domain.

First, the United Kingdom revived copyright in some public domain works in 1996 when it extended the period of copyright protection from 50 to 70 years after the author's death in order to allow the estates of authors who had died between 50 and 70 years previously to benefit, as much as possible, from the extended protection henceforth accorded to the works of all deceased British authors.

When Canada joined the World Trade Organization, our own Copyright Act was amended to establish copyright in certain performers' performances that were previously in the public domain in Canada under section 32.4.

Now that the government has dropped the ball on copyright protection for the works of these authors, where do we go from here? The Writers Union of Canada suggests extending copyright protection for a further three years in order to give rights holders and users an opportunity to discuss a more reasonable transition period for affected authors, as this was the purpose of clause 21 in Bill C-8. I encourage the government to do something to rectify this difficult situation as soon as possible.

## THE HONOURABLE B. ALASDAIR GRAHAM

### TRIBUTES ON RETIREMENT

**Hon. Joseph A. Day:** Honourable senators, I had the opportunity, along with a number of senators from this chamber and a few hundred other close friends of Senator Alasdair Graham, to dine at the Chateau Laurier. The tremendous regard in which Senator Graham has been held for his lifetime of service was apparent to all of us who had the opportunity to attend last evening for that wonderful celebration.

Senator Graham has been representing the people of this country, his province and his native island of Cape Breton with dignity and distinction for 40 years — 32 of them in this chamber. We have had the benefit of his service in a remarkable array of capacities, and he continues to make valuable contributions to the legislative framework of Canada to this day.

Beginning his political career in 1964, after failing to capture the riding of Antigonish-Guysborough in the federal election of 1958, Senator Graham came to Ottawa as an assistant to former Senator Allan J. MacEachen while he was Minister of Labour, and Senator Allan J. MacEachen was in attendance last evening. Shortly thereafter, Al Graham became employed at the Cape Breton Development Corporation in Sydney, Nova Scotia, where he worked until he was appointed to this chamber in 1972.

Since that time, honourable senators, Senator Graham has worked tirelessly for the Liberal Party of Canada and Liberal International. We on this side of the chamber have benefited greatly from his efforts.

After being elected as president of the federal Liberal party in 1975, when I first met Senator Graham, he travelled throughout the country to meet with Canadians and discuss public policy with them. When he could not meet with them in person, he would speak to them on the telephone. He was so much known as a person who used the telephone that in 1980, during a dinner in his honour, former Senator Eugene Whelan presented Senator Graham with a red and white telephone on behalf of the Liberal members of this chamber.

In addition to serving Canadians domestically, Senator Graham has been responsible for leading Canadian delegations to symposia and conferences in countries on every inhabited part of this earth. He was deservedly made an honorary doctor of laws at his alma mater of St. Francis Xavier University in 1993.

Honourable senators, it is fitting that so many of us wished to speak yesterday that we ran out of time and some of us were not able to do so. We have only scratched the surface of Senator

Graham's contributions to his country and to this chamber. His continuing efforts on behalf of all Canadians will not soon be forgotten, and I am sure those efforts will not stop with his retirement from this place.

**Hon. John Buchanan:** Finally, Senator Graham.

Honourable senators, I have a few words to say about Senator Al Graham. I can assure you it will be short, and I can assure you it will all be complimentary. I have known him for about 40 years. My father was born in Port Morien, but moved to Dominion when he was five; I am also a Dominion boy. Al Graham was a Sydney boy; I am a Sydney boy. My people were all from Glace Bay, Sydney, Port Morien and Dominion. I was down in the coal-mine with Al as well. Down in the coal-mine, Al not only met his nephew, but also his neighbours, his cousins and friends. I only met three people I knew. I could not believe it.

• (1350)

Over the years, whenever I would speak at a graduation ceremony at Sydney Academy, Holy Angels Convent, St. FX University, or UCCB, Al was there. He was always there.

When I would travel through Cape Breton County, Inverness, Victoria County, to ceilidhs or whatever, Al Graham was there. It is like that old country and western song: We've been everywhere, man. He and I have been everywhere.

We even travelled to Boston from time to time, once in a while in a government plane. It is easy to say that now; it does not matter. We travelled on government business, of course.

Seriously, though, Al Graham is a credit to Cape Breton, Nova Scotia and his country. He is one of those fellows who will never be forgotten in Cape Breton. He has been a staunch supporter of everything going on in Cape Breton over the years. He has probably as many friends throughout Nova Scotia as I do. I say that in a very complimentary way.

We both have a doctorate of laws degree from St. FX University. I have four other honorary degrees that he does not, so he has to catch up to me.

During my years in opposition in Nova Scotia and my 13 years as premier of that province, Al Graham was very helpful to me, not in a political but a government sense. He was always very good to all of my members from Cape Breton, particularly during that period of time.

Al, it has been a great pleasure knowing you, as it will be to know you for many years to come. I wish to thank you for speaking at my tribute dinner last November at the World Trade Centre in Halifax. It was a better event because you were there and because of your words. One thing that upsets me is that last night I did not get a chance to speak at your dinner. I was waiting for Senator Rompkey to invite me to sing *Song for the Mira*, but he did not. I thought Al would tell him to be sure to do that, but he did not. Some day, maybe in this chamber, I might get up and sing *Song for the Mira*.

I wish to end by saying this to my friend: May the road rise up to meet you and may the wind be always at your back. May the gentle rains fall upon your fields, may the sun shine upon your countenance, and may the good Lord hold you and your family in the palm of his hand forever. God bless you.

**Hon. Senators:** Hear, hear!

[Translation]

#### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I wish to draw to your attention the presence in the gallery of Reverend Father Zoël Saulnier, a guest of the Honourable Senator Losier-Cool. Tonight, Father Saulnier, who is accompanied by members of his family, will receive the rank of Chevalier de l'Ordre de la Pléiade.

On behalf of all senators, I congratulate you and welcome you to the Senate of Canada.

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### ROUTINE PROCEEDINGS

#### HUMAN RIGHTS COMMISSION

##### 2003 ANNUAL REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table the 2003 annual report of the Canadian Human Rights Commission, pursuant to section 61 of the Canadian Human Rights Act and section 32 of the Employment Equity Act.

[English]

#### QUEEN'S THEOLOGICAL COLLEGE

##### PRIVATE BILL TO AMEND ACT OF INCORPORATION—REPORT OF COMMITTEE

**Hon. George J. Furey,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, March 25, 2004

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

#### THIRD REPORT

Your Committee, to which was referred Bill S-15, to amend the Act of incorporation of Queen's Theological College, has, in obedience to the Order of Reference of Thursday, March 11, 2004, examined the said Bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

GEORGE FUREY  
*Chair*

[ Senator Buchanan ]

### OBSERVATIONS to the Third Report of the Standing Senate Committee on Legal and Constitutional Affairs

Bill S-15 is a private bill that amends the 1912 Act of Parliament that incorporated Queen's Theological College in Kingston. In all that time, the College has not returned to Parliament for ask for amendments to that Act. Meanwhile, much has changed. The College was originally founded as a Presbyterian College, but when the union of the Presbyterian, Methodist and Congregational Churches took place in 1925 to produce the United Church of Canada, the Act was not changed to reflect this new relationship. There are a number of other amendments to the Act that the College also wishes to see made, including changes in the composition and role of its Board of Management.

Your Committee is satisfied that the College has complied with all of the requirements for a private bill set out in the *Rules of the Senate*, and accepts the testimony of College representatives that the contents of Bill S-15 are reasonable and required.

On the other hand, your Committee believes that the time has passed when private corporations incorporated by a Special Act of Parliament should be required to return to Parliament to modernize their governance structures. Your Committee has previously recommended that the *Canada Corporations Act* should be amended to permit these corporations to regulate such matters internally, and we reiterate that recommendation in the context of Queen's Theological College and all other Special Act corporations in the same situation.

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

**Hon. Lowell Murray:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(b), I move that the bill be read the third time later this day.

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

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, would the honourable senator explain why the bill should be accelerated rather than follow the proper procedure?

**Senator Murray:** Honourable senators, I am advised that if the Senate were to accommodate us in this way, the Honourable Speaker Milliken in the other place would use his good offices, as he is also the Member of Parliament for Kingston and the Islands, to facilitate the passage of the bill through the House of Commons by the end of the week.

**Senator Lynch-Staunton:** What is the haste? Does the honourable senator know something about the importance of the end of next week that he would care to share with the rest of us?

**Senator Murray:** Honourable senators, I have been around here long enough to have lively suspicions.

**Senator Lynch-Staunton:** With that appropriate explanation, I am very happy to support the motion.

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

Motion agreed to.

## SEX OFFENDER INFORMATION REGISTRATION BILL

### REPORT OF COMMITTEE

**Hon. George J. Furey**, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, March 25, 2004

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

### FOURTH REPORT

Your Committee, to which was referred Bill C-16, respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts, has, in obedience to the Order of Reference of Thursday, February 19, 2004, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

GEORGE FUREY  
*Chair*

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

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

## CRIMINAL CODE

### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. George J. Furey**, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, March 25, 2004

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

### FIFTH REPORT

Your Committee, to which was referred Bill C-250, to amend the Criminal Code (hate propaganda), has, in obedience to the Order of Reference of Friday, February 20, 2004, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

GEORGE FUREY  
*Chair*

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

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

• (1400)

## CITIZENSHIP ACT

### BILL TO AMEND—FIRST READING

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition)** presented Bill S-17, to amend the Citizenship Act.

Bill read first time.

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

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

[*Translation*]

## ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

### POLITICAL MEETING, MARCH 6-9, 2004— REPORT TABLED

**Hon. Rose-Marie Losier-Cool:** Honourable senators, pursuant to rule 23(6), I have the honour to table in both official languages the report of the Canadian Branch of the Assemblée Parlementaire de la Francophonie and the related financial report. The report is on the meeting of the APF Political Committee held in Nouakchott, Mauritania, from March 6 to 9, 2004.

[English]

## CANADA-EUROPE PARLIAMENTARY ASSOCIATION

MEETING OF EUROPEAN BANK FOR  
RECONSTRUCTION AND DEVELOPMENT,  
JANUARY 22-23, 2004—FIRST PART OF THE 2004  
ORDINARY SESSION OF THE PARLIAMENTARY  
ASSEMBLY OF THE COUNCIL OF EUROPE,  
JANUARY 26-30, 2004—REPORTS TABLED

**Hon. Isobel Finnerty:** Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Meeting of the Committee on Economic Affairs and Development at the European Bank for Reconstruction and Development (EBRD), held in London, England, from January 22 to 23, 2004, and at the First Part of the 2004 Ordinary Session of the Parliamentary Assembly of the Council of Europe held in Strasbourg, France, from January 26 to 30, 2004.

MEETING ON GLOBAL PARTNERSHIP AGAINST  
SPREAD OF WEAPONS AND MATERIALS OF MASS  
DESTRUCTION, NOVEMBER 20-21, 2003—REPORT  
TABLED

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have the honour, pursuant to rule 23(6), to table, in both official languages, the report of the delegation to the Inter-Parliamentary Conference on the Global Partnership against the spread of weapons of mass destruction and materials of mass destruction held in Strasbourg, France, from November 20 to 21, 2003.

[Translation]

## OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Maria Chaput:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Committee on Official Languages be empowered to sit at 5:30 p.m. on Monday, March 29, 2004, even though the Senate may be then sitting, and that rule 95(4) be suspended in relation thereto.

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

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

## QUESTION PERIOD

### PUBLIC WORKS AND GOVERNMENT SERVICES

AUDITOR GENERAL'S REPORT—  
SPONSORSHIP PROGRAM—INVOLVEMENT  
OF PRESIDENT OF PRIVY COUNCIL

**Hon. W. David Angus:** Honourable senators, my question today is once again on the subject of "AdScam," which I understand is the new acronym for the sponsorship scandal. It seems that as each day unfolds a new version of the government's involvement emerges. It is all very troubling.

During her testimony this morning at the House of Commons Public Accounts Committee, Huguette Tremblay, who was an assistant to program executive director Charles Guité, implicated several Liberal members of Parliament and ministers who, according to the witness, were in regular contact with Mr. Guité, Mr. Tremblay and other officials involved in the sponsorship scandal. When asked who these people were, Ms. Tremblay identified the current President of the Queen's Privy Council, Denis Coderre. According to her testimony, Mr. Coderre met and spoke regularly with Messrs. Chuck Guité, Pierre Tremblay and Jean Pelletier concerning files in the sponsorship program.

Prime Minister Martin has asserted time and again, particularly on February 12 at his press conference and on February 18 in the House of Commons, that he made a point of personally interviewing all current cabinet ministers with regard to their possible involvement in or knowledge of the sponsorship program.

As far as I understand it, he has asserted — I believe even confirmed — to Canadians that all ministers interviewed indicated that they had no involvement in this matter.

Can the Leader of the Government in the Senate confirm that President of the Privy Council, Denis Coderre, was one of the ministers interviewed by the Prime Minister and, second, that he advised the Prime Minister that he had no involvement in the sponsorship program?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, the Prime Minister's statement stands for itself.

**Senator Angus:** Honourable senators, could the government leader please confirm, or deny, that Denis Coderre had knowledge of the sponsorship program and did not disclose it to the Prime Minister?

**Senator Austin:** Honourable senators, I have no personal knowledge either of what Minister Coderre knows or of what he did. However, it would be unusual for a question to be valid in terms of whatever evidence may be proceeding before a committee in the other place.



**Senator Angus:** Honourable senators, I understand that answer, but does the government leader have any information that would indicate that Mr. Coderre was aware of the sponsorship program and participated in these meetings referred to by Ms. Tremblay this morning?

**Senator Austin:** I have no personal information.

• (1410)

## PRIME MINISTER'S OFFICE

### NATIONAL UNITY RESERVE FUND

**Hon. W. David Angus:** Honourable senators, yesterday, reports of a secret unity fund of \$50 million, allegedly set up to seed fund the sponsorship program, were mentioned in the House of Commons and in the media this morning. Canadians were told by Mr. Alcock, the President of Treasury Board, as well as by the Prime Minister himself, that these funds were appropriately allocated to worthwhile programs.

Can the Leader of the Government please provide senators with a breakdown of how these funds were spent?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, yesterday, Senator LeBreton asked that question of me. I am in the process of obtaining whatever information I can to provide to the Senate.

**Senator Angus:** Honourable senators, I am sorry if my question is redundant. However, I understand that the question I ask today is not exactly the same as the question asked yesterday by my honourable colleague.

Can the Leader of the Government inform honourable senators if the Prime Minister, in his capacity as Finance Minister at the time, knew about this fund, before the past few days, and approved of its existence and its expenditure?

**Senator Austin:** Honourable senators, yesterday, I answered the question of the Honourable Senator LeBreton. I will give the honourable senator a short summary of the answer, which is that the Right Honourable Paul Martin was unaware of the fund when he was Minister of Finance, and he was unaware of the fund when he ceased to be Minister of Finance and before he became Prime Minister.

**Hon. Marjory LeBreton:** Honourable senators, I will phrase my question a little more carefully.

Yesterday, I asked some questions about the Liberal fund which operated out of the Chrétien PMO, and which was known as the national unity reserve. Documents from the Public Accounts Committee show that \$35.8 million was pumped into the sponsorship program from this unity reserve. These documents, signed in November 1996 and November 1997 by then Prime Minister Jean Chrétien, would have — or should have — gone to the cabinet committee of Treasury Board for

approval. The deputy chair of that committee was the Minister of Finance, now the current Prime Minister. Whether or not Mr. Martin attended that particular cabinet meeting, he would have received briefing books with all the submissions under consideration.

Does the Leader of the Government in the Senate still believe that Prime Minister Martin was not aware of the national unity reserve when he would have been briefed and possibly attended a cabinet meeting approving the transfer of these funds?

**Senator Austin:** That is my information, honourable senators.

**Senator LeBreton:** Honourable senators, it is reported that the Prime Minister had to approve every transaction from the reserve to departments wishing to fund community events. Can the Leader of the Government in the Senate tell us how members of Parliament were made aware of this fund? Was the fund discussed at Liberal caucus meetings? Were there secret e-mails to members of the Liberal caucus? Or was it discussed quietly at fundraisers? Just how were members of Parliament made aware of this fund and how to access it?

**Senator Austin:** Honourable senators, I have no information, although I know that Senator LeBreton is aware that caucus matters are not subject to questions.

**Hon. Gerry St. Germain:** Honourable senators, there will be no sound and lights, nor music.

As to whether or not members of Parliament received information on this fund, I tried to pose that question yesterday when I remarked that this slush fund was only available to Liberal MPs. I made that allegation or that inference. This is not a question involving caucus matters. It is a question of whether or not members of Parliament were privy to the fact that this fund existed, and whether they would have had access to it in any way, shape or form. I am referring to the \$50 million slush fund in the Prime Minister's Office.

**Senator Austin:** Honourable senators, I answered the question yesterday. I said that there are no allegations of misuse of any funds whatsoever. Senator LeBreton asked me yesterday where these funds were shown in the estimates and budgets of the Government of Canada. I am seeking to obtain that information and to provide it to her.

**Senator St. Germain:** Honourable senators, it is not a question of misuse; I am talking about plain knowledge and access. Are we not all equal here, or are some more equal than others? That is my question.

**Senator Austin:** Honourable senators, the answer to that question is linked to the answer I just gave. I am searching for the information I was requested to present, if, when and as I can present it. The funds will have been disclosed in the budgets and estimates of the Government of Canada. I intend to try to pinpoint that disclosure.

## HUMAN RESOURCES DEVELOPMENT

### THE BUDGET— COST OF POST-SECONDARY EDUCATION

**Hon. Ethel Cochrane:** Honourable senators, I want to get back to the budget. My question concerns student debt.

The promises in Paul Martin's so-called education budget in 1998 were never realized. As Prime Minister, he has allowed students to sink even further into debt.

The federal budget contained an increase in the federal student loan ceiling from \$165 a week to \$210 a week. With that, he has made it easier for students to borrow larger amounts of money. This may help them access post-secondary education now, but it will strangle them financially once they graduate and must pay that money back. I am sure my honourable colleague Senator Rompkey, who is a former teacher, will agree with me because he knows of the problems of students.

The only way to deal with this skyrocketing problem is for the federal government to work with the provinces in cutting the high cost of attaining a post-secondary education.

Can the Leader of the Government in the Senate tell us what this government will do to address the high price Canadians have paid, and continue to pay, to get a post-secondary education?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I think all of us would like to see absolutely free post-secondary education made available to all Canadian students. However, it is not possible in the current financial situation in Canada to achieve that excellent goal.

Honourable senators, in this budget the government is acting to advance assistance to students as far as it can, given the fiscal constraints which Canada now faces. We are acting on a number of fronts to assist students with the burden of education. The budget introduced a new grant for first-year students from low-income families and an upfront grant for students with disabilities. These grants will reduce the amount of federal student debt that would be otherwise incurred.

In introducing the new Canada Learning Bond of up to \$2,000 for children and families eligible for the National Child Credit Benefit Supplement, the government is also enhancing the matching rate on Canada Education Savings Grants for low- and modest-income families. These initiatives will help families accumulate savings for future post-secondary studies.

The Government of Canada also recognizes that some graduates face financial hardship in repaying Canada student loans. Therefore, it is making improvements to key debt measures. The budget will increase by 5 per cent the income threshold for interest relief eligibility. As a result of this change, more borrowers will become eligible for interest relief, in particular those with low incomes and high student debt.

The maximum amount of debt reduction and repayment will be increased to \$26,000 from the current maximum of \$20,000 to ensure that the increase in the weekly loan ceiling does not result in greater financial hardship for borrowers in long-term financial difficulty.

• (1420)

Finally, the Government of Canada will review with the provinces — as was suggested by the Honourable Senator Cochrane — and with other stakeholders, the current debt-management measures, to ensure that they better reflect the capacity of the borrowers to repay their student debt.

**Senator Cochrane:** I am not asking for free education for our post-secondary students. I am asking the government to make loans in such a way as to reduce the cost. I am asking the government to work out a plan with the provinces, and to please do it soon.

The government leader talks about low-income Canadians. I have a supplementary question on that. The budget introduces a learning bond for children from low-income families, beginning with those born this year. That means that the money will not be paid out until 2022 — 18 years from now, when these children are old enough to be in post-secondary education. That is when this bond starts. By that time, the government estimates that the average cost of a four-year degree program will have climbed to over \$87,000.

Several recent studies that I have read have shown that low-income families are not able to save money for their children's education, even with government assistance. Absent any family contributions, the bond will be worth about \$3,000. Therefore, it is clear that this learning bond is merely a drop in the bucket for students who, 18 years from now, will face the daunting if not impossible challenge of financing their education. Poor parents!

Could the Leader of the Government in the Senate tell us how this learning bond will help students from low-income families? Furthermore, where is the help in the budget for today's students?

**Senator Austin:** Honourable senators, I believe I answered the last part of the honourable senator's question in my lengthy and detailed previous answer.

With respect to the rest of the question, the Canada Learning Bond will not necessarily stay at its current level. We all hope that, as the fiscus allows, future governments will be able to enrich the program that has been started in this budget. However, the honourable senator must understand that, at the moment, the Government of Canada provides funding to the provinces and territories for post-secondary education through cash and tax transfers under the Canada Health and Social Transfer, which will start April 1, 2004. That transfer provides predictable and sustainable federal funding for post-secondary education. It is estimated in the year 2004-05 that that total will be \$14.9 billion.

## FINANCE

### THE BUDGET—PREDICTION ON DEBT-TO-GROSS-DOMESTIC-PRODUCT RATIO

**Hon. Terry Stratton:** Honourable senators, the budget makes the bold commitment that the debt will fall to 25 per cent of GDP by 2014. That really sounds impressive, except for a bit of elementary math.

The falling debt-to-GDP ratio can result from falling debt and/or a rising GDP. Over the past several years, counting inflation, the GDP growth has typically been in the ballpark of 5 per cent a year. Such a trend will bring our GDP to more than \$2 trillion by 2014. The current debt of \$500 billion, divided by \$2 trillion of GDP in 2014, would be 25 per cent. In other words, without doing anything but relying on simple growth in our GDP, the debt-to-GDP ratio would go down to 25 per cent just through growth.

Could the Leader of the Government in the Senate confirm that basic math, that unless there is a complete meltdown in the economy, the debt will fall to 25 per cent of GDP by 2014, without the government doing a darned thing?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I will not quarrel with Senator Stratton's math or with his general statement. The government is setting a 10-year objective. The fact that it may not be a totally painful accomplishment is probably a credit to the Canadian economy. As the honourable senator has said, the objective is there and, unless something very untoward takes place in the global economy, we should be able to achieve it through a combination of paydown in debt and economic growth. I know that Senator Stratton shares a similar view with regard to the 10-year objective of the government.

**Senator Stratton:** Honourable senators, my concern is that we are sitting here with a \$37-billion yearly interest payment, which does not seem to have been addressed. That number will drop, I hope. However, in the forecast by the government, it looks as though that number will stay at about \$37 billion.

My problem with that is that Canada soon will be facing the retirement of all the baby boomers. The demand on our health care system will grow exponentially, because health care costs in each province are in the range of 40 to 50 per cent of their budgets annually, and those provincial budgets grow at a rate of 8 to 10 per cent annually.

How can we possibly address what I think is the most substantial issue facing this country? If the debt interest payment could be cut in half, \$18 billion could be applied to health care. That is the magic formula that should be addressed. By reducing the interest on the debt, the federal government could guarantee the provinces stable health care funding on an annual basis. Why would the government not look at that?

**Senator Austin:** In fact, that is our policy. As the honourable senator knows, since 1993, payment on the debt has freed up \$3-billion worth of interest costs to the government, which is now absolutely essential to the government's contingency reserve. The direction the honourable senator is advocating is in fact the direction in which the government is going. I am pleased we are in concurrence on this particular issue.

I do want to tell the honourable senator, because I know he understands this, that the 10-year objective is designed as a signal to the financial community. In that way, the international

financial community can take the 10-year objective into account when they calculate their demand for interest rates on Canadian commercial paper and when they take into account the level of the Canadian currency, which is affected by interest rates and the soundness of Canadian performance.

Honourable senators, it is exciting to be able to report that, in 2004-05, Canada will have the lowest debt-to-GDP ratio in the G7. I think that that is an amazing and desirable accomplishment. It is not good enough yet, however. As the Honourable Senator Stratton has said, we need to be in even better shape when it comes to the debt-carrying burden in Canada.

**Senator Stratton:** That still leaves the question unanswered as to stabilized funding for the provinces, whose budgets are facing exponential growth — a growth that will increase dramatically with the retirement of baby boomers. I do not see anywhere a promise of increased stabilized funding over the next 10 years, so that the provinces will not face this problem of continued explosive growth in health care costs. Stabilized funding will allow the provinces to manage that growth.

**Senator Austin:** I appreciate the seriousness of the question the honourable senator is raising. There is a complicated matrix of issues that allows this country to address the growth of health care costs. One is the cost of interest, including the costs to provinces with respect to their borrowing. The 10-year objective is designed to assist that. As the honourable senator knows, the subject he raised is under active discussion among the federal government, the provinces and the territories with a meeting planned this July to address the whole question of the growing costs of medical care.

• (1430)

Such issues as the Romanow report and the report of our own Standing Senate Committee on Social Affairs, Science and Technology, chaired by Senator Kirby, are in play because there are two sides to the issue — the revenue-raising capacities of federal, provincial and territorial governments, and the demand side to which the honourable senator has referred, by which I mean the aging boomer population and the cost of supplying advancing technology to that generation of Canadians. These are very difficult subjects and very important ones. I am delighted that my honourable friend has raised them.

## HEALTH

### THE BUDGET-GROWTH IN FUNDING

**Hon. Donald H. Oliver:** Honourable senators, my question is to the Leader of the Government in the Senate. It also deals with the budget and, on this particular occasion, with medicare.

*The Globe and Mail* today bears the headline:

PM seeks 10-year medicare plan

Asks Health Minister to develop blueprint to ensure long-term financial stability

This is a surprising announcement coming two days after a federal budget that seemed purposefully to avoid dealing with long-term

funding for our health care system. Why was there no mention of this 10-year plan in Tuesday's budget?

**Senator Austin:** Honourable senators, I have no idea.

**Senator Oliver:** Honourable senators, the Minister of Health is quoted in *The Globe and Mail* today as saying that the federal government acknowledges there is possible room to manoeuvre to accommodate increased health care funding. The provinces must find that statement surprising, considering that the only help offered them in Tuesday's budget was the \$2 billion that had been promised about four different times already, starting with the previous Prime Minister. The \$2 billion is a one-time-only payment. Increases in transfer payments will offset it, meaning that the provinces will in fact have lower operating budgets this year.

Could the Leader of the Government in the Senate tell us why there is not a greater commitment to health care funding in the budget and whether the Minister of Health admits that the government has room to manoeuvre to find it?

**Senator Austin:** Honourable senators, I again point to the ongoing discussions between the federal government, the provinces and the territories with respect to the entire health care topic and the very important forthcoming July meeting. We will see many statements by the parties taking positions with the public. I have noticed newspaper advertisements under the authority of the Council of Premiers alleging certain facts with regard to Canada's current health care. Perhaps there will be statements by a number of people on this subject as the fiscal chess game is played out.

## FOREIGN AFFAIRS

### THE BUDGET—FOREIGN AID

**Hon. A. Raynell Andreychuk:** Honourable senators, yesterday in the budget speech of the Minister of Finance, he announced an 8 per cent increase in the money allotted for foreign aid. Like most everything else announced in that speech, that increase is not new and not enough.

Thirty-five years ago, the Pearson commission, chaired by the former Liberal Prime Minister, recommended that 0.7 per cent of gross national income be reserved for development assistance. In the 1990s, his Liberal successors cut aid by 29 per cent, the largest cuts to any government department. Today, spending on aid in Canada hovers around 0.29 per cent of the gross national income — less than half what Mr. Pearson recommended 35 years ago.

Will the Leader of the Government in the Senate confirm for this chamber that the Liberal government of today has abandoned Mr. Pearson's recommended goal, one that was embraced by the World Bank, the OECD and the United Nations?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I can confirm that this government has not abandoned the long-term goal of 0.7 per cent. That remains the objective of this government for our foreign aid contribution.

[Senator Oliver]

I would inform Honourable Senator Andreychuk that to reach that target would require approximately \$5 billion in additional funds in this year alone. It is, again, a target that competes with a whole host of other requirements for the management of Canada's domestic and international interests. It competes with other priorities, but the objective remains.

**Senator Andreychuk:** Honourable senators, it is laudable to have an objective, but I do not think we are seriously working toward it. When there were cutbacks in the late 1980s, the Minister of Foreign Affairs of that day fought vigorously and successfully to exclude many portions of development aid from being cut back. It was only in the 1990s that this government said it would put its house in order and then begin taking this situation seriously and catching up. We are seriously behind other countries. If we wish a safe, secure, stable and prosperous world, we would be wise to put our money into aid and not have to face some of the horrific challenges of humanitarian service that are currently before us. Will this government rethink its strategy and make the safety and security of Canadians one of the goals of increasing development aid?

**Senator Austin:** Honourable senators, the government asserts that the safety and security of Canadians is a paramount national objective and that it is meeting the safety and security requirements of Canadians.

The sum of \$248 million, which is added to last year's total, is not an insignificant amount of money. It shows the direction in which the Government of Canada wishes to go.

The Honourable Senator Andreychuk refers to the situation in the late 1980s. She might also notice the very substantial deficit into which that government took Canada. We cannot borrow money continuously for all of our needs. We have to manage in a stable fiscal environment.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, I have the honour of presenting two delayed answers. The first is in response to an oral question posed in the Senate on February 19, 2004, by Senator Corbin, regarding official languages and the bilingual status of the City of Ottawa. The other is in response to an oral question posed in the Senate on February 12, 2004, by Senator Sparrow, regarding performance bonuses to senior officials.

## INTERGOVERNMENTAL AFFAIRS

### OFFICIAL LANGUAGES— BILINGUAL STATUS OF CITY OF OTTAWA

*(Response to question raised by Hon. Eymard G. Corbin on February 19, 2004)*

Following a request from the City of Ottawa, the Government of Canada announced April 18, 2002 a five-year financial assistance of \$2.5M to help the City of Ottawa meet the costs related to the transition towards bilingual services. The funds granted to the City of Ottawa

aim primarily to sustain language training for municipal employees in both official languages, promote translation, and allow the implementation of a program that encourages businesses to offer bilingual services as well as to hire bilingual staff.

The City of Ottawa has begun its budgetary review for the year 2004. According to our information, financing for the delivery of bilingual services will be included in this revision. The City of Ottawa could reduce the bilingual services budget.

The Department of Canadian Heritage is following this issue and is ready to discuss with the City of Ottawa to re-examine the situation if cuts to bilingual services were to be announced.

I congratulate the Ontario Government for announcing that they are ready to follow-up on the City of Ottawa's request to officially recognize its bilingualism policy.

## TREASURY BOARD

### PERFORMANCE BONUSES TO OFFICIALS

*(Response to question raised by Hon. Herbert O. Sparrow on March 26, 2004)*

#### **On what basis is performance pay awarded?**

The Performance Management Program for Executives (PMP) was initiated by the government as:

- A performance management tool designed to help departments and agencies achieve results as set out in their business plans;
- A compensation program that, by awarding achievement of results, provides an incentive for achieving and surpassing objectives.

It is government policy that, at the entry level, the total compensation of executives should be comparable to the external labour market. Total compensation is defined as base salary, variable pay and other benefits such as pension.

Executive total compensation at the EX01 level, or the first level of executive, is maintained at a level equivalent to EX01 equivalents in the Canadian labour market. This 'external labour market' includes the broader public sector (universities, hospitals and municipal governments, not-for-profit organizations and public utilities) and the private sector.

In order to make the comparison with the external labour market, the government uses independent analysis to calculate a valuation (as a dollar value) for EX01 total compensation. Variable pay is an important element of the

total compensation comparison or benchmark with the external labour market. The independent Advisory Committee on Senior Level Retention and Compensation considers this value as well as other labour market information when it makes recommendations for salary adjustments.

Benchmarking to the external labour market occurs at the EX01 level only; compensation of higher levels falls within the pre-determined salary structure which is based on differences in accountability, problem-solving and know-how at each different level of executive. Compensation at levels higher than the entry level falls below that of the external labour market, for example, past studies have shown that the total compensation for the EX05, or highest level in the Group, is about 35 per cent lower than the compensation of equivalent positions in the labour market.

It is expected that the majority of public service executives would earn some amount of variable pay in any given year, as is the case in the external market, with the amount of variable pay depending on individual performance. The average earned by executives at all levels is seven per cent. Some executives earn the maximum possible (10 per cent for EX01 to EX03, and 15 per cent for EX04 and EX05) and some earn very small amounts.

The variable pay portion of total compensation must be re-earned each year and varies from year to year for each executive based on the achievement of key commitments.

Without variable pay, executive salaries at the EX01 level would significantly trail the compensation afforded to labour market equivalents.

Executive performance affects the two components of executive cash compensation: base salary and variable pay. First, movement of the base salary within its range, or 'in-range movement' is affected by the achievement of Ongoing Commitments. Second, variable pay, or annually re-earnable pay that is based on performance depends on the achievement of key commitments. Executives who do not meet their ongoing commitments are not eligible for either in-range salary movement or variable pay.

As recommended by the Advisory Committee on Senior Level Retention and Compensation, the PMP is designed to allow executives to move from the bottom of the salary range to the maximum, in about three years, subject to meeting ongoing commitments. As a result, executives who have met ongoing commitments for three years would be expected to be at the top of the salary range for their level. Because there is a 15 per cent difference between the bottom and top of the salary range, normal movement in the range is about five per cent each year.

### **Variable Pay**

Beginning in April 2000 executives were eligible to earn the full amount of variable pay recommended by the Advisory Committee on Senior Level Retention and Compensation as follows:

- EX 01 to EX 03 up to 10 per cent
- EX 04 to EX 05 up to 15 per cent

Deputy heads have the authority to award any amount of variable pay within these parameters.

### **Budgets for Variable Pay**

The Treasury Board has provided departments and agencies with a budget allocation of seven per cent of executive payroll for variable pay. The allocation may be exceeded when warranted by organizational results, provided that the departments absorb any excess from their overall budgets.

The budget allocation for variable pay is based on a normal distribution of amounts, taking into account that most executives are eligible for up to 10 per cent of their salary in variable pay, and the small number of executives at the Assistant Deputy Minister level are eligible for up to 15 per cent. Some executives will receive no variable pay, and some will receive the maximum. In other words, seven per cent is the average of all variable pay as a percentage of the entire executive payroll and does not reflect how departments actually manage their variable pay budgets.

Because an executive's annual cash compensation consists of salary plus variable pay, it is expected that, in a year when departmental goals are met, departments will fully expend their budgets for variable pay.

### **What classes of employees are the recipients of performance pay?**

A number of groups and levels in the federal public service are eligible for performance pay, including deputy ministers, CEOs of Crown corporations and certain excluded and unrepresented groups (AS-7 and 8, ES-8, FI-4, IS-6, LA-1, LA-2-A and 2-B, PE-6, PM-MCO 1 to 4, PG-6, TR-4 and 5, WP-7), senior non-specialist military officers of the Canadian Forces (CF) (both regular and reserve forces) at the rank of Colonel and above, levels LA-3A, LA-3B and LA-3C of the excluded Law Group, levels DS-7A, DS-7B and DS-8 of the Defence Scientific Service Group, levels MD-MOF-4, MD-MOF-5 and MD-MSP-3 of the Medicine Group, and Canadian Forces Legal Officers (both regular and reserve forces) at the rank of Colonel and Brigadier-General and Canadian Forces Medical and Dental Officers (both regular and reserve

forces) at the rank of Lieutenant-Colonel and above in accordance with the *Queen's Regulations and Orders for the Canadian Forces (QR&O)*.

Departments and agencies under the *Public Service Staff Relations Act Part 1-1* are required to report to the Public Service Human Resources Management Agency of Canada annually on their applications of the PMP to members of the EX Group. These results are provided as part of the response to your question.

### **What percentage of the class receives performance awards?**

Of the EX group 93.5 per cent of the group received variable pay for 2002-03. This figure is comparable to the 93 per cent reported by the Conference Board of Canada for private sector executives.

### **What was the total amount paid in such bonuses?**

The Public Service Human Resources Management Agency of Canada is providing the requested information for members of the EX Group. Information is provided by department, by type of performance pay (i.e. in-range salary increases and variable pay) but not by EX level except in aggregate because this information would have a tendency to disclose information that must be protected under the *Privacy Act*.

For organizations with five or fewer executives, only the number of executives and the levels will be provided. In order to comply with the *Privacy Act*, the totals for the increases to base salary and the variable pay is provided for these organizations.

The total amount paid out in increases to salaries for 2002-03 is \$8,976,789.

The total amount paid out as variable pay for 2002-03 is \$31,621,179.

### **How many public service employees have been paid bonuses in this fiscal year?**

The information is attached as Annex 1.

### **What are the names of the recipients and the amounts received of these bonuses over the same fiscal year?**

Information about amounts received by specific individuals is protected by privacy legislation.

### **Annex 1**

Listing by department of the numbers in each level of the group, the number who received in-range salary increases and the number who received variable pay, the expenditure on in-range movement and the expenditure on variable pay.

(For text of annex, see Appendix, p. 645.)

## PROTECTION OF NAHANNI WATERSHED

### NOTICE OF MOTION URGING GOVERNMENT TO TAKE ACTION

Leave having been given to revert to Notices of Motions:

**Hon. Consiglio Di Nino:** Honourable senators, I give notice that on Tuesday, March 30, 2004, I will move:

That the Senate call upon the Government of Canada:

(a) to expand the Nahanni National Park Reserve to include the entire South Nahanni Watershed including the Nahanni karstlands;

(b) to stop all industrial activity within the watershed, including:

(i) stopping the proposed Prairie Creek Mine and rehabilitating the mine site,

(ii) ensuring complete restoration of the Cantung mine site,

(iii) immediately instituting an interim land withdrawal of the entire South Nahanni Watershed to prevent new industrial development within the watershed; and

(c) to work with First Nations in the Deh Cho and Sahtu regions of the Northwest Territories to achieve these goals.

• (1440)

## ORDERS OF THE DAY

### PARLIAMENT OF CANADA ACT

#### BILL TO AMEND—THIRD READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Rompkey, P.C., for the third reading of Bill C-4, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

**The Hon. the Speaker:** Honourable senators, when our proceeding was interrupted yesterday, Senator Austin had the floor and was answering questions.

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I am prepared to continue with two or three questions, if that is the wish of the chamber.

**Hon. Gerald J. Comeau:** Honourable senators, I would like to continue with the question I was about to ask yesterday.

Given that we will be going into an election and that the odds are that we will not have the opportunity to appoint a new ethics officer, would the Leader of the Government in the Senate — who may not be the leader at that time; I hope he will be our leader — agree and confirm to this house that he will, if the bill passes, agree to the convention that he is proposing to establish if he continues to be the Leader of the Government in the Senate?

**Senator Austin:** Honourable senators, that is a hypothetical question. Normally I would not answer it, but I will in this case.

If I should continue in a new Parliament to be the Leader of the Government in the Senate, I will ask the government of that day to permit me to give the same undertaking as I gave on February 24. I would be delighted to add to the precedent that I started by taking the same step twice.

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government as well. It is a theoretical question. This is Bill C-4, “C” indicating a bill that started in the House of Commons and went through first, second and third reading in the House of Commons. When that bill got to the Senate and had its second reading, the Honourable Leader of the Government in the Senate made a unique proposal for something new to this House of Commons bill. That was a brand new procedure and a brand new convention, started by, Senator Austin, in relation to the appointment of the new ethics official.

My question to Senator Austin is whether or not proceeding with his suggestion for a new way and new methods of appointing this ethics commissioner is creating an injustice for the other chamber, whose bill this is, by not affording that chamber an opportunity to develop, perhaps, similar conventions or practices to those he is offering to this chamber.

**Senator Austin:** Honourable senators, first, to be exact, this is a government bill that was introduced in the House of Commons. It is not accurate to refer to it in that sense as a House of Commons bill.

Second, the House of Commons, so far as we know, has expressed its satisfaction with the bill in its current form. Nothing bars the members of that chamber from dealing with questions of procedure. I am only concerned with what we do in this chamber. If there is concern in that chamber, that is something that will be considered over there.

**Senator Oliver:** Honourable senators, it would have been an advantage to have known of this unique proposal and new convention that the Leader of the Government has announced during second reading in this chamber, and it may be something that they might have wanted to adopt. Is this considered by him to be a normal practice?

**Senator Austin:** Honourable senators, what I said is on the public record. It is public knowledge. It has been discussed. A member of the Conservative Party raised a question in the House of Commons with respect to this undertaking. They are the masters of their procedure, and I think it should be that way. We are the masters of our procedure.

**Hon. Lowell Murray:** Honourable senators, I want to ask the Leader of the Government in the Senate what on earth the RCMP is doing supplying two red-coated officers to a Liberal nomination meeting in Portneuf, Quebec?

**Senator Austin:** Honourable senators, this is not Question Period. This is for questions on Bill C-4.

**An Hon. Senator:** It is a good question.

**Senator Austin:** However, I will take the question as notice.

**Hon. A. Raynell Andreychuk:** Honourable senators, I am not fast enough on my feet to work that into my questions on Bill C-4.

We have an obligation to ensure that we have the best piece of legislation possible. While we have to respect the House of Commons and how they want to conduct themselves, if we believe that there is something substantially wrong or if there is something that we could substantially improve, even in the House of Commons portion of the bill, are we not obliged to either bring it to the House of Commons' attention or to act on it?

**Senator Austin:** Honourable senators, it is a very big "if." I do not happen to harbour that belief.

**Senator Andreychuk:** My supplementary is on the question of the consequential amendments. Mr. Reid came before our committee. He indicated that, due to his workload, much of which had to do with the Radwanski matter, he did not go through the bill with the kind of care that he would have liked. He put that on the record very forthrightly. He indicated that the effect of the consequential amendments would be to lessen the transparency and the access to information for the average Canadian, because of the interplay of the two offices in the House of Commons and for ministers. That certainly gave me something to consider in looking at the House of Commons portion of the bill, with which I had not preoccupied myself.

Does the Leader of the Government not think it is important that we take that into account? I know that he put on the record that he thinks it is not that consequential, but if we lessen at all the access to information to Canadians, how does this bill improve our transparency?

**Senator Austin:** Honourable senators, I do not believe there is any substantial change in the access to information. I do not refer to the legislation; I refer to the system of legislation, which includes this bill, and which is available to Canadians.

Mr. Reid made it clear that he is concerned with a much larger issue and he wanted to be able to present that issue, and that is that all parliamentary officers should be subject to his Access to Information Act. It is part of his general advocacy, and I do not blame him for it. His role is to advocate.

In this particular case, of course, we will have an entire system of information for the ministry and parliamentary secretaries under an ethics commissioner in that place. The answer I gave yesterday, I think, completely deals with Mr. Reid's questions.

**Senator Andreychuk:** Honourable senators, with respect, in fairness to Mr. Reid, he had two concerns. In reflecting on and getting good legal advice from his office on those portions of the consequential amendments, he felt they would lessen the access to information for the average Canadian. When he first came to the committee to address us, he indicated that he did not know if it was an error, because we do often pass bills and then realize there are unintended consequences, particularly when we are amending other bills. He did not know if it was intentional or not.

The Privy Council said it was intentional. It was at that point that Mr. Reid indicated that he thought, on its face, that access to information was a serious issue at this time, in this atmosphere, in the House, around ministers and around Parliaments and politicians. Access to information is a means for the public to make public office-holders accountable to average citizens, however minute those concerns may be. I will submit later in a speech that it is more than minute. He said that it was lessening what the public has today. He went on to say that, although you pointed out the Auditor General and others, there is also the Official Languages Commissioner who is subject to the Access to Information Act. Perhaps I am putting some words into his mouth now, but he said that in light of today's atmosphere, he is rethinking things, and I think we should rethink this: that access to information for all office-holders to do with the offices reporting to Parliament would be in order.

• (1450)

**Senator Austin:** Honourable senators, access to information for all those office-holders who are not members of the ministry has been unchanged by this legislation. This legislation deals with the ministry and certain designated office-holders. These office-holders are members of the executive. Those office-holders, nonetheless, as was pointed out in questioning with Mr. Reid, remained subject to reporting by the ethics commissioner in that House. I saw no issue raised by Mr. Reid save and except his general advocacy, for which, as I say, I do not blame him.

As for the rest of this exchange with Senator Andreychuk, I think we will put it down to debate, and I will await her more fulsome argument.

Honourable senators, I think it is desirable to allow the next speaker to proceed in this debate. I thank honourable senators for their questions.

**The Hon. the Speaker:** Normally I would go to the other side. Senator Bryden is rising to speak, but before he does, I will hear from Senator Kinsella.



**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I think there is an agreement on both sides that the first speaker after Senator Austin would be the critic on the bill from this side. That is Senator Oliver, who will be ready to speak on Monday. We would like to reserve for him his 45 minutes. However, not wanting to hold up the process, we are happy to yield to Senator Bryden so that the debate can continue.

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, we are agreeable to that course of action. We acknowledge that the 45 minutes is reserved for Senator Oliver on Monday, and that Senator Bryden will now speak and have the usual 15 minutes at this time.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** We will proceed as described.

**Hon. John G. Bryden:** Honourable senators, it is not my intention, nor was it my intention, to debate Senator Austin's speech. Others will do that as well as, or better than, I. My purpose today is to put before you, at this early stage of third reading, an amendment that presents what I believe is an alternative approach to that which is put forward in this bill.

However, before proceeding to do that, I should like to provide a more complete picture of the expert opinion of Professor Gélinas than was presented in Senator Austin's speech yesterday. In Senator Austin's speech yesterday, he stated:

... the Senate has a powerful sanction at its disposal. Under proposed section 20.1, the Senate can simply not deal with the resolution approving the proposed appointment. That clause, as Professor Fabien Gélinas agreed, clearly gives the Senate the last word on the appointment.

Fortunately, those were not Professor Gélinas' last words. In reviewing the transcripts from the hearings of the Rules Committee, which I attended, Professor Gélinas said, in relation to the commitment or undertaking that Senator Austin proposes to make, or has made:

The question would be: Can the commitment, or the undertaking, put on record by the government through the Leader of the Government in the Senate, amount to a constitutional convention? In my view, no, and the answer is quite clear. Convention requires precedent, and in this case we do not have it. Rather, we have a formal undertaking by the government.

A further statement is made by Professor Gélinas:

Our system is clear in that the new government would not be bound by a simple commitment of a previous government. It is a fundamental aspect of our institutions that the newly-elected government would be free to go back on things that

the previous government had said. Frankly, even if the new government were the same political party, I do not believe that the new Prime Minister would be prepared to abide by all of the commitments that were made by the previous government.

Then, on a different point, Senator Austin said to the professor:

... thank you for your evidence this morning. Let me begin by saying that, of course, the rule that no Parliament is bound by a previous Parliament applies to statute, to rules and to conventions. Would you agree?

Professor Gélinas said:

Yes, I would agree with the statement that a Parliament is not bound by a previous Parliament.

On the basis of that, Senator Austin said:

Therefore, statutes passed in previous Parliaments are not binding on the new government.

Quite clearly that is not the case. I am sure Senator Austin simply misspoke, because statutes passed in previous Parliaments are binding on the new government until such time as Parliament changes the statute.

Senator Carstairs also questioned Professor Gélinas:

Let me ask one further question. Do you realistically think that it is possible for a prime minister in the future to not accept this as a precedent? Once it has been done, is it realistic to think that a future prime minister could just simply ignore it and say, "We will not do it this way," despite what the legislation says, in terms of the consultation and the resolution, and that we will simply ignore the precedent of the previous prime minister?

**Mr. Gélinas:** Yes, I think it is possible for a future government to ignore that.

**Senator Carstairs:** Is it likely?

**Mr. Gélinas:** From past experience, yes, it is.

I then asked Professor Gélinas:

... there is reference to the final word being the approval of the appointment by resolution of the Senate.

This is a follow-up on Senator Austin's point that he made yesterday.

I submit that this is not correct that it is the last word because the only sanction is that there would be no resolution of the Senate. If that is so, then under clause 20.2(2), when there is a vacancy — and there would be a vacancy — the Governor in Council can appoint for six months. What is more, the law gives the right to reappoint.

• (1500)

Professor Gélinas answered that question.

The second question was about the last word. Who has the last word under the arrangements? I am grateful for the question because I would like to clarify that, in my view, the last word here is not with the Senate. It seems to me that it is quite possible, under the bill, for the Governor in Council to appoint someone and get the resolution passed in the Senate. In terms of political realities, the last word is actually with the government and not really the Senate. What the Senate can do is stop it. This is a negative power, not a positive power.

Honourable senators, what I would like to do is to get to the task at hand before I run out of time. I would like to move an amendment.

#### MOTION IN AMENDMENT

**Hon. John G. Bryden:** Honourable senators, I move, seconded by the Honourable Senator Sparrow:

That Bill C-4 be not now read a third time but that it be amended,

(a) on page 1, in the English version, by replacing the long title with the following:

“An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Counsellor) and other Acts in consequence”;

(b) in clause 2,

(i) on page 1, by replacing lines 8 to 27 with the following:

“**20.1** (1) Subject to subsection (2), the Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

(2) If the position of Senate Ethics Counsellor is vacant for 30 sitting days, the Senate shall, by resolution and after consultation with the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

**20.2** The Senate Ethics Counsellor shall be a member in good standing of the bar of a province or the Chambre des notaires du Québec.

**20.3** (1) The Senate Ethics Counsellor holds office during good behaviour for a term of seven years and may be removed for cause, with the consent of the leaders of all recognized parties in the Senate, by resolution of the Senate.

(2) The Senate Ethics Counsellor, on the expiration of a first or subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.”

(ii) on page 2, by deleting lines 1 to 49,

(iii) on page 3,

(A) by deleting lines 1 to 12,

(B) by replacing lines 13 to 18, with the following:

“**20.4** (1) The Senate Ethics Counsellor shall assist members of the Senate by providing confidential advice with respect to any code of conduct adopted by the Senate for its members and shall perform the duties and functions assigned to the Senate Ethics Counsellor by the Senate.”, and

(C) by replacing line 43, with the following:

“**20.5** (1) The Senate Ethics Counsellor, or any”,

(iv) on page 4, by deleting lines 16 to 24, and

(v) in the English version, by replacing the expression “Senate Ethics Officer” with the expression “Senate Ethics Counsellor” wherever it occurs;

Honourable senators, I am on page 2 of 9 of the amendment. What comes next is what draftsmen have told me is referred to as the concordance, being the part that refers to the other acts and sections to make them consistent with the amendment. With the consent of honourable senators, I will dispense with reading the other pages because they will be printed in the proceedings of today.

I asked whether it was possible for me to have circulated the amendment prior to making my speech, and I was advised by the clerk that it was better to present in the manner that I am doing now and have the officers take charge of the distribution at a proper time. Perhaps His Honour could determine whether there is consent to proceed in that fashion.

**The Hon. the Speaker:** Honourable senators, we have heard Honourable Senator Bryden in the course of presenting his amendment request leave that the concordance to the substantive amendment be taken as read on the basis that it will be distributed as part of the *Journals of the Senate* tomorrow and perhaps distributed otherwise. Is leave granted to proceed in that way, or do honourable senators wish him to read the concordance?

**Hon. Jack Austin (Leader of the Government):** Is there a precedent for taking something that needs to be a part of our record as read? In my years in the Senate, I have not known that to be the case. I have known a document to be appended to the day's proceedings, but I wonder whether there is a precedent. If there is no such precedent, I would be happy to give leave to have the entire concordance read. I am not trying to prevent the amendment from being read, but I would like us to conform to our practice.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, would it be satisfactory to the Leader of the Government if we were to agree to give leave and that this would not constitute a precedent?

**Senator Austin:** I have never heard of that kind of precedent, honourable senators. I have never heard that we could create a precedent and say it was not one.

**Hon. Anne C. Cools:** Honourable senators, I would like to thank Senator Bryden.

Our record is an oral record. Moving a motion is an oral experience, and the reporters merely report it. We have no capacity to take documents as read. It is somewhat of a burden, perhaps, for Senator Bryden. I am sure that if he were to read the entire thing, we would listen with great eagerness and support.

**The Hon. the Speaker:** To end this, I do not need to deal with the exchange on precedent, simply because I take it from Senator Cools that leave would not be granted to proceed as suggested. Accordingly, Senator Bryden should continue with his amendment.

**Senator Bryden:** It gives me a great deal of pleasure to proceed in that way. By the way, there will be a test at the end.

Your Honour, do I have to start from the beginning?

**The Hon. the Speaker:** It never rains, but it pours.

Senator Bryden, your 15 minutes have expired.

Is leave granted for the Honourable Senator Bryden to continue?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted.

• (1510)

**Senator Bryden:** Thank you. I will continue where I left off.

(v) in the English version, by replacing the expression “Senate Ethics Officer” with the expression “Senate Ethics Counsellor” wherever it occurs;

(c) in clause 4, on page 7, by replacing line 8, with the following:

“72.06 For the purposes of sections 20.4,”;

(d) in clause 6, on page 11, by replacing lines 37 and 38, with the following:

“(d) the Ethics Commissioner”;

(e) in clause 7, on page 12, by replacing lines 7 and 8, with the following:

“any committee or member of either House or the Ethics Commis-”;

(f) in clause 8, on page 12,

(i) by replacing lines 14 and 15, with the following:

“(c) with respect to the Senate, the”, and

(ii) by replacing lines 28 and 29, with the following:

“Commons, Library of Parliament and office of”;

(g) in clause 9, on page 13, by replacing the heading before line 1, with the following:

“SENATE, HOUSE OF COMMONS, LIBRARY OF PARLIAMENT AND OFFICE OF THE ETHICS COMMISSIONER”;

(h) in clause 10, on page 13,

(i) by replacing line 7, with the following:

“ment”, and

(ii) by replacing lines 14 and 15, with the following:

“Parliament or office of the Ethics Commis-”;

(i) in clause 11, on page 13, by replacing lines 21 and 22 with the following:

“brary of Parliament and office of the Ethics Com-”;

(j) in clause 12,

(i) on page 13,

(A) by replacing line 30, with the following:

“Parliament”, and

(B) by replacing line 36, with the following:

“Parliament”, and

(ii) on page 14,

(A) by replacing line 3, with the following:

“ment or”,

(B) by replacing lines 6 and 7, with the following:

“of Commons, Library of Parliament or office of the”,

(C) by replacing line 12, with the following:

“ment or”,

(D) by replacing lines 16 and 17, with the following:

“House of Commons, Library of Parliament or office of”,

(E) by replacing lines 25 and 26, with the following:

“mons, Library of Parliament or office of the Ethics”,

(F) by replacing line 33, with the following:

“ment or”, and

- (G) by replacing line 38, with the following:  
 “Parliament”;
- (k) in clause 13,  
 (i) on page 14, by replacing lines 47 and 48, with the following:  
 “Commons, Library of Parliament or office of”,  
 and  
 (ii) on page 15,  
 (A) by replacing lines 13 and 14, with the following:  
 “of Parliament or office of the Ethics Commis-”,  
 (B) by replacing lines 22 and 23, with the following:  
 “of Parliament or office of the Ethics”, and  
 (C) by replacing lines 35 and 36, with the following:  
 “ment or office of the Ethics Com-”;
- (l) in clause 14,  
 (i) on page 15, by replacing lines 43 and 44, with the following:  
 “brary of Parliament or office of the Ethics  
 Commis-”, and  
 (ii) on page 16, by replacing lines 6 and 7, with the following:  
 “Parliament or office of the Ethics Commission-  
 ”;
- (m) in clause 15,  
 (i) on page 16,  
 (A) by replacing lines 14 and 15, with the following:  
 “House of Commons, Library of Parliament or  
 office of “,  
 (B) by replacing lines 20 and 21, with the following:  
 “Library of Parliament or office of the Ethics  
 Commis-”,  
 (C) by replacing line 29, with the following:  
 “ment or”,  
 (D) by replacing lines 34 and 35, with the following:  
 “House of Commons, Library of Parliament or  
 office of”, and
- (E) by replacing lines 41 and 42, with the following:  
 “brary of Parliament or office of the Ethics  
 Commis-”, and  
 (ii) on page 17, by replacing line 1 with the following:  
 “ment or”;
- (n) in clause 16, on page 17, by replacing lines 11 and 12,  
 with the following:  
 “mons, Library of Parliament or office of the  
 Ethics”;
- (o) in clause 17, on page 17, by replacing lines 20 and 21,  
 with the following:  
 “Library of Parliament or office of the Ethics  
 Commis-”;
- (p) in clause 18, on page 17, by replacing line 30, with the  
 following:  
 “ment”;
- (q) in clause 25, on page 20, by replacing lines 26 and 27,  
 with the following:  
 “Library of Parliament or office of the”;
- (r) in clause 26, on page 20, by replacing lines 36 and 37,  
 with the following:  
 “(c.1) the office of the Ethics”;
- (s) in clause 27, on page 21, by replacing line 9, with the  
 following:  
 “Parliament”;
- (t) in clause 28, on page 21,  
 (i) by replacing lines 20 and 21, with the following:  
 “Library of Parliament or office of the Ethics  
 Commis-”, and  
 (ii) by replacing lines 28 and 29, with the following:  
 “Commons, Library of Parliament or office of  
 the”;
- (u) in clause 29, on page 22, by replacing lines 14 and 15,  
 with the following:  
 “Commons, Library of Parliament and office of  
 the Ethics”;
- (v) in clause 30, on page 22, by replacing lines 24 and 25,  
 with the following:  
 “Library of Parliament or office of the Ethics  
 Com-”;

(w) in clause 31, on page 22, by replacing line 33, with the following:

“ment”;

(x) in clause 32, on page 22, by replacing lines 38 and 39, with the following:

“of Parliament or office of the Ethics Commissioner.”;

(y) in clause 33, on page 23,

(i) by replacing line 3, with the following:

**“word “or” at the end of paragraph (b), by adding the word “or” at the end of paragraph (c) and”**, and

(ii) by replacing lines 6 to 8, with the following:

“(d) the office of the Ethics Commissioner”;

(z) in clause 34, on page 23, by replacing lines 15 to 17, with the following:

“(c.1) the office of the Ethics Commissioner”;

(z.1) in clause 36, on page 24, by replacing lines 11 and 12, with the following:

“Commons, Library of Parliament and office of the”;

(z.2) in clause 37, on page 24,

(i) by replacing line 22, with the following:

“Parliament”, and

(ii) by replacing line 31, with the following:

“ment or”;

(z.3) in clause 38, on page 25, by replacing lines 12 and 13, with the following:

“any committee or member of either House or the Ethics Commis-”;

(z.4) in clause 40,

(i) on page 28,

(A) by replacing lines 4 and 5, with the following:

“communes, à la bibliothèque du Parlement ou”;

(B) by replacing lines 17 and 18, with the following:

“ment ou au commissariat à l'éthique par”;

(C) by replacing lines 28 and 29, with the following:

“House of Commons, Library of Parliament or office of”;

(D) by replacing lines 34 and 35, with the following:

“Library of Parliament or office of the Ethics Commis-”, and

(E) by replacing line 43, with the following:

“ment or”, and

(ii) on page 29,

(A) by replacing lines 2 and 3, with the following:

“House of Commons, Library of Parliament or office of”;

(B) by replacing line 13, with the following:

“ment or”;

(C) by replacing lines 19 and 20, with the following:

“brary of Parliament or office of the Ethics Commis-”;

(D) by replacing line 26, with the following:

“ment or”, and

(E) by replacing lines 38 and 39, with the following:

“Commons, Library of Parliament or office of the Ethics”, and

(iii) on page 30,

(A) by replacing lines 5 and 6, with the following:

“Library of Parliament or office of the Ethics Commis-”;

(B) by replacing lines 20 and 21, with the following:

“Library of Parliament or the office of the”;

(C) by replacing lines 25 and 26, with the following:

“Commons, the Library of Parliament or the”;

(D) by replacing lines 36 and 37, with the following:

“Commons, the Library of Parliament or the”, and

(E) by replacing lines 42 and 43, with the following:

“Parliament or the office of the Ethics Commis-”; and

(z.5) in clause 41, on page 31,

(i) by replacing lines 23 and 24, with the following:

“Commons, Library of Parliament and office of the”, and

(ii) by replacing lines 43 and 44, with the following:

“Commons, Library of Parliament and office of the”.

• (1520)

**The Hon. the Speaker:** Honourable senators, this is an important piece of our business today. I request your leave for me to have this motion reproduced and distributed before I put it to the house. I am told that will take between 10 and 15 minutes.

Honourable senators, may I have leave to suspend the sitting for that period of time so that photocopies of the amendment can be made in both French and English and then be distributed so that you will have them on your desks when I put the motion?

**Hon. Senators:** Agreed.

The sitting of the Senate was suspended.

• (1540)

The sitting of the Senate was resumed.

**The Hon. the Speaker:** Honourable senators, I will now seek to put the amendment moved by Senator Bryden.

[*Translation*]

It is moved by the Honourable Senator Bryden, seconded by the Honourable Senator Cools:

That Bill C-4 be not now read a third time, but that it be amended

(a) on page —

**Hon. Senators:** Dispense.

[*English*]

**The Hon. the Speaker:** Is it agreed that I dispense with the reading of the motion in amendment, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** The Honourable Senator Bryden has the floor. I know a senator wishes to see if he will take a question.

**Senator Cools:** Honourable senators, I am trying to assist the Speaker. Before we go into questions, because it was such a long amendment and because it took so much time to read, we should allow Senator Bryden an opportunity to explain it.

[ Senator Bryden ]

**Senator Bryden:** Honourable senators, when the sitting was suspended, I was speaking and I had had my time extended by unanimous consent. Is that not where we are?

**Senator Cools:** That is where we are.

**Senator Bryden:** Honourable senators, it is my intention to go through the first part of the amendment, for want of a better term the substance sections of the amendment. I will attempt to explain what I am doing and why this amendment is different from both the bill we have before us and the proposal made by the Leader of the Government in the Senate.

First, the title has been changed. It is called, “An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Counsellor).” I did not choose the words “ethics counsellor” simply because I thought it was a nicer name. There are significant differences between the connotation of the word “counsellor” and the word “officer.”

In my opinion, the word “counsellor” is more appropriate to the issues that anyone who helps us in this place would be dealing with than that of an officer. The word “officer” is sort of like the word “commissioner.” Officers often carry badges. Officers do investigations. Officers lay complaints. In some instances, depending upon where, the term “officer” implies enforcement. “Officer” implies an office.

Senator Austin has said that Bill C-4 creates a framework for the structure, for the institution. I know I am quoting him when I say that. This bill creates a framework. It does not appoint officers. It does not make the rules. It creates a framework for the institution. That framework, put together in the manner that is set out in Bill C-4, is an institution that is outside the Senate as we know it. It is an institution that is independent, in the same manner as the Auditor General. The Auditor General is not inside Parliament. She reports to Parliament but she operates her office totally outside and independent of it.

The purpose of using the word “counsellor” is to indicate that what we are looking for in this approach is to have this chamber be able to preserve within its framework the ability to have an ethics counsellor who can assist senators in following the codes, in doing all of the things that will be demanded of us as senators and to determine what type of rules we will have. It will be an assisting role, a counselling role. It will not be a separate, independent body that is apart from the Senate.

• (1550)

I do not want to use any names, but a number of senators raised this issue almost every time they spoke, namely, that when the amendment was introduced last fall, it gave the Senate the right, on whim, to hire and fire our ethics officer. On page 1 of the bill, clause 2 would be amended with proposed clause 20.1(1), which states:

Subject to subsection (2), the Senate shall, by resolution and with the consent of the leaders of all recognized leaders of parties in the Senate, appoint a Senate Ethics Counsellor.

The first subclause, therefore, gives the opportunity for all recognized parties to consent to the person who would be appointed. That appointment is then made by resolution after consent and not after consultation.

Subclause (2) is necessary because, being an old labour lawyer, there must be a tiebreaker. We need to be able to stop people ragging the puck or not being able to make a decision. Subclause (2) states:

If the position of Senate Ethics Counsellor is vacant for 30 sitting days —

On average the Senate sits three days a week, which would translate into about 10 weeks. If we are unable to obtain agreement so that we have a consent situation in making our appointment:

— the Senate shall, by resolution and after consultation with the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

That subclause says that if we cannot get one that we can agree upon unanimously, then we do not do it within the 10-week period. By ordinary resolution, after consulting with the parties — and usually it will be the government that will put forward a motion — this person will be the ethics counsellor and the motion will be treated like any other motion before the Senate. That could be done.

Clause 20.2 of the amendment states:

The Senate Ethics Counsellor shall be a member in good standing of the bar of a province or the Chambre des notaires du Québec.

The reason for that is that our counsellor will be someone with whom we will want to be absolutely open and frank in relation, for example, to our assets, to our positions on any boards, to our involvement in university boards of regents, or whatever it is. The reason for the use of lawyers or members of the bar is that this puts senators and the members of the bar in a position such that any communication between us is a matter of solicitor-client privilege. Even if that communication were to occur outside this chamber, it would still involve solicitor-client privilege, although it would not necessarily have immunity if it were done within.

If there is a concern, then there will be no question about whether there is a constitutional challenge under the existing bill where someone might challenge the right of the Senate or the Governor in Council to grant immunity to the ethics counsellor. The Senate's immunity and the immunity of senators exist now. That is why it is there. I am not attempting to make work for lawyers.

I want to note as well that being a “member of the bar” would include judges and retired judges. There is a large pool of very qualified people who would be available to act as confidential counsellors to our Senate and to our senators.

Clause 20.3(1) of the amendment goes to the other end of the criticism that was made about the amendment we passed last November, which said simply that the Senate shall appoint an ethics officer. Clause 20.3(1) states:

The Senate Ethics Counsellor holds office during good behaviour for a term of seven years and may be removed for cause, with the consent of the leaders of all recognized parties in the Senate, by resolution of the Senate.

The Senate will not be able to fire the ethics counsellor on a whim. The ethics counsellor is appointed for a fixed term and can be removed for cause, but only with the consent of the leaders of all recognized parties in the Senate, and then only by resolution. This is the other side of the issue that was raised by Senator Lynch-Staunton yesterday. We were attempting to make it very difficult to remove our officer. We would require the concurrence of all parties and then a resolution, in addition to the fact that there would be just cause.

Clause 20.3(2) of the amendment states:

The Senate Ethics Counsellor, on the expiration of a first or subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.

That is not dissimilar from the term that is indicated in the bill.

Clause 20.4(1) of the amendment states:

The Senate Ethics Counsellor shall assist members of the Senate by providing confidential advice with respect to any code of conduct adopted by the Senate for its members and shall perform the duties and functions assigned to the Senate Ethics Counsellor by the Senate....

That is what was anticipated by the current bill. A committee will probably set out the terms of conduct and what the ethics counsellor will do.

Remember, honourable senators, that this ethics counsellor is part of the Senate. He or she is not outside our house. That person is part of our house and is protected by the provisions that are in this bill. I say “bill” because this is a bill. I have moved an amendment to a bill and, if adopted, it will become part of the legislation, not an undertaking or something else. It provides the opportunity for the Senate to explore the range of possibilities of the system, including the registry that applies to the upper chamber in Westminster, where members of the House of Lords are required to register and divulge their interests. It is all there. That is what they are required to do. The ethics counsellor would be able to assist with that, check it, keep it up to date and discuss it.

There is a way of being able to objectively select an ethics counsellor. Alberta set a precedent by striking a special committee. It indicates a job description, takes applications and then deals with it. This precedent allows us the complete freedom, as is proposed in the bill, to determine the terms and conditions of the ethics counsellor we hire.

One of the fundamental differences is that to have this counsellor in the Senate as described here, we do not need another bureaucracy. We have the office. He or she does not need to have the status of a deputy minister. He does not need clerks and the like. These positions are created and — to use the words of another witness before the Rules Committee, Professor Sutherland — those roles as officers of Parliament take on lives of their own. When the Auditor General's office was first put in place, it was not foreseen that it would grow in size and range of investigation that it has taken unto itself.

• (1600)

That sort of thing is not unique. I want to make another quick reference. I know I am probably trying your patience — but that would not be the first time. I appreciate the indulgence of honourable senators.

In the *Canadian Parliamentary Review*, in the spring of 2004, there is an article by David E. Smith, entitled "A Question of Trust: Parliamentary Democracy in Canada Today." He says this about officers of Parliament:

Officers of Parliament are not a new phenomenon; Norman wrote extensively about two of them, the Auditor General and the Chief Electoral Officer. The difference between then and now is that where once seen as servants of Parliament, they are evolving into its masters. This is a claim, I realize, with potential for controversy. Nonetheless, what is clear is that the officers are in the process of becoming the integrity branch of government, what Bruce Ackerman of Yale University has labelled its fourth branch.

Honourable senators, that sums up, pretty well, my position on where we are headed under Bill C-4.

The ethics counsellor will accomplish what needs to be done, objectively and helpfully, for this autonomous and independent chamber, which has been that way for 137 years, without creating a new creature that, once set on its feet and started to run, there is some question as to where it will go, as there was with some of the others.

If we are the place that holds up this ethics bill, then the press will say unkind things about us. People will be upset with us. However, if they are not upset with us about this, it will be about something else.

However, not everyone, not every press, believes that what we did last fall, for example, or what this amendment would do is a bad thing.

I should like to quote briefly from an editorial that appeared last November in the *Ottawa Citizen*, right after our debate over Bill C-34. The headline reads: "Sober second thinkers: Recent criticism of the Senate's delay of legislation is unfair." I quote:

The Senate is the frequent object of derision by those who think it an anachronism. We respectfully disagree. At the time of Confederation, the Senate was intended to protect minorities against any majority tyranny of the House of Commons, and look after the interests of the provinces. By and large, it does its job well.

Take the latest shellacking the Senate has received for blocking three pieces of legislation: Bill C-34, to establish separate ethics offices for the Senate and Commons; Bill C-10B to amend the Criminal Code to increase fines and jail sentences for people convicted of cruelty to animals; and Bill C-49 to move up the creation of seven new federal ridings to April 1, 2004. With the Commons having prorogued this week, these bills die. The senators are accused of being self-serving by defying both Prime Minister Jean Chrétien, who wanted the ethics offices set up before he steps down, and soon-to-be prime minister Paul Martin, who wanted the new ridings in time for a spring election.

Did any of the critics read the legislation in question? Take Bill C-34, for example....

In this regard, the Senate is not being unreasonable in amending the bill to require that it, and not the Prime Minister's Office, be responsible for appointing an ethics officer. There's also a constitutional principle involved: Crown officials should not have oversight authority on institutions of Parliament, because that intrudes on the hard-won tradition of parliamentary independence.

In my point of view, there is never a good time for a member of the party that is in government to disagree, ultimately, with a position of his party. Obviously, I find myself in that position today. It is probably most inappropriate at this time, because of all the election rumours and so on. As someone said, there are wars and rumours of wars.

The last time we were under the gun, in a sense, was with the clarity bill. Every time we get into this situation, the rights of the Senate seem to get diminished by just a little bit. In the clarity bill, we were no longer part of the decision-making process of Parliament but we became consultants to the House of Commons who made the decision.

I ultimately supported that bill because I bought the argument that, if the bill were not passed just then, it would go back into the cauldron that is the House of Commons and it would bubble around there for such a long time that we could very well lose the country because we did not have that bill and it would be our fault. As it turns out, significant people are now saying in Quebec — the place we were trying to protect by the clarity bill — that the clarity bill is useless. For that, we diminished our legislative powers.

In this instance, I have the reputation — I have been beaten over the head with it for the last week. I am asked by new senators, "How do you handle this party loyalty, loyalty to the team, and loyalty to your conscience?" I have a general rule — though sometimes people forget my little bit of a preamble: My rule is that except on issues of significant principle — for example, capital punishment or abortion — except for instances like that, within the system, in caucus, in trying to twist the arm of ministers, the term that has been used is "You fight like hell." Fight within the system to try to improve it, to change what you



think is wrong. However, ultimately, if a well-considered majority opinion is put forward, then normally it is not my role to disagree with the well-considered opinion of the majority. I will have done my best and, for the most part, that is the way it works — except on issues of fundamental principle.

• (1610)

The defence of this institution and its rights, its independence and its autonomy is a matter of fundamental principle to me. If I am not prepared to stand up for the institution of which I am a part, and to which I feel I have made a significant contribution, and through which I believe I have made a significant contribution to my country, to my province, to my region and, I hope, to others, then what am I prepared to stand up for?

Is now the time? I am reminded of a saying, and I cannot remember who said it: If not us, then who? If not now, then when?

We will all make our best decision, using our judgment and our conscience. I want to quote to you from a senator, Senator Jane Cordy. This may hurt my tough reputation, because it comes from *Homemakers* magazine, which my wife subscribes to. I do not read it on a regular basis. I am sure Senator Cordy did not think, when she said this, that it would end up being quoted on the floor of the Senate. I wish she were here. In this magazine there are little things that they do; they have their claim to fame, their big break, their best-kept secret; and at the bottom is “Words of Wisdom.” This is what Senator Cordy said: “When you make decisions, whether personal or political, you always have to be able to look yourself in the mirror and say, ‘I have done the right thing.’”

If we all can do that, when this is over, then I will be very happy.

**Hon. Gérald-A. Beaudoin:** Honourable senators, I thank Senator Bryden for a very good explanation of his amendment.

At first he said that we either follow the convention route or we follow the legislation route. By proposing an amendment, he obviously selected the legislation route. It is a choice. The convention route, of course, is also valuable, but in law a convention may be overturned and may be even set aside without any legislation at all.

If we follow the legislation route that he is suggesting — and this perhaps answers the question of my colleague Senator Comeau — we know that legislation in one Parliament is binding on the next Parliament, unless the next Parliament legislates to amend the precedent legislation. It is possible, of course. We have often done that. However, that is one thing. If it is only a convention, we need a precedent, et cetera, and the remedy is not legislative. The remedy is purely a political question.

I should like to know from the honourable senator, now that he is proposing an amendment, whether he has set aside the proposition of Senator Austin and is selecting another way to arrive at his objective?

**Senator Bryden:** The answer is yes. Despite the Herculean effort that Senator Austin has put forth, to use my Scottish mother’s expression, to make a silk purse out of a sow’s ear, the fact is that without a legislative amendment the flaws that are in Bill C-4 will remain in Bill C-4. Attempts to fix the flaws by undertakings, by trying to establish some sort of pattern, will not work. In every instance, if someone wishes to ignore the undertakings, that is all they will have to do. They do not need to do anything else. In order to change a statute, it has to go through many systems. It has to go through the House of Commons and it has to go through us.

If there is a conflict between a regulation, a rule, or even a convention and the clear words of a statute, the clear words of the statute trump every time.

**Senator Beaudoin:** Honourable senators, in our jurisprudence, the courts interpret legislation. However, the courts may recognize a convention only, and it is not binding in the sense that if it is violated for one reason or another, the remedy is legislative. It is political. It is not a legal remedy. Do we agree on this?

**Senator Bryden:** Yes, we do. I want to make one other comment. It is quite clear from the expert testimony that we received that there is an example of creating a constitutional convention with one situation. However, the only examples that exist are in situations where commonwealths get their independence from the mother country. It is all at the constitutional level. The evidence could not have been clearer that what is being proposed here by Senator Austin is not a convention. Indeed, it was indicated clearly that in order for something to become a precedent, I think I used the expression, “one swallow does not make a summer;” if one undertaking were to go on for seven, eight, nine or ten Parliaments, it might then be more difficult to change it. However, it would not at any time be impossible to pass a statute to overcome it.

**Hon. David P. Smith:** Honourable senators, I have not had a chance to go through the amendment clause by clause, but is it fair for me to conclude that all the clauses deal with the issue of how the appointment is made?

**Senator Bryden:** Honourable senators, they do not. That is exactly what the first clause deals with. The appointment will be made by resolution, and if that does not work then it is done by regular resolution. That section deals with the appointment.

**Senator Smith:** Let us stay with that for a second. The honourable senator said in his speech that the government has the last word on the appointment. Would it be fair to characterize the procedure as set out in this bill as similar to a double veto in that no one can assume the office until two things have happened: first, that a resolution of a majority of the Senate has approved of the person, and second, that the Governor in Council has appointed the person?

Is it not fair to say that that is a double veto?

• (1620)

I am not asking Senator Cools; I am asking Senator Bryden.

**Senator Bryden:** The statute says that the Governor in Council shall appoint a senate ethics officer. That is what the statute says. Senator Austin says in his undertaking, if I have it right this time, that no such appointment will be made until the Senate, through him, recommends the name of the person to be appointed. That is what I said last time. What the Honourable Senator Smith said is correct. That is how that is done.

**Senator Smith:** Given the fact that the bill says “after approval of the appointment by resolution of the Senate,” you could literally argue that that is the last word because it says “after.” I am not suggesting that either has the last word, because both events must occur for it to happen, and that is the whole concept of a double veto. Do you not think that that is a fair characterization?

**Senator Bryden:** No, I do not, nor did our experts, which is why I went through in some detail the actual evidence that was given. They said that the last word lies with the government. Having a negative veto is not a very terrific sanction because all it does is allow you to refuse to do something. You cannot actively do something.

The other point is that if you simply exercise the negative veto and not agree to appoint somebody, just refuse to do it, then the position remains vacant. I do not know how long the government would be prepared to leave it vacant — a week, six months, six years — but under the bill, if the position of ethics officer is vacant, the Governor in Council, i.e., the Prime Minister’s office, has the right to appoint for six months. Let us remember that every time we say “Governor in Council,” we are really talking about the Prime Minister’s office. The bill also is clear that they have the right to reappoint, and there is no indication whatsoever that they can only exercise the six-month appointment once. There is nothing to prevent them reappointing that position and again reappointing that position, presumably until they get their own way.

**Senator Smith:** If that is your judgment on what constitutes the last word, we have to agree to disagree, but I would put to you that it is a double veto.

You also said that the government can ram the appointment through the Senate. I think that was the verb that was used. Would you not agree that the culture here is fundamentally different from the other place? The clearest evidence we have that the government cannot just ram it through this place is the fact that your amendment last November carried, notwithstanding the fact that the government did want to see the bill in its present form passed. The whip was on, so to speak, for lack of a better word. I think 21 members of the government side of the house voted to support your amendment. Is that not pretty clear evidence that the culture of this place is such that if people feel strongly and want to exercise the prerogatives that the bill would

give them, in fact they would veto someone with whom they were not happy? Is that not that a fair characterization?

**Senator Bryden:** No. The fact is that after long consideration, we had the bill before us in draft form for a year. We debated it passionately and thoroughly, and the result that occurred was the result that the honourable senator has mentioned. Let me finish, if I may. The honourable senator said that he would have brief questions; I did not agree to brief answers.

If we were so successful in doing that, why are we now reconsidering it? I know the technical reason is that we brought the bill forward, and we had to bring it forward out of the House of Commons because that is the way it was left there the last time. However, the government has had since the middle of November last year to take into account the will of the Senate, as expressed last November. They had the right to introduce a bill that took account of that will. They chose not to do that, and so we have the same situation back here again.

Maybe this time, Senator Smith — maybe this time, the government side will be able to defeat the amendment. If that is the way we play, I would like to go back to the time when we used to flip quarters. If you flipped and called heads and the big guy you were flipping against got tails, he would say, “It is two out of three.” Why not do two out of three? If you win this time, then bring it back and we will do the rubber.

**Senator Smith:** In the honourable senator’s amendment, he requires that someone be a member of the bar in order to be eligible. Would that mean that when Senator Graham retires in a month or so, he would be ineligible, and likewise other former distinguished senators such as Senators Stewart or Wilson or MacEachen, could not do it? Former Governors General such as Massey, Vanier, Sauvé, Schreyer and LeBlanc were not lawyers, so they would be ineligible. Ethical parliamentarians such as Stanley Knolls or Tommy Douglas, were they alive and well and up to it, would be ineligible. Would the honourable senator throw them out and say, “Only lawyers need apply”?

I happen to be a lawyer, but I do not think it is such sacred ground upon which we tread that only we can come up with decisions that really have more to do with common sense and a sense of fairness and justice than anything else.

**Senator Bryden:** I thought I had given that. The reason for putting the provision in is that the word “counsellor” is operative. This individual is to be a counsellor to the Senate and a counsellor to individual senators. The only reason for saying in the legislation that that counsellor should be a member of the bar is to be able to preserve the solicitor-client privilege between senators and their counsellor, which would protect them and their families, and all of these things in relation to what they divulge and what they discuss with their counsellor.

Indeed, I do not know that that is the only way to do it. It was the only way I could think of doing it in a short paragraph. If the honourable senator wishes to make an amendment to that part which would include other than lawyers, then I am sure the Senate would be prepared to consider it.

[ Senator Smith ]

**Senator Smith:** I can think of someone, but I am not about to volunteer their name.

The honourable senator has said that doing this by resolution does not necessarily mean that we can hire and fire on a whim, and act unilaterally and arbitrarily. I thought he was referring to only dismissing with the consent of the leaders of the other parties. I do not see that in here.

**Senator Bryden:** It is in 20.3(1):

The Senate Ethics Counsellor holds office during good behaviour for a term of seven years and may be removed for cause, with the consent of the leaders of all recognized parties in the Senate, by resolution of the Senate.

**Senator Smith:** It does not say that.

• (1630)

**Senator Bryden:** What I just read into the record is what I have just moved in amendment. I apologize, Senator Smith. I did not proofread what was being photocopied. What I said, Senator Smith, is this:

20.3(1) The Senate Ethics Counsellor holds office during good behaviour for a term of seven years and may be removed for cause, with the consent of the leaders of all recognized parties in the Senate, by resolution of the Senate.

**Senator Smith:** I would have to look at the version the honourable senator is referring to. I will let other senators have a go.

**Hon. Gerald J. Comeau:** Honourable senators, for the record, proposed new clause 20.3(1) says, in French:

[*Translation*]

[...] avec le consentement des chefs des partis reconnus au Sénat.

So, French being an official language ...

[*English*]

... this makes it official. At least one of the two versions is correct.

My question is on the subject of clause 20.1(1), relative to 20.1(2). Basically, clause 20.1(1) refers to the consent of the leaders of all recognized parties.

Clause 20.1(2) says:

If the position of Senate Ethics Counsellor is vacant for 30 sitting days, the Senate shall, by resolution and after consultation with the leaders...

If under clause 20.1(1) a name were presented to our leader, say, on day 29, but the recommendation was found to be unacceptable to this side, would not clause 20.1(2) kick in on day 30, whereby the process would revert to one of consultation rather than consent? In other words, would that nullify what the honourable senator is trying to accomplish, which is to get the consent of both sides? It would seem to me that, on day 30, we would revert back to the intent of the bill as it stands now, that it would be strictly a government appointment.

**Senator Bryden:** The answer to that is, yes, but for a reason. There are almost always trade-offs. The attempt is made in asking that the first process that is followed is to get the consent of the leaders of the recognized parties. There are 30 sitting days, which means that there are probably about 10 weeks to do that, a little more because of the breaks.

Presumably, within that period of time, the effort would be made. What we are really trying to do is get a consensus over that period of time as to who that person should be.

However, as Senator Lynch-Staunton said yesterday, if we cannot get the consent of a leader of, say, a small, registered party, then what we have here is a fall-back position. We must face the public, face the Senate, with a credible proposition. That is the reason for 20.1(2). The process would revert to a regular motion, after consultation, to prevent a roadblock.

The government would probably introduce the motion. The person's name would be introduced on the motion. The matter would be debated and voted on in the normal fashion. That would be the process by which the person would be chosen.

However, we would first be given the opportunity in this place to consent to who our ethics officer would be.

Some of the literature indicates that unless that type of concurrence is built into an organization, it is very difficult to have these types of positions work well for everyone inside. This would be a first test for us.

**Hon. Lowell Murray:** Honourable senators, I had not intended to ask a question on this item, but now that I am back on the Order Paper, perhaps the honourable senator would explain his clause 20.2, which reads:

The Senate Ethics Counsellor shall be a member in good standing of the bar of a province or the *Chambre des notaires du Québec*.

My friend explained why, in his opinion, someone with legal training was needed for the position of Senate ethics counsellor for the Senate and for honourable senators. Has it been explained to the honourable senator what the training of a professional notary in Quebec is that would qualify him or her in the same sense that a member of the bar of Quebec would be qualified?

**Senator Bryden:** It is my understanding that, for the purposes that I really am most interested in here — which is the ability of the counsellor to be able to give advice and receive information from his or her client — the solicitor-client privilege that we refer to as solicitor-client privilege also applies in Quebec under the terminology that I have used there. If I am wrong, I stand to be corrected, and we would replace that reference with whatever the correct one is.

**Senator Murray:** I have no way of knowing whether my friend is right or wrong. I presume there is a professional privilege that obtains between a notary and a client, but is that all there is to it?

The argument that my friend made earlier was that the legal training of a member of the bar was necessary, since the person would be a counsellor.

I defer to friends from Quebec to tell us whether a notary is equally qualified to be a counsellor on matters of conflict of interest. Perhaps an honourable senator from Quebec might explain that to me.

**Senator Bryden:** I can answer, as far as I can. The words were chosen basically with the knowledge and the recommendation of our legal advisers in the Senate that, if that term were used, it would provide the equivalent solicitor-client privilege of other members of the bar.

I want to be clear. Perhaps I did not make this clear when responding to questions from Senator Smith. The issue is not what a great person certain people are. For example, it is not an issue of whether, say, Senator Al Graham would be able to give us good advice. The issue is that we want to be in a position that the exchange between senators and their counsellor is privileged information.

An individual may be a fine professor, or a great carpenter, but his or her exchange with us would not be a privileged communication, in the sense that the courts or anyone else might recognize it.

**Senator Beaudoin:** Honourable senators, if I may answer the question for Quebec.

**Senator LeBreton:** You cannot.

**Senator Beaudoin:** It is privilege.

**Hon. Nick G. Sibbeston:** Honourable senators, would Senator Bryden expound on the issue of solicitor-client privilege? I understand that, in the normal course of business, when a person engages a solicitor, there is a relation struck up that involves solicitor-client privilege.

• (1640)

If we were to hire a lawyer who would be an employee of the Senate, would the solicitor-client relationship automatically come into effect? Does this relationship come into existence the moment you enter a lawyer's office? What is so magical or sacrosanct about this relationship?

**Senator Bryden:** There are two parts to the answer. One is that the terms of employment of the counsellor and his role will be specified by the appropriate committee, as provided for in the bill. We cannot do it all on the floor of this chamber.

Speaking off the top of my head, I will say that one of the principal functions of this person will be to act as counsellor to individual senators in their compliance with the code of conduct. That would be absolutely sufficient to create solicitor-client privilege; that is, what you would tell me, if I were the counsellor, is between you and me. I would be in violation of my responsibility at the bar, as a lawyer, if I divulged that information to anyone without your permission, and vice versa.

**Senator Sibbeston:** Honourable senators, I appreciate that a solicitor-client relationship is in respect to legal matters, in respect to the law, as it were. In this case, since the counsellor is dealing foremost with matters of ethics, does that not change the situation somewhat? Would we necessarily have to strike a contractual relationship?

I wonder what may need to be done in order to enter a relationship that meets the test of a solicitor-client relationship. Although the ethics councillor will be a lawyer, the solicitor-client relationship may not automatically apply because he will be engaged primarily as an ethics counsellor.

Has Senator Bryden thought about whether there may be provision for the special relationship with an ethics counsellor that he is seeking?

**Senator Bryden:** It might indeed be helpful to do that. The person will be called an ethics counsellor, but under the code the counsellor will be giving advice on our holdings in publicly owned corporations in Canada, on serving on boards of public corporations and on significant amounts of funds earned outside. It is not ethics in the sense of living a good life. We are talking about conflicts of interest between the way we function as senators and our lives outside the Senate.

We should certainly look at the House of Lords model at Westminster. They are required to register the organizations of which they are a part in order to determine whether there is an opportunity for conflict of interest. They must disclose the source of their principal income. They are not paid to be members of the House of Lords, so they are allowed to earn income in other ways. Their disclosure is extremely significant.

I was required to talk to an ethics counsellor when I was Deputy Minister of Justice in New Brunswick. I had to fill out forms indicating whether there were things in my life that would put me in conflict with the work I was doing. I did not know whether certain of the activities in which I participated fit into the categories listed. Therefore, I spoke to the judge and if, in his opinion and mine, they did, they were listed. However, if I raised something that did not fit into the categories, the fact that I had raised it did not cause it to become part of the public domain because that was a conversation between him and me.

I return to the point that it is difficult to include it all in less than a page. I attempted to create a situation in which there is not only one option. Without creating an entirely new bureaucracy, this provision provides an option for the Senate to do the right thing with regard to the desire that we all uphold the ethics of parliamentarians.

We do not have the same issues as people in the other place — cabinet ministers and so on. We do not make contracts; we do not negotiate bank loans; we do not influence the awarding of contracts and we do not look at bids. One of our main functions is to review legislation. We represent minorities and regional interests. We conduct studies and make recommendations. Someone said that we do not make decisions, although we do make decisions on legislation.

The real question that we will have to address, I believe, although the code of conduct is currently under construction, is whether there is anything in our personal lives — our holdings; the way we make our income; our connections, be they remote connections through family or whatever — that would impede our ability to act in the best interests of Canada and Canadians in the performance of our legislative duty. If there is, we do not necessarily have to quit being senators. The counsellor may advise that we cannot sit on a particular committee or chair a particular committee. Indeed, we may have to make a choice if we own a big chunk of something.

Those are the issues we must face. The Senate is not the House of Commons, as was pointed out by Senator Smith, and we are not the executive. We are not cabinet; we are not cabinet ministers; we are not office-holders. However, the ethics officer part of Bill C-4 was grafted from a bill designed to look after what occurs in the executive in the House of Commons.

**The Hon. the Speaker:** Honourable senators, I know other senators wish to speak to Bill C-4. Senator Bryden could modify his motion, if necessary, with unanimous consent. I would like to suggest that he carefully compare the signed copy of his motion in English and in French with what he read into the record and that, while he is doing so, we proceed with other senators who I know wish to speak to Bill C-4.

Is that suggestion acceptable, honourable senators? We could then return to Senator Bryden, although perhaps not for long, as he has been on his feet for 95 minutes and must be getting short of breath.

If we could proceed that way, Senator Bryden could look at his motion in amendment, and I will recognize him again at an appropriate time if he wishes to seek leave to vary what he has submitted as his motion.

**Hon. Senators:** Agreed.

• (1650)

**Senator Bryden:** Is what Your Honour said to make the paper concur with what I said?

**The Hon. the Speaker:** Yes.

**Senator Bryden:** I would be perfectly happy to stop, if there is agreement to do that. I would then carry that through in the proper way, and then I would be done.

Honourable senators can tell I am getting a little hoarse after 95 minutes. I guess I am showing my age.

Might I do that as opposed to coming back later, Your Honour?

**The Hon. the Speaker:** Does the honourable senator want me to suspend the proceedings while he does that?

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, I understand Senator Bryden wants the debate to go on while he corrects the text to his satisfaction. He would then consider the amendment tabled and we would be able to continue with the debate.

**Senator Cools:** Honourable senators, I noticed the discrepancy. The fact of the matter is that Senator Bryden read what he wanted into the record. What he said verbally is what he wanted. Where it is slightly different is on some of the copies that were put aside. There is no real need to vary the motion. No leave is needed. All that is needed is to correct for the record the document that was circulated.

**The Hon. the Speaker:** Honourable senators, that is what I had intended to suggest, and it was misinterpreted. I had intended to suggest precisely what Senator Bryden got up to say, which was reinterpreted by Senator Rompkey.

I believe that Senator Bryden and I are *ad idem*.

I will now recognize Senator Gill.

**Senator Bryden:** If I go to see someone else, I can adjust the paper in accordance with what is on the record.

**The Hon. the Speaker:** Honourable senators, let us start from the beginning.

What I am suggesting to honourable senators is that during an exchange that Senator Bryden had with Senator Smith, it came out that it is possible that the signed version of the motion — and I was reading from the French version and not the English version — differs from what Senator Bryden read into the record. Senator Smith drew the attention of Senator Bryden to something in the motion, and the two disagreed as to what it was.

I have reason to believe, from information I have obtained from the Table, that I know what has happened here. What I am suggesting is that Senator Bryden can take some time while other honourable senators are debating Bill C-4 to examine what it is that he signed and gave me, in order to ensure that it is what he wanted submitted as the motion in amendment. I will see Senator Bryden later, even though he has spoken, to give him an opportunity to request leave to modify this motion in amendment to something else that conforms to what it is that he wants this to be, if it is not already what he wants it to be. Is that clear?

**Senator Bryden:** Yes, that is fine.

[*Translation*]

**Hon. Aurélien Gill:** Honourable senators, I too would like to make my humble contribution to this debate. We are all following very closely the political affairs of this country. We are citizens and we are senators.

[*English*]

Sometimes these events create situations that are new and completely different from those that existed before. When that happens, it is not only proper but also imperative that we adapt rapidly to the new reality.

[*Translation*]

This is now the year 2004, not 2003; and no one could have predicted the intensity of this debate with respect to the government's integrity. We are faced with what has become an urgent duty: the need to energetically promote transparency in government affairs and to recognize the absolute necessity to review our processes from the points of view of rigour, ethics, clarity and justice. The questions raised cannot remain unanswered, without follow-up and without consequences.

[*English*]

In 2003, along with most of my honourable colleagues, I voted for an amendment to the ethics bill. At the time, there were good and valid reasons for opposing the bill with an amendment. I do not need to remind honourable senators that the situation has changed.

[*Translation*]

It is fundamental, in my opinion, for the senators to be in a position to react promptly, indeed to change their minds, about this new situation. The situation absolutely requires it. It would have been wrong for us to close our eyes to a reality that has become a cause of major concern for all Canadians. More than ever, rigour and integrity need to be affirmed, assured and provided with a framework.

The Senate's efforts to improve this bill, well intentioned as they might be, would surely be misinterpreted by the public and perceived as a kind of obstruction.

[ The Hon. the Speaker ]

[*English*]

For these reasons, I do not hesitate to alter the position I took in 2003. I am now in support of the ethics bill and believe that we must support it without reservation for the public good.

[*Translation*]

It is, moreover, our role to get what is essential out of all the background noise. It is not always apparent or obvious. When it comes to ethics, what is essential has become very apparent. It seems to me that there must be no humming and hawing about this. The Senate, I am convinced, must clearly and firmly state its support for the government's efforts to provide itself immediately with an ethics officer and a code of ethics. This is a necessity, given the present atmosphere of distrust and discontent among the public toward our institution.

**Hon. Lise Bacon:** Honourable senators, I would like to address Bill C-4, which provides for the appointment of a Senate ethics officer. Last fall, I supported an amendment to then Bill C-34. My decision was based on a number of factors, but was primarily dictated by two main issues. I was convinced that the Senate's independence from the executive branch deserved particular attention and that the immunity from civil and criminal proceedings enjoyed by the ethics officer would put him above the law and give him a power that was too broad. The comments made in this regard by some of my colleagues were very eloquent and they played a critical role in convincing me that the bill should be amended. However, after thinking about it for a long time, after consulting several of my colleagues, and after hearing the formal commitments made by our leader in the Senate, I must say that I have reconsidered my initial position.

I want to be clear. The conclusion that I have reached is based on my reflection, my research and my consultations. It is not related to the political situation. A key element in my reflection was the widespread concern in the country about ethical principles and values. In these times, when the need for integrity and ethics is apparent, Canadians are hoping more than ever before that their leaders will display greater transparency and integrity. This explains the great attention paid by the government to these issues and the numerous commitments that it is making to ensure the implementation of measures that will promote ethics in government. The government wants to act quickly and put integrity at the forefront.

The Senate is also affected by this sentiment. This bill is providing us with a great opportunity to show that we senators care about ethics and that we are sensitive to this issue.

[*English*]

In the first vote I was uncomfortable with the concept of civil and criminal immunity for actions taken by the officer in good faith. I felt that very broad, exceptional protection put the officer above the law and unassailable where a good faith defence was successfully made.

I felt senators would be adversely affected, being unable to defend themselves properly. I have been convinced by one of my colleague's arguments and comments.

• (1700)

Closer analysis of the bill's provisions, more specifically proposed subsection 20.6(2), shows that federal statutes contain many such provisions — 93 in 54 separate acts. In this regard, the provinces have also introduced an ethics officer and have made provision for limiting the liability of the officer.

It must be stated that the officer's immunity is not absolute — far from it. If the ethics officer does not act in good faith or does not demonstrate the necessary discipline and ability, he or she may be removed for cause by the Governor in Council, on address of the Senate. We therefore have a mechanism to address cases of apparent abuse and bad faith.

[*Translation*]

Moreover, the Senate code of ethics will certainly include in its provisions the means to sanction the officer if he does not perform his duties properly or if he exceeds his authority.

We must also remember that people nominated for similar duties are subject to close scrutiny of their professional qualifications and personal biases before being officially appointed. The reasons behind granting limited immunity to people in such positions reflect the desire to protect any confidential information the officer may have, for example. That makes it possible to avoid any disclosures in a legal setting. Also, the officer cannot be constrained to testify and cannot be prosecuted with respect to his duties. He is protected in order to avoid his being subject to any form of sanction or reprisals from the outside.

After much thought, I have decided that it is reasonable to protect the officer in this way, remembering that if good faith does not prevail, the Senate can quite properly sanction the officer. On the question of the privileges of senators raised by one colleague, I think nothing should be cast permanently in stone. Although section 18 of the Constitution Act, 1867 says that the Senate cannot enjoy more privileges than those existing in the British Parliament at the time of Confederation, I am of the opinion that Parliament has always had the right and power to legislate the granting of a privilege. Absolutely nothing prevents Parliament from amending or clarifying the privileges of one of its chambers. I believe we are not prevented from conferring the privileges and immunities of the Senate and senators on the ethics officer.

I would now like to speak to the process for appointing this officer, which was the subject of the amendment put forward last fall. The fundamental principle of the independence of the Senate with respect to the executive branch or the House of Commons is undeniable in our parliamentary system. It must be scrupulously respected under all circumstances, and that is why the

appointment procedure outlined in the bill — according to which the appointment would be made by the Governor in Council — initially raised some questions for me. The Prime Minister would have the power to appoint someone, but to what extent would the Senate, and the senators, be involved in the actual appointment process?

Proposed section 20.1 provides that:

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

[*English*]

Not only is the Prime Minister required to conduct the consultations provided for, but also he has an obligation to submit his choice for preliminary Senate approval. This is not in any way a unilateral appointment that does not involve our house. The fears expressed by some over the Prime Minister's power to appoint without a sufficient degree of consultation and approval of the Senate appears to have no basis.

Close examination of proposed section 20.1 reveals that it does not state from where the proposed name of the future officer should come, the Senate or the Governor in Council. Our leader in the Senate has made a formal commitment on behalf of the government. Before communicating the name to the Senate, he will unofficially consult the leaders of the recognized parties in the Senate, as well as other senators.

That commitment, although not legislative in nature, guarantees that the spirit of proposed section 20.1 will be complied with in future and will definitely set a precedent from which it will be difficult for any future government to deviate. That means the Governor-in-Council would take the Senate's interests into account in ensuring that the officer is perceived as independent and that he or she is completely independent in order to perform the duties of such a position.

[*Translation*]

I see no reason not to support the proposed appointment process. I do not believe that the independence and historical prerogatives of the Senate are threatened by the adoption of such measures. Under our parliamentary tradition, the Governor in Council appoints a number of officers of the Senate, a process that is fully recognized. It is a matter of balancing responsibilities, starting with the Governor General's prerogative to appoint the Speaker of the Senate, in accordance with section 34 of our Constitution.

Under the Public Service Employment Act, the Governor in Council appoints the Clerk of the Senate. Tradition and customs have resulted in the appointment of the Usher of the Black Rod by the Governor-in-Council; this appointment is not the result of legislation but rather a constitutional convention.

Consequently, it is neither new nor unusual for officers of the Senate to be appointed by the executive branch, starting with our own Speaker, as obviously the Speaker of the House is elected, and senators themselves are appointed by the executive without any prior consultation. As you know, numerous people in Canada oppose the way senators are appointed. Accordingly, we must be rigorous and objective in our analysis of the process by which our future ethics officer will be appointed. If we subscribe unhesitatingly to the appointment process when it comes to officers of Parliament, such as the Auditor General, the Information Commissioner and the Privacy Commissioner, it is hard to show that, when it comes to the Senate, there is a need to proceed otherwise.

[English]

The degree to which party leaders and senators are consulted, the weight of precedent and the proof that our parliamentary system does not condemn this approach are all reasons in favour of the appointment process as proposed in the bill. If we comply with the proposed procedure on the face of it, the person appointed would be invested with the degree of approval and trust that such an office entails. He or she would also enjoy security of tenure so that no outside pressure can be exercised and dictated to the officer's conduct. This is essential for any person holding such office.

It would only be possible to remove the officer for valid reasons. Proposed subsection 20.2(1) provides that the Senate ethics officer may only be removed for cause and may only be removed by the Governor-in-Council on address by the Senate. The officer will be protected from any arbitrary action and changing moods of the Senate and government.

[Translation]

No one would be able to accuse the ethics officer of being in the pay of the Senate or the Prime Minister. His independence and the perception of independence are thus strengthened. The public, as well as the senators, should have confidence in the performance of the ethics officer. Having stated my arguments, I do not think that the independence of the Senate is at stake here. Nor do I believe that the Senate ethics officer will be omnipotent or above the law, or fail to act in good faith.

I certainly do not think, in these difficult times, when too many Canadians are wondering whether they can trust their elected representatives, that the Senate can afford to pass up the opportunity we have, with Bill C-4, to put our concerns about ethics and integrity at the forefront. As senators, we have always been, and must continue to be, sensitive to issues having to do with ethics. We must demonstrate this clearly by supporting Bill C-4.

Today I am being very realistic when I say that I will support the creation of the position of a Senate ethics officer. I hesitated for a long time, reflected and took a closer look at the provisions before making my final decision. There is no longer any doubt in

[ Senator Bacon ]

my mind that I am doing the right thing. My decision is in keeping with my deepest moral convictions and consistent with my view of the Senate and Canadian parliamentarism.

As I said earlier in my speech, I am acting in good faith and after personal reflection on the best course to take in the general interest of our institution and our country.

• (1710)

**Hon. John Lynch-Staunton (Leader of the Opposition):** Would Senator Bacon entertain a question?

**Senator Bacon:** One question.

**Senator Lynch-Staunton:** You support the formula proposed by Senator Austin whereby each of the caucuses would confirm a double majority for a vote to take place in the Senate. This interesting formula would only apply for the duration of this legislature. I would prefer it to be truly useful and permanent, and that it be part of the bill that is now before us.

Would the honourable senator be prepared to support an amendment that would give a permanent character to the formula proposed by Senator Austin, regardless of the duration of a legislature or of the date when a choice must be made?

**Senator Bacon:** Regardless of which party is in office, I do not think it would be able to change what will be done here, whether there is an amendment or not.

**Senator Lynch-Staunton:** That is not the question. Would the honourable senator be prepared to support an amendment whereby Senator Austin's formula, which we have been debating for two days, would be included in the bill on a permanent basis?

**Senator Bacon:** I do not think it is necessary to have the formula in the legislation now to be able to implement it.

[English]

**Senator Lynch-Staunton:** It is against the Constitution? That is interesting.

**The Hon. the Speaker:** Senator Bryden, are you ready with a request for leave?

**Senator Bryden:** Yes, I am ready. I have the corrected copy.

Honourable senators, I request leave to distribute a new and accurate English version of the motion in amendment. It complies with the motion that I made orally. Honourable senators can know it is the correct version because it is signed on the front and it is dated 3/25/04. I would ask leave to have this distributed.

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

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted.



I ask the pages to distribute that copy and substitute it for the English copy that was first distributed.

**Hon. Shirley Maheu:** Honourable senators, I rise today to speak on Bill C-4 only because of what has gone on in the past two or three weeks and because this is an important initiative — providing ethics personnel for both Houses of Parliament.

Pardon me, honourable senators, when I say that I am not rushing to support this legislation. Parliamentarians and others have concerns about how this initiative will proceed in practice. We do recognize, however, the need for rules that address issues of conflict of interest, inside knowledge and the inappropriate furthering of private interests.

I have read with very great interest the numerous technical arguments and concerns that have been presented from both sides of this chamber. I would like to look for a minute at something that affects me so strongly that I must talk about it.

Canada's Auditor General functions in the same ballpark as that of the ethics personnel proposed in this legislation. All have responsibility as guardians of the integrity of the system. All assume roles to fix things that need fixing. All have an enormous challenge to work in good faith with due diligence and balance. As we deal with this legislation, we should pause to reflect on some of the outcomes of the current brouhaha about the federal government's sponsorship program and the role of the Auditor General in driving the agenda reviewing this program. Those are implications when legislating rules for ethics personnel.

Some Canadians have used this controversy to trot out old perceptions that governing is different in Quebec compared to the rest of Canada. A short while ago, a political scientist at the University of Calgary said that the sponsorship program shows that politics in Quebec is sleazy and that this sleaze is part of what makes Quebec a distinct society. I invite all honourable senators to condemn what this so-called Canadian intellectual has said.

**Hon. Senators:** Hear, hear!

**Senator Maheu:** Professor Barry Cooper is his name. He suggests that Quebec's distinct society is about sleaze. What a silly, damaging, unhelpful and uncharitable thing to say. It seems that the Auditor General's report has served as an excuse for some to revisit all the old clichés and thinly disguised bigotry that have characterized a certain level of relations between Quebec and the rest of Canada since the beginning of our time. Let us send a clear message that the Auditor General's report is not an excuse for a debate about Quebec's place in Canada. Let there be no report from future parliamentary ethics personnel that is used as a similar excuse to vilify Quebec and Quebecers.

Another outcome of the current report of the Auditor General on the sponsorship program is the impression that a trial of certain unnamed individuals has already taken place and has been concluded in secret. Those accused and tried yet-to-be-named individuals are already guilty and are about to be thrown into eternal purgatory.

Is this what we can expect as well from parliamentary ethics personnel? We should hope that the practical outcome of the ethics reporting system would not follow that unfortunate course. A trial and a parliamentary committee — disguised as a hearing, of course — is what we inevitably get when the political purpose of the investigation process is to score cheap political points, rather than to preserve the dignity and the integrity of the system.

Ethics personnel should not be about provoking and originating trials but, rather, approving and supporting due process. Where is the due process so far in the issues we have been looking at in the past weeks? Where is the principle of the right to presumption of innocence? Frankly, a well-crafted regime whereby ethics personnel are father-confessors is, by far, a more preferable approach than the pursuit of a Canadian 21st-century version of the Inquisition wherein the sponsorship program staff were being burned at the stake by the Auditor General while their names were kept secret. Witch hunts, leading to the gratuitous destruction of reputations, aided and abetted by parliamentary committees, auditors general and perhaps by ethics personnel should not be a part of the parliamentary system. These are activities that deter Canadians from choosing roles in the public life of our nation. How can anyone praise the American system?

• (1720)

Honourable senators might like to be reminded that our congressional neighbours to the south spent, recently, the magnificent sum of \$40 million pursuing, investigating, sifting, inspecting, researching, examining, analyzing, studying and ultimately reporting on the very soft and quasi-pornographic dalliances of one Bill Clinton, sometime President of the United States — \$40 million was spent on this little inquiry. I am not certain that any of our Canadian politicians are so exciting that we would actually spend \$40 million looking underneath their sheets, so to speak. Perhaps that could not happen here.

But wait a minute! Was there not an inquiry into the activities of parliamentarians and a certain Gerda Munsinger some time ago? It was surely a case of much money, time and energy being spent for the entertainment of Canadians. I believe that most Canadians thought this was a great waste of money.

You will recall that Gerda Munsinger was allegedly being bonked, and at the same time, in Montreal by two former Diefenbaker cabinet ministers, one from Ontario and one from Quebec.

**Senator Lynch-Staunton:** Show a little respect. One is not even buried yet.

**Senator Maheu:** Gerda had had, apparently, similar liaisons with behind-the-Iron-Curtain interests, bonking on both sides of the Atlantic. What will our new ethics watchdogs have to say about yet-to-be-revealed dalliances of parliamentarians, particularly if it is about those from Quebec or those simply doing it in Quebec, especially about those doing it in Montreal, the most exciting city in Canada?

Sometimes I think Canadians — the ones very far from Quebec in particular — are a bit envious of all the fun that is supposed to be happening in Montreal and across la belle province.

The fact is that auditors general and ethics personnel need to be subject to some controls. These people are not, and must never be, above the law. Was the Auditor General out of control in the way in which she trashed the sponsorship program so publicly? Afterwards, the Auditor General left Canadians salivating, for a few short days, about the identities of those involved in the program. Then she refused, suddenly, to reveal any names. This seemed like a cat-and-mouse game. Can someone tell me if this pattern of the Auditor General's reporting of information and subsequent withholding of information was in the public interest?

Students of history can readily compare this to England's notorious Star Chamber, wherein today the media is used for purposes of torture rather than one of those 400-year-old machines of physical torture. Is this the same kind of apparently out-of-control behaviour we can expect to see generated by ethics personnel? Auditors general and ethics personnel should not consider themselves to be above the law.

Another issue is the concern about regulating financial relations between spouses and the appropriate reporting of such relations. Much has been said about this already. We are treading new territory here. Will the spousal issue adversely impact on the summoning of new senators?

Given that private members in both Houses of Parliament are just that — private members — why should the rules governing ministers be the same as the rules governing private members? Is it not important that we guard the maintenance of these distinctions?

I am here as a supporter of the government, not as a member of the government, as is everyone else on this side except for our leader. We have different roles to play here, roles that have been tested over and over again in public life. Do we change this relationship at our peril? Perhaps.

In summary, honourable senators, I say once again, ethics personnel and auditors general should not be above the law. At the same time, our goal as senators should be that ethics personnel and auditors general have nothing to report.

I repeat what I said at the beginning of my remarks: Honourable senators, I am not rushing to support this legislation. However, with the hope that we can do something about it once the period we are facing has been passed, I will support this present bill and my leader and my government, but I hope that we can make the necessary changes.

**Hon. Senators:** Hear, hear!

**Senator Rompkey:** I move the adjournment of the debate.

**The Hon. the Speaker:** We had one other honourable senator wishing to speak — no, that honourable senator has changed her mind.

[ Senator Maheu ]

**Senator Rompkey:** I would like to move adjournment of the debate in the name of the Honourable Senator Smith.

On motion of Senator Rompkey, for Senator Smith, debate adjourned.

[*Translation*]

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

### THIRD READING

**Hon. Pierrette Ringuette** moved the third reading of Bill C-18, respecting equalization and authorizing the Minister of Finance to make certain payments related to health.

She said: Honourable senators, I believe we are aware of the need for this extension in order to allow the provinces to benefit starting next week from the usual transfer payment to which they are entitled, and also to receive the \$2 billion dollars designated for health care.

**Hon. Lowell Murray:** Honourable senators, I have no objections or comments on the substance of the bill, but I do have several comments on equalization.

[*English*]

This equalization issue has moved more quickly than some of us — including, perhaps, the provinces — had expected. In February, there was a meeting of federal-provincial finance ministers, in the course of which Mr. Goodale, the federal minister, tabled a proposal, you might call it, for the renewed equalization program that would take us from fiscal 2004-05 for the next five years. As I think I pointed out in Question Period one day, it was a confidential document, but it was no sooner on the table than a number of provinces were in front of the television cameras denouncing it, followed closely by the minister defending it. That was the last we heard or saw of the issue until fairly recently.

Meanwhile, this bill, Bill C-18, received second reading in the Senate and went to our Standing Senate Committee on National Finance. We had no difficulty with the extension. We heard from the parliamentary secretary to the Minister of Finance, the Honourable John McKay, last Tuesday morning, and then from officials of the Finance Department; and I think the committee, as usual, did due diligence with that bill.

At the same time, we decided that in view of the state of federal-provincial fiscal relations generally, and the considerable controversy about the situation regarding equalization, our committee ought to revisit the general subject of equalization.

Honourable senators will recall that two years ago we presented a report with a number of recommendations. Lo and behold, at least one of our major recommendations was accepted and implemented by the Chrétien government. Others have not been so readily accepted.

In any case, we felt that we should revisit the issue. Therefore, we began to lay plans to do that, beginning next week and in the period following Easter, assuming we are all back here.

• (1730)

Meanwhile, somewhat to my surprise, in the budget speech or paper, Mr. Goodale indicated strongly that the document he had tabled for the provincial ministers had undergone a few minor changes and that he would be introducing legislation for the renewed equalization program imminently.

I do not think that should stop our committee from doing what it had intended to do, which is to revisit the general equalization issue and to make our recommendations. I confirm that beginning on Wednesday at 6:15 p.m., we will hear from Professor Harvey Lazar, Director of the Institute of Intergovernmental Relations at Queen's University. He does not pretend to be an expert on equalization in a technical sense, but he has a great deal of expertise on federal-provincial fiscal relations. He was in charge of the team that did the federal-provincial fiscal work for the Romanow commission. He will be followed that same evening by the Deputy Minister of Finance from Nova Scotia. Other provinces are lining up to testify, and we plan to have a number of experts to present a good balanced approach on these issues beginning April 20 and 21, assuming we are back after Easter.

I simply wanted to make that statement for the information of honourable senators. Meanwhile, Bill C-18 can pass and extend the present equalization program for 12 months, it being understood that the new one brought in will be retroactive to April 1, 2004.

**Senator Lynch-Staunton:** Is there a minister's letter on that?

**Senator Murray:** It is in the bill.

**Hon. Gerald J. Comeau:** Honourable senators, I have a couple of comments to make on the bill. Committee members asked the parliamentary secretary about the retroactive element of Bill C-18. Once the new equalization bill is passed, it could retroactively amend the extension of Bill C-18. That was somewhat worrisome for provinces that are trying to prepare their budgets for the upcoming year. They will have to base it on Bill C-18, not knowing how the new equalization bill will impact on what they are now being told they will receive under Bill C-18. I raised that item but was unable to obtain a commitment from the government on whether those retroactive adjustments would be strictly on the positive side; so they could, in fact, be on the negative side. The provinces will have to recognize that in their budget-making process.

**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 third time and passed.

[*Translation*]

## PARLIAMENT OF CANADA ACT

### BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

**Hon. Yves Morin** moved second reading of Bill C-24, to amend the Parliament of Canada Act.

He said: Honourable senators, I have the honour to present Bill C-24, to amend the Parliament of Canada Act. This legislation will improve the medical plan coverage of retired members of Parliament.

[*English*]

The bill would allow parliamentarians with at least six years of service and who retire between the ages of 50 and 55 to receive medical plan coverage on the same basis as parliamentarians who receive a parliamentary pension. The bill was passed in the other place with all-party support.

Honourable senators and members of the other place receive coverage under the Public Service Health Care Plan, the Public Service Dental Care Plan and the Public Service Management Insurance Plan established by the Treasury Board. Retired parliamentarians who receive a pension could continue their coverage just like retired public servants in receipt of a pension.

Prior to changes to parliamentary pensions in 1995, all parliamentarians who contributed to the pension plan for at least six years were eligible for an immediate pension upon retirement, regardless of age. They would all receive benefit plan coverage on retirement, regardless of age.

After Parliament passed changes to the parliamentary pension plan in 1995, parliamentarians elected after 1995 could only receive a pension at age 55. These parliamentarians could receive benefit plan coverage only after age 55.

I would note that public servants may retire as early as age 50 and receive a reduced pension and continue their benefit plan coverage if they pay their premiums. However, there is a gap for former parliamentarians elected to the other place or appointed to the Senate after 1995 who are between 50 and 55. These parliamentarians are not eligible for benefit plan coverage until they receive a pension at age 55. Bill C-24 addresses this gap by allowing parliamentarians with at least six years of service and who retire between the ages of 50 and 55 to be eligible to pay the necessary premiums for continued coverage under these plans.

In 2001, Parliament agreed to a disability allowance for parliamentarians aged 65 and over who resign because of disability. This responded to the 1998 report of the Standing Committee on Privileges, Standing Rules and Orders. Since 2001, it has been brought to the government's attention that the authority for medical plan coverage for parliamentarians over 55 is unclear and that legislation should clarify this situation. The bill provides authorization for parliamentarians over 65 who receive a disability allowance to continue their participation in benefit plans.

Bill C-24 would come into force on January 1, 2001, as is the case with other changes to parliamentary compensation made in 2001. This would also ensure that one former parliamentarian over 65 who is in receipt of disability allowance would have the necessary authority for medical plan coverage.

[*Translation*]

That, honourable senators, is the main thrust of a bill that will markedly improve parliamentarians' benefit package. I trust it will meet with your support.

On motion of Senator Lynch-Staunton, debate adjourned.

[*English*]

#### APPROPRIATION BILL NO. 4, 2003-04

##### BILL TO AMEND—SECOND READING

**Hon. Joseph A. Day** moved second reading of Bill C-26, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004.

He said: Honourable senators, this bill is based on the Supplementary Estimates (B), 2003-04.

• (1740)

Honourable senators will have received the Supplementary Estimates (B) and, I am sure, have studied those estimates as your committee has done. The Standing Senate Committee on National Finance looked at these estimates with your direction. The results of the study are in the committee's third report, which was adopted on March 11, 2004.

Honourable senators, in summary, the Supplementary Estimates (B), which were tabled in this Senate on February 19, deal with the conclusion of this fiscal year and any additional approval of funding that the government requires to conclude this fiscal year. The amount of funding that is requested in Supplementary Estimates (B) and is requested in this bill, which is reflective of those supplementary estimates, is \$8.1 billion, of which \$1.9 billion is required to be voted. The balance of \$6.2 billion is an increase in projected statutory spending from amounts forecasted in the original Main Estimates filed a year ago.

Honourable senators, the \$6.2 billion is not required to be voted on but is rather given in the supplementary estimates and is referred to here for knowledge purposes only. We have already passed statutes that authorize those expenditures. In effect, this bill requests approval for \$1.9 billion in voted expenditures. The important point is that these expenditures were provided for within the planned spending set out by the Minister of Finance in his February 2003 Budget and in his November 2003 Economic and Fiscal Update.

Honourable senators, I would urge your support of this bill at second reading.

[ Senator Morin ]

**The Hon. the Speaker:** As I see no honourable senator rising, 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.

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

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

#### THE ESTIMATES, 2004-05

##### INTERIM REPORT OF NATIONAL FINANCE COMMITTEE ON MAIN ESTIMATES ADOPTED

The Senate proceeded to consideration of the sixth report (first interim) of the Standing Senate Committee on National Finance (2004-05 Estimates) presented in the Senate on March 23, 2004.

**Hon. Lowell Murray** moved the adoption of the report.

He said: Honourable senators, I will not keep you long, as I will try to kill at least two birds with one stone in addressing this report. The report is before us and the transcripts of our meetings are available if honourable senators are really keen to follow them.

We, the Standing Senate Committee on National Finance, undertook our study of the Main Estimates for 2004-05 on March 9 and 10. On March 9, we heard from Treasury Board officials and on March 10 from the minister himself, the President of the Treasury Board, Mr. Alcock, and his officials.

In reading the report, I especially draw the attention of honourable senators to the narrative concerning the restructuring within the government that began with the swearing in of the Martin government on December 12. In particular, we had quite a discussion about that with Mr. Alcock. There is one element of it that I want to flag for honourable senators and it concerns the comptroller general. The government has decided to restore the office of comptroller general of Canada and to place them in every department and agency of government. So far, so good.

Our committee has taken quite an interest in this general subject of comptrollership for some time, when our good and much missed friend Senator Bolduc was with us. He spoke frequently about the value of having comptrollers in each department who reported to a comptroller general for the entire government and were able to — I do not want to say “blow the whistle” — flash an orange light when activities that were taking place or about to take place in departments may not have been completely kosher. As Senator Bolduc used to explain it, this regime obtains in the Government of Quebec, and he was a long-time senior civil servant there. He told us that it worked very well.

When Mr. Alcock was before our committee, we asked him about this. In particular, we asked whether the comptroller in the various departments would be reporting to the comptroller general. In other words, although located in a particular department, we wondered if the comptrollers would serve a master other than the deputy minister, the deputy head of that department or agency.

Mr. Alcock, if one reads between the lines of his responses, indicated that while there are arguments on both sides and they were trying to strike a balance, it was obvious to those of us who have been around for a while that there was some tension in the system and obviously some argument going on in the system as to whether the comptroller in the department should report to the deputy minister or to the comptroller general of Canada.

On budget night, I was at home watching television and saw Mr. Alcock being interviewed on CBC by Mr. Don Newman, who posed exactly that question, because Mr. Alcock had used the example of the comptroller function as being one of the big improvements that was being brought to bear in the restructuring of the government. Mr. Newman asked him whether the comptroller in the department would be reporting to the comptroller general. Mr. Alcock indicated very conclusively that the issue had been settled. No, the comptroller in the department will be reporting to the deputy minister but will have a secondary reporting relationship to the comptroller general of Canada.

I think that is a mistake. The government will regret it. Why go to all that trouble to have another officer reporting internally? I do not want to open up or re-open the debate about the sponsorship business, but if senators will recall what happened in the Department of Public Works and Government Services, the then deputy minister, Mr. Ranald Quail, by his own testimony at the Public Accounts Committee of the House the other day, indicated he simply stepped aside. He stepped aside so that whatever could transpire between a lower level public servant and the minister, and who knows who else, could be allowed to transpire unimpeded. If there had been a comptroller in that department reporting to the deputy minister, what good would it have done? It is much better to have a comptroller who reports to a comptroller general. I think it is in the interests of the government to have that arrangement, and I am more than a little disappointed that, in the argument between those who wanted a better system of comptrollership and those who wanted to maintain the culture of the system, the system obviously won out.

• (1750)

Honourable senators, what I am going to say now could be as easily said when Bill C-27 — which is the interim supply bill for the new fiscal year — comes before us. However, I will say it now and remain silent, you will be happy to hear, when the interim supply bill comes.

The estimates that we were looking at in the committee, the so-called Main Estimates for 2004-05, are, as I concluded and

said, a first draft. These Main Estimates will be replaced some time before the end of June by a revised set of Main Estimates. This is highly unusual, to put it mildly. The explanation is this: “Well, restructuring is taking place among departments and agencies, and so forth; therefore, to reflect that restructuring, we will bring in a revised set of Main Estimates.”

At the same time, honourable senators, we do not have before us, as we have had every year, Part III of the estimates, the Reports on Plans and Priorities (RPP). They are nowhere to be found. We asked about them. “Well, there is no point bringing forward departmental plans and priorities, given that restructuring is taking place. The departmental plans and priorities will have to reflect that restructuring.” When will we see them? “Well, May, June, sometime.” Not quite “aux calendes grecques,” but in the spring.

If an election is held in the spring, we will have an election in which there is only a first draft of the Main Estimates and no departmental plans and priorities on which to judge what is behind these expenditures. If an election is not held, the new Main Estimates will be presented, let us say, some time in June. Meanwhile, because of the bizarre set of rules governing supply in the House of Commons, these Main Estimates, this first draft, will be deemed to have been adopted by the various committees, whether the committees have opened the book on them or not. Hence, the supply cycle will be completed.

Meanwhile, in Bill C-27, which our friend is lusting to present as we speak — is lusting to defend, and I want to hear this — they are asking for supply until the end of December of \$50 billion, as the Deputy Leader of the Opposition points out.

This is truly unique. In looking back at election years, as far back as the 1960s, it has never happened — except once, in 1997, when the opposition over there must have been asleep at the switch — that they asked for supply for nine twelfths of the year at the beginning of the fiscal year. What makes this truly unique is that we are being asked to vote supply until the end of December on the basis of a first draft of the estimates and no departmental plans and priorities.

It places the Senate in a somewhat awkward position, but I cannot help but reflect, which I will do for a minute or two, on the role of the House of Commons again. Honourable senators have heard me on this point before.

There they are over there, trying to get a little piece of the executive prerogative. They want to vet appointments to boards and commissions; they want to have their say about the Supreme Court; they want to be able to draft legislation. Meanwhile, the central role of the Commons, the central power they have — the power of the purse — has been gone for more than 35 years. All this other stuff — they must realize that the executive is just co-opting them. The executive can keep them busy forever looking at nominations to the National Parole Board, or whatever it is, and they will not have done their job.

My message to them is this: Get back the power of the purse and you will have struck the biggest blow, not just for fiscal conservatism or fiscal prudence, but the biggest blow for parliamentary democracy that has been struck in 35 years.

**Hon. Joseph A. Day:** Honourable senators will understand why those of us who serve on the National Finance Committee under the very able leadership of Senator Murray enjoy and covet the opportunity to so serve, having just heard the comments from Senator Murray.

We have the report, honourable senators, which I believe fairly reflects the discussion that took place within our committee. I would urge support of that report.

**The Hon. the Speaker:** I see no other senator rising. Are honourable senators ready for the question?

**Hon. Senators:** Question!

**The Hon. the Speaker:** It was moved by the Honourable Senator Murray, seconded by the Honourable Senator LeBreton, that this report be adopted now.

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

Motion agreed to and report adopted.

#### APPROPRIATION BILL NO. 1, 2004-05

##### BILL TO AMEND—SECOND READING

**Hon. Joseph A. Day** moved second reading of Bill C-27, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2005.

He said: Honourable senators, as we have just seen with the previous bill, in the normal process what happens in the Senate is somewhat different from the other place in how we deal with these supply bills. Normally, what would happen is that we would receive, as in this instance, the Main Estimates, and the National Finance Committee would study those Main Estimates and come forward with a report, which in fact we have just adopted. Therefore, we have followed the procedure up to this time.

Typically, we would then use that report as a form of a pre-study and therefore not go into committee with the bill on supply. However, in this particular instance, it has been agreed between the leadership on both sides that we would in fact go to committee on this bill. Following second reading, it would be my proposal to ask honourable senators to refer this bill to committee. The committee is prepared to deal with the matter on Tuesday next at its normal time.

The reason for this change in our normal procedure relates precisely to the points just raised by the chairman of our committee, Senator Murray. Typically, the first supply bill that we get with respect to the Main Estimates is an interim supply bill

for three twelfths of the year. In this particular instance, the supply bill when it came was asking for nine twelfths of the year. Therefore, we would like to ask some questions in relation to that particular issue. That is why we will be asking that this matter be referred to committee.

• (1800)

At this stage at second reading, this is an interim supply for 2004-05, based on the Main Estimates, which have been studied. The total Main Estimates contain \$183 billion in budgetary expenditures, which is included in the planned spending laid out by the Minister of Finance in his February 2003 budget and his November —

**The Hon. the Speaker:** I am sorry to interrupt, Senator Day, but it is six o'clock.

**The Hon. Bill Rompkey (Deputy Leader of the Government):** I think, if you were to ask the chamber, Your Honour, you would get an agreement not to see the clock.

**The Hon. the Speaker:** Honourable senators, is it agreed that we not see the clock?

**Hon. Senators:** Agreed.

**Senator Day:** Thank you, honourable senators.

Of the total amount that is outlined in the Main Estimates, \$65 billion is appropriated or amounts that we must vote on, and the balance is statutory and already approved under different statutes. Of that \$65 billion, Appropriation Bill No. 1, which we are dealing with today, is asking for approval to spend \$50.1 billion.

Honourable senators, I would ask for your support on this supply bill at second reading.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to participate in the debate on this bill at second reading. I would begin my remarks by observing that even when it is used on a bill, the idea of pre-study is that we study the subject-matter of a bill that is being examined in the other place with the objective of having our views taken into consideration, through our report, by the House committee before it concludes its work. The analogy comparing the work that is done by the National Finance Committee in its report to the pre-study process is really not accurate.

It has been mentioned by Senator Day and Senator Murray that the situation this year is a little bit different. We are being asked to vote interim supply of \$50 billion, sufficient to last the government, not just as usual until the end of June, but rather, until the end of December, based on what is essentially an interim set of Main Estimates. Beyond the Main Estimates tabled last month and the Supplementary Estimates that will follow later this year, the government plans to table a second set of Main Estimates late in the spring, reflecting the government's reorganization and any new spending announced that flows from the budget of earlier this week.

The traditional Blue Book is but a stopgap measure, meeting a requirement under the rules of the other place that they be tabled by the end of February. However, no one told Parliament when the Main Estimates were tabled on February 24 that it was an interim document. The President of the Treasury Board simply told the other place, "Mr. Speaker, I have a copy of the Main Estimates to be laid at the table, and I have copies for the appropriate critics and leaders of the opposition parties in the House." My colleague Senator Rompkey in this place made a similar statement, telling us, "Honourable senators, I have the honour to table the 2004-05 Estimates, Part I and Part II of the government expenditure plan and Main Estimates."

Honourable senators, the government chose to announce that there would be two sets of Main Estimates this year, not through Parliament, not through a minister rising in his or her place, but through a press release. The President of the Treasury Board was questioned about this when he appeared before the National Finance Committee of the Senate on March 10, telling Senator Lynch-Staunton that, "I was simply informed that I could not make a statement. That was why there was no statement. I got a formal set of instructions: Stand, read this, put it down on the table, stand, read that, put it down on the table, and walk away." It is astonishing that the minister, an experienced parliamentarian, would simply accept someone telling him that he, as a minister of the Crown, could not make a statement. Every day in the other place, the Speaker calls for statements by ministers. There is an appropriate time that he could have done so. Does the Prime Minister's office silence ministers in their parliamentary duties, one might ask? Who gave this advice, and why was it accepted?

Honourable senators, the previous day, March 9, during the committee's initial meeting on the Main Estimates, our colleague Senator Murray had asked the Treasury Board officials if there was any precedent for this occurrence. Aside from a case eons ago where estimates had been re-tabled following a change of government, the answer, honourable senators, was no.

This is not the only affront to Parliament this year. Reports on Plans and Priorities, or the Part IIIs, as has been mentioned, will not be tabled until the end of May. Part III provides Parliament with detailed information on the planned spending and expected revenues of each department, board and agency of the government. They are the documents through which the government not only informs Parliament of its detailed spending plans but justifies its requests for supply. Normally, we get these towards the end of March. Indeed, according to a November 5 memo sent from the Treasury Board to Reports on Plans and Priorities coordinators in the various other government departments, the game plan last fall was to table them on March 25. Then, on February 6, a new memo went out giving a revised tabling date of May 25. Moreover, information on the new departments will not follow until the fall. Subsequently, we will have the machinery of government legislation.

This might be convenient for the government. If an election is called, Canadians will not know the full details of the government's spending plans. If an election is not called,

committees in the other place will examine the estimates without the benefit of the government's full expenditure plans until almost the date on which they will be deemed to have been reported back to the House. The government has chosen to sit on the information that Parliament and Canadians need to hold the government accountable until it is too late to be of any use.

What is the justification, for example, for not telling Parliament whether the \$100 million allocated to the Canadian firearms registry in the Main Estimates is the full amount or just another down payment? The Part IIIs would give us total planned spending this year, including funds to be voted through the supplementary estimates. This is important for the simple reason that there has yet to be a single fiscal year where the gun registry has lived within the money voted through the Main Estimates.

What is the justification for not now providing an updated accounting of the EI fund and its surplus, as we typically would receive in the Part III for Human Resources Development Canada? Last year, Finance Minister John Manley said that the EI premium for 2004 would be just the amount needed for the program to break even. As long as we do not have updated numbers, we cannot tell if the government is or is not still adding to the more than \$40 billion it has already fleeced from Canadian workers.

Honourable senators, votes in a supply bill typically provide departments with authority to spend the revenue that they receive from the various charges and fees. Where is the detailed breakdown of expected revenue from cost recovery charges that would normally be detailed in the Part IIIs? For example, how much will the government collect from airport leases this year, from aviation inspection revenues, or from short-line rail inspection? We do not have the Part IIIs for the transportation department, so therefore we do not know.

We are told that the need for revised Main Estimates and the delayed Reports on Plans and Priorities are all due to the massive government reorganization announced by the Prime Minister last December. Where is the legislation to create these new departments? Where is the machinery of government legislation? We have been sitting here for several weeks with a very thin government legislative agenda, and there is no justification for the machinery of government legislation not to have been brought forward. The fact is that the Department of Human Resources Development Canada, for example, continues to exist in law until such time as Parliament says that it does not. Its people and programs are still voted their funding under that name. For that matter, why does the government not at least table the Reports on Plans and Priorities for those departments that are not undergoing a massive reorganization?

• (1810)

Honourable senators, prior to the 1980s, there was just one book for the Main Estimates. There was no Part I, II or III. The Part IIIs, the Reports on Plans and Priorities, were introduced in the early 1980s. At that time, they were called departmental expenditure plans and were tabled at the end of February along with the Part I expenditure plan and the Part II Main Estimates.

Along the way, the February tabling date was extended to March, so that the government departments would have a few weeks to incorporate changes from what was then typically a February budget. This was a tradeoff. Parliament got more complete information, a few weeks after the Main Estimates, but with plenty of time for proper committee study before supply was voted, in June. This year, we are being promised complete information far too late for it to be of much use in the supply process.

Honourable senators, after the Part IIIs became available for all departments, much of the information formerly available in the Main Estimates was dropped in the Part IIs to avoid duplication. For example, in the Main Estimates that Parliament received in the years prior to the mid 1980s, we would typically be given the details of every major capital project. Thus, senators and members of the other place could look at the 1983 Main Estimates for the fisheries department and know that the government now planned to spend \$2.7 million on harbours development at Sandy Cove, in eastern of Nova Scotia, compared to the previously estimated \$2.3 million cost for this project. The problem is that you cannot do that today unless you have the Part IIIs, and we do not have the Part IIIs.

Honourable senators, I could go on, but given the lateness of the hour, I will simply conclude. The proponent of the bill has indicated that the bill ought to go to the National Finance Committee. I would hope that the National Finance Committee would meet on this bill forthwith to hear from witnesses such as the Secretary of the Treasury Board, Mr. Judd, or perhaps even the Deputy Minister of Finance, Mr. Lynch.

**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?

**Hon. Lowell Murray:** Honourable senators, if this motion passes, the committee will meet at 9:30 on Tuesday morning. Meanwhile, we will endeavour to obtain the presence of the witnesses that the Deputy Leader of the Opposition has mentioned.

**The Hon. the Speaker:** I am not sure that is entirely in order. In any event, thank you, Senator Murray.

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

On motion of Senator Day, bill referred to the Standing Senate Committee on National Finance.

#### PARLIAMENT OF CANADA ACT

##### BILL TO AMEND—ALLOTMENT OF TIME FOR DEBATE—NOTICE OF MOTION

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, I rise to inform the chamber that I have had a discussion with my counterpart, the Deputy Leader of the

Opposition, about the disposition of Bill C-4. It has not been possible to reach an agreement concerning the time to be allocated for the third reading stage of this bill.

Therefore, I wish to give notice that, at the next sitting of the Senate, I will move:

That, pursuant to rule 39, not more than a further six hours of debate be allocated for the consideration of the third reading stage of Bill C-4, to amend the Parliament of Canada Act and other acts in consequence;

That when debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the third reading stage of the said bill; and

That any recorded vote or votes on the said questions shall be taken in accordance with rule 39(4).

#### BUSINESS OF THE SENATE

**Hon. Bill Rompkey (Deputy Leader of the Government):** Your Honour, I believe that if you were to poll the chamber, you would find agreement that we stand all other items on the Order Paper in their order until the next sitting of the Senate.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, excepting the house order that was passed earlier today to consider Bill S-15.

**The Hon. the Speaker:** Is it agreed, honourable senators that we proceed to Bill S-15?

**Hon. Senators:** Agreed.

#### QUEEN'S THEOLOGICAL COLLEGE

##### PRIVATE BILL TO AMEND ACT OF INCORPORATION— THIRD READING

**Hon. Lowell Murray** moved the third reading of Bill S-15, to amend the Act of Incorporation of Queen's Theological College.

He said: Honourable senators, I thank the leadership on both sides and I thank honourable senators on behalf of Queen's Theological College for having expedited or facilitated the movement of this bill to committee. I thank the chairman and members of the Standing Senate Committee on Legal and Constitutional Affairs for having made the time at their meeting yesterday to hear from us.

Yesterday, the committee heard from the Reverend Jean Stairs, the Principal of Queen's Theological College; from the Reverend Anne MacDermaid, Chairman of the Board of Management of the college; and from Mr. Robert Little, QC, a lawyer in private practice in Kingston, who acts for Queen's University and for the Theological College.



The members of the committee canvassed the issues quite thoroughly. The substantive matter that arose concerned the process; that is, is it good practice for organizations that have been incorporated by acts of Parliament to return to Parliament to have their acts of incorporation amended or should we not provide for an amending formula for these organizations to amend their own business?

Honourable senators, I will refer to the observations in the third report of the Standing Senate Committee on Legal and Constitutional Affairs on Bill S-15, tabled by our friend, the chairman, Senator Furey, earlier today:

...your Committee believes that the time has passed when private corporations incorporated by a Special Act of Parliament should be required to return to Parliament to modernize their governance structures. Your Committee has previously recommended that the Canada Corporations Act should be amended to permit these corporations to regulate such matters internally, and we reiterate that recommendation in the context of Queen's Theological College and all other Special Act corporations in the same situation.

Senator Andreychuk and Senator Joyal raised this question and discussed it at the committee. They also posed questions to our witnesses on the matter. Mr. Little, the solicitor for Queen's Theological College, in effect agreed with the position of Senator Andreychuk and Senator Joyal and indicated that the matter had been under consideration by their board on a previous occasion, but that they had come to no conclusion.

• (1820)

It is the hope and expectation of us all, I believe, that the discussion of the committee yesterday and the observations appended to this report may spur Queen's Theological College and others in a similar position to suggest to us the kind of changes that would be necessary in the Canada Corporations Act to enable them to attend to their own business without need of coming to Parliament.

With regard to Queen's University generally, it is a different situation. Nothing we do in the Canada Corporations Act would, I think, be applicable. Queen's University itself exists under a Royal Charter granted in 1841 under the old United Province of Canada. There was much discussion afterwards as to who would have jurisdiction to amend the charter. There was something called the Temporalities Case involving the Presbyterian Church that found that it would be not the legislature of Ontario, not the legislature of Quebec, not the two of them acting together, but only the Parliament of Canada that could amend that charter.

They have come here seven times, and a reading of the debate is intensely interesting. I read one of those debates dating back to 1911 on the jurisdictional and other questions involved. It was engaged in by then Prime Minister Sir Robert Borden and then

Leader of the Opposition Sir Wilfrid Laurier, both quoting the former and late Minister of Justice and Prime Minister Sir John Thompson and various other eminences who took part in the debate. It is a treat to read if you have the time.

I thank honourable senators for their indulgence on this matter. I hope we will be able to proceed and approve this bill at third reading and commend it to the safe hands of the member of the House of Commons for Kingston and the Islands, Mr. Speaker Milliken.

**Hon. Joseph A. Day:** Honourable senators, it has been my pleasure to second the motion sending this bill on its way through the Senate. I would also like to thank honourable senators for their unanimous consent to expedite this matter, and I urge honourable senators to support this bill.

**Hon. A. Raynell Andreychuk:** I want to echo the words of Senator Murray. I am pleased that Senator Austin is here because this is the second time that the committee has indicated that it is very difficult for the committee to judge what is in the best interests of the membership.

The witnesses who appeared before us explained why they needed the changes. There was an outdated modality from the Presbyterian Church to the United Church, et cetera. I believe that it is time, 100 years later, that we allow the evolution of the membership to occur without coming to Parliament. I do not think we have the skill to deal with this matter, and I do not think we are the people who should be determining how to hold the management and directors accountable. That is something within the purview of the college. While they came with graciousness and good information, I think it is time that we entered a new era, and I hope that we do not get another charter application. They should receive the same scrutiny as any other corporation. This is the second time we have put that comment on the record, and I trust that something will be done. It is not a contentious issue. We were all in agreement.

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I have not followed the debate on this bill closely, but I want to observe — and perhaps the sponsor of the bill could assist me — that there is nothing with which I am familiar that would prevent the presentation of a bill here that would remove Queen's Theological College from our jurisdiction. The college could ask that the legislation that presently applies to it be revoked, and they could apply under Part II of the Canada Corporations Act and incorporate, or they could ask us to provide for a transitional arrangement.

I share with Senator Cools a bit of nostalgia for the ancient role of Parliament. Of course, in this 21st century, pragmatic expediency, I am sure, will govern this conflict.

**Senator Murray:** I think the Leader of the Government is correct. It will be entirely within our power to take the steps that he described. However, as he will know, I have never been one to impose amending formulas on others.

**Senator Andreychuk:** This is not the only college or group that is caught under this legislation. Surely someone within the ministry could look at this matter. We have had other examples of this sort of situation. Senator Joyal pointed out one that I had forgotten that we had dealt with. This is something that should be considered in the routine of considering amendments to the Canada Corporations Act.

**The Hon. the Speaker:** Honourable senators, before I put the question, Senator Day indicated a desire to second the motion for

third reading of the bill. I did not state it that way. Is it agreed that Senator Day be the seconder?

**Hon. Senators:** Agreed.

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

Motion agreed to and bill read third time and passed.

The Senate adjourned until tomorrow at 9 a.m.

APPENDIX

PERFORMANCE BONUSES TO OFFICIALS

(see page 616)

Performance Management Program for Executives of the Public Service of Canada Results for 2002-2003  
 Résultats du Programme de gestion du rendement pour les cadres supérieurs de la fonction publique du Canada pour 2002-2003

Department or Agency / Ministère ou agence	Number of executives by classification level Nombre de cadres supérieurs par niveau de classification						Number receiving in- range movement	In-range salary expenditure \$	Number receiving lump sum	Lump sum expenditure \$
	EX01	EX02	EX03	EX04	EX05	Total				
Accelerated Executive Development Program / Programme de perfectionnement accéléré des cadres supérieurs	2	18	38			58	26	87,181	53	467,041
Agriculture and Agri-Food Canada / Agriculture et Agroalimentaire Canada	67	34	19	7	2	129	45	206,795	124	982,775
Atlantic Canada Opportunities Agency / Agence de promotion économique du Canada atlantique	20	10	3	3	2	38	6	36,588	38	300,060
Canada Industrial Relations Board / Conseil canadien des relations industrielles	7		1			8	1	4,700	7	57,660
Canadian Centre for Management Development / Centre canadien de gestion	12	6	5	1	1	25	5	24,342	23	178,188
Canadian Environmental Assessment Agency / Agence canadienne d'évaluation environnementale	6	1	2			9	1	1,600	9	66,676
Canadian Grain Commission / Commission canadienne des grains	2	3		1		6	2	7,500	6	39,500

Performance Management Program for Executives of the Public Service of Canada Results for 2002-2003  
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	Number of executives by classification level							Number receiving in-range movement	In-range salary expenditure \$	Number receiving lump sum	Lump sum expenditure \$
	Nombre de cadres supérieurs par niveau de classification										
	EX01	EX02	EX03	EX04	EX05	Total					
Department or Agency / Ministère ou agence	6	1	1	1		9		24,491	9	57,705	
Canadian Human Rights Commission / Commission canadienne des droits de la personne							5				
Canadian International Development Agency / Agence canadienne de développement international	68	32	8	7	3	118	32	143,541	107	746,566	
Canadian International Trade Tribunal / Tribunal canadien du commerce extérieur	2	4	1	1		8	2	8,100	8	63,200	
Canadian Radio-television and Telecommunications Commission / Conseil de la radiodiffusion et des télécommunications canadiennes	17	5		1		23	7	38,389	20	152,001	
Canadian Space Agency / Agence spatiale canadienne	14	6	4	1		25	8	43,118	25	194,835	
Canadian Transportation Agency / Office des transports du Canada	7	2	2			11	3	9,900	10	68,351	
Communication Canada	24	8	2	5		39	21	131,085	35	259,366	

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	Nombre de cadres supérieurs par niveau de classification										
	EX01	EX02	EX03	EX04	EX05	Total					
Correctional Service Canada / Service correctionnel du Canada	57	59	13	8	2	139	41	160,409	139	990,170	
Department of Canadian Heritage / Ministère du Patrimoine canadien	53	21	11	5	2	92	23	84,261	89	670,992	
Department of Citizenship and Immigration / Ministère de la Citoyenneté et de l'immigration	84	23	16	5	1	129	118	771,804	118	818,745	
Department of Finance / Ministère des Finances	66	29	20	9	5	129	34	166,636	125	974,431	
Department of Fisheries and Oceans / Ministère des Pêches et des Océans	158	31	25	11	2	227	88	329,900	221	1,605,558	
Department of Foreign Affairs and International Trade / Ministère des Affaires étrangères et du Commerce international	231	100	97	22	9	459	436	2,630,675	412	3,335,593	
Department of Health / Ministère de la Santé	112	83	36	6	3	240	90	413,270	204	1,585,419	

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Department or Agency / Ministère ou agence	Number of executives by classification level						Number receiving in- range movement	In-range salary expenditure \$	Number receiving lump sum	Lump sum expenditure \$
	EX01	EX02	EX03	EX04	EX05	Total				
Department of Human Resources Development / Ministère du Développement des ressources humaines	212	53	50	16	5	336	136	613,500	328	2,433,577
Department of Indian Affairs and Northern Development / Ministère des Affaires indiennes et du Nord canadien	108	34	32	6	2	182	61	314,334	173	1,347,986
Department of Industry / Ministère de l'Industrie	153	51	51	8	2	265	44	192,500	233	1,682,480
Department of Justice / Ministère de la Justice	27	17	14	1	3	62	22	101,500	58	374,601
Department of National Defence / Ministère de la Défense nationale	82	20	14	3	3	122	41	167,103	117	867,810
Department of Natural Resources / Ministère des Ressources naturelles	55	39	25	4	5	128	44	158,400	122	937,059
Department of Public Works and Government Services / Ministère des Travaux publics et des Services gouvernementaux	125	72	43	7	3	250	76	325,102	228	1,794,923

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Department or Agency / Ministère ou agence	Number of executives by classification level						Number receiving in- range movement	In-range salary expenditure \$	Number receiving lump sum	Lump sum expenditure \$
	EX01	EX02	EX03	EX04	EX05	Total				
Department of the Environment / Ministère de l'Environnement	69	30	24	4	3	130	45	206,102	127	982,053
Department of the Solicitor General / Ministère du Solliciteur général	18	11	5	4	1	39	24	97,334	37	295,735
Economic Development Agency of Canada for the Regions of Quebec / Agence de développement économique du Canada pour les régions du Québec	7	6		3		16	3	12,100	15	124,213
Immigration and Refugee Board / Commission de l'immigration et du statut de réfugié	9	5	3		1	18	8	44,658	16	133,101
Infrastructure Canada	2	2	2	2	0	8	3	15,786	7	70,655
National Archives of Canada / Archives nationales du Canada	10	3		1		14	5	18,250	14	96,105
National Parole Board / Commission nationale des libérations conditionnelles	9		1			10	2	8,735	10	58,564

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	Number of executives by classification level						Number receiving in-range movement	In-range salary expenditure \$	Number receiving lump sum	Lump sum expenditure \$
	Nombre de cadres supérieurs par niveau de classification									
	EX01	EX02	EX03	EX04	EX05	Total				
Department or Agency / Ministère ou agence										
Office of the Chief Electoral Officer / Bureau du Directeur général des Élections	5	4	3			12	2	8,500	10	74,075
Office of the Commissioner of Official Languages / Commissariat aux langues officielles	5	1	2			8	3	11,760	7	44,214
Office of the Coordinator, Status of Women / Bureau de la Coordonnatrice, Situation de la femme	3	3				6	3	14,685	6	25,768
Office of the Governor General's Secretary / Bureau du Secrétaire du Gouverneur général	6	1	1			8	2	8,700	7	45,111
Office of the Privacy Commissioner / Commissariat à la protection de la vie privée	3	3	1	1		8	3	12,955	0	-
Passport Office / Bureau des Passeports	12					12	5	13,141	11	54,643
Prairie Farm Rehabilitation Administration / Administration du rétablissement agricole des Prairies	8	3				11	5	19,155	10	61,379



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	Number of executives by classification level							Number receiving in-range movement	In-range salary expenditure \$	Number receiving lump sum	Lump sum expenditure \$
	Nombre de cadres supérieurs par niveau de classification										
	EX01	EX02	EX03	EX04	EX05	Total					
Department or Agency / Ministère ou agence											
Privy Council Office / Bureau du Conseil privé	44	15	15	15	3	92	37	166,910	86	744,282	
Public Service Commission / Commission de la fonction publique du Canada	26	19	7	5	1	58	20	93,474	58	476,349	
Registry of the Federal Court of Canada / Greffe de la Cour fédérale du Canada	4	1	1	1		7		-	7	54,544	
Royal Canadian Mounted Police (Civilian Staff) / Gendarmerie royale du Canada (Personnel civil)	39	14	7	2	2	64	32	167,899	58	452,391	
Royal Canadian Mounted Police (Regular Members) / Gendarmerie royale du Canada (Membres)		62	26	1	6	95	24	129,200	85	779,576	
Statistics Canada / Statistique Canada	13	51	20	7		91	12	69,173	90	730,063	
Transport Canada / Transports Canada	83	31	25	5	1	145	55	314,154	135	1,066,587	







Performance Management Program for Executives of the Public Service of Canada Results for 2002-2003  
 Résultats du Programme de gestion du rendement pour les cadres supérieurs de la fonction publique du Canada pour 2002-2003

Department or Agency / Ministère ou agence	Number of executives by classification level						Number receiving in-range movement	In-range salary expenditure \$	Number receiving lump sum	Lump sum expenditure \$
	Nombre de cadres supérieurs par niveau de classification									
	EX01	EX02	EX03	EX04	EX05	Total				
Patented Medicine Prices Review Board / Conseil d'examen du prix des médicaments brevetés										
RCMP External Review Committee / Comité externe d'examen de la GRC										
RCMP Public Complaints Commission / Commission des plaintes du public contre la GRC										
Registry of the Tax Court of Canada / Greffe de la Cour canadienne de l'impôt										
Veterans Review and Appeal Board / Tribunal des anciens combattants (révision et appel)										
Total for departments with 5 or fewer Executives / Total pour ministères ayant 5 cadres supérieurs ou moins de 5	21	22	6	0	0	49	19	94,652	43	342,353
<b>Grand Total / Somme globale</b>	<b>2288</b>	<b>1105</b>	<b>723</b>	<b>209</b>	<b>78</b>	<b>4403</b>	<b>1796</b>	<b>8,976,789</b>	<b>4102</b>	<b>31,621,179</b>

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Thursday, March 25, 2004

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