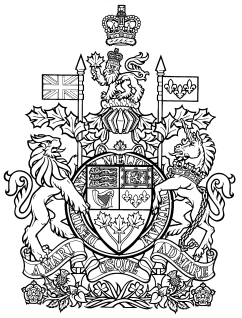

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OFFICIAL REPORT
(HANSARD)

Wednesday, May 5, 2004

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, May 5, 2004

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

Prayers.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before proceeding to Senators' Statements, I would like to draw your attention to the presence in our gallery of the participants in the Spring 2004 Parliamentary Officers Program. They represent parliamentary bodies from various countries in the world, and some of us have had the pleasure of meeting with them during their two-week stay here. On behalf of the members of the Senate of Canada, welcome to our chamber.

SENATORS' STATEMENTS

MULTIPLE SCLEROSIS AWARENESS MONTH

Hon. Yves Morin: Honourable senators, May is Multiple Sclerosis Awareness Month. Here is a fact you may not know: Multiple sclerosis, best known for attacking adults in the prime of life, also affects children as young as three. The Toronto Chapter of the Multiple Sclerosis Society of Canada certainly was aware of this fact as it was receiving calls from parents whose children had been diagnosed. Its officials worked with Toronto's Hospital for Sick Children to establish the first Paediatric Multiple Sclerosis Clinic in North America and probably the world. Today the clinic regularly follows over 90 children.

The Toronto Paediatric Multiple Sclerosis Clinic serves the unique needs of children with this disease and their families. It also provides a unique opportunity to advance our knowledge about what causes multiple sclerosis. Earlier this year, researchers from the clinic were able to show a possible association between multiple sclerosis and the Epstein-Barr virus that causes mononucleosis.

Yesterday, the Multiple Sclerosis Society of Canada and the Multiple Sclerosis Scientific Research Foundation announced a new $4.3-million study of children in 22 Canadian centres. This study will allow researchers to explore the biological factors involved in the development of multiple sclerosis.

[*Translation*]

Honourable senators, multiple sclerosis is a disease whose prevalence is higher in Canada. It appears that our children can also be affected. Since this is Multiple Sclerosis Month, let us give our support to the researchers who are trying to discover the causes of this terrible affliction.

[*English*]

TD CANADA TRUST SCHOLARSHIPS FOR COMMUNITY LEADERSHIP

Hon. Donald H. Oliver: Honourable senators, yesterday I was honoured to attend the National Awards Ceremony of the TD Canada Trust Scholarships for Community Leadership in Toronto. Twenty outstanding Canadian high school students with exceptional academic credentials were chosen from 3,300 candidates across our country to receive the coveted $60,000 scholarships. The 20 students representing the true diversity of Canada have each made extraordinary contributions to their community.

Once again, honourable senators, I was honoured to have been a judge of the candidates from Ontario. I had the opportunity to interview some of the most talented, enthusiastic and bright young students who are the true future of Canada. It gave me great pride to see the strength that we have in our high school graduates.

Each TD Canada Trust Scholarship is valued at up to $60,000 and includes full tuition for up to four years of study at any approved university or college in Canada, $5,000 a year toward living expenses for up to four years while attending university or college, and an offer of summer employment with TD Canada Trust during the years of the scholarship.

Honourable senators, the TD Canada Trust Scholarship is one of the most outstanding scholarship programs in Canada, for it emphasizes not just academic credentials but also young Canadian students who have already distinguished themselves by their extraordinary concern for the people and environment around them.

As Her Excellency Governor General Adrienne Clarkson said in a forward to yesterday's program:

> Canadians accept certain responsibilities towards each other as part of the duty of citizenship. This group of scholarship recipients exemplifies that duty and responsibility through the ways in which they have applied their unique skills to solve problems and create opportunities in their communities. They have already gone beyond the call of duty to help others, and their full potential has not yet been reached.

Honourable senators, a number of other members of this chamber also have served as judges in this important Canadian contest. This year, the Honourable Marilyn Trenholme Counsell and the Honourable Landon Pearson were also judges.

Honourable senators, I am honoured to salute the 20 excellent recipients of this year's TD Canada Trust Scholarships for Community Leadership.

EIGHTIETH ANNIVERSARY OF CANADIAN AIR FORCE

Hon. Jane Cordy: Honourable senators, the Royal Canadian Air Force was formed on April 1, 1924, by Royal Warrant. Today, I take the opportunity to recognize the eightieth anniversary of the Royal Canadian Air Force, now the Canadian Air Force. It is on this occasion that I wish to honour all Canadian Air Force personnel, past and present, who have served not only in the Royal Canadian Air Force but also in the Royal Flying Corps and the Royal Naval Air Service during World War I. It is with this in mind that I wish to pay tribute to two Nova Scotians who led distinguished careers serving Canada and the RCAF.

Born in New Aberdeen, just outside of Glace Bay, Harold "Gus" Edwards was working the mines in Cape Breton at the onset of World War I. Mr. Edwards promptly joined the Royal Naval Air Service and was soon flying missions along German lines, providing support for ground troops. It was on one of these missions that he was shot down and became a prisoner of war. He was eventually released, and on completion of his duties, returned home to continue his career. In the 1930s, Gus Edwards was named squadron leader in charge of the RCAF in Dartmouth. When war broke out again in 1939, Gus Edwards continued to move up the ranks to Air Marshal. He was stationed in London, England, in charge of RCAF operations for Canadians in the Royal Air Force and those in Canadian squadrons.

• (1340)

Another Cape Bretoner who rose to the rank of Air Marshal and Canada's Chief of Air Staff was Clarence Rupert "Larry" Dunlap. Born in Sydney Mines in 1908, Mr. Dunlap earned a Bachelor of Science degree in Electrical Engineering from Acadia University. Following his graduation in 1928, Larry Dunlap was accepted for pilot training in the Royal Canadian Air Force. He was one of many young Canadians recruited in the 1920s for the rapidly developing air force. From the lowest commissioned rank, Larry Dunlap earned his way to Air Marshal and Canada's Chief of the Air Staff, and in 1964 became Deputy Commander in Chief of NORAD, a position he held until his retirement in 1968.

Both men were inspired when they were young by the aviation achievements of Alexander Graham Bell, Casey Baldwin and John McCurdy, who successfully completed the first controlled flight in the British Empire on February 23, 1909, in Baddeck, Cape Breton. As a youngster, Mr. Dunlap had the opportunity to watch U.S. Navy HS-2L flying boats take off and land from a base at North Sydney. Mr. Dunlap once reminisced of his childhood as follows: "On the same perch from which, up to that time, I had watched fishing schooners sail out of Sydney Harbour, I now had an even more exciting picture, that of flying boats cavorting about the sky."

Gus Edwards and Larry Dunlap were just two of many Canadians in the Royal Canadian Air Force. We are indebted to these men and to all the men and women who have served and continue to serve our country Canada.

[*Translation*]

QUEBEC FILM INDUSTRY

GENIE AWARDS

Hon. Jean-Claude Rivest: Honourable senators, for many years, the dynamism and vitality of artistic creation in Quebec have been recognized, not only in Quebec but also throughout Canada and on the international scene. It is important for me, as a Quebecer and a Canadian, to underscore the exceptional performance by Quebec's filmmakers, who walked away with most of the trophies at the Canadian film industry's annual Genie Awards, last Sunday in Toronto.

In addition to the creators and artists, I should also point out the exceptional vitality of the Quebec film industry in recent years. The constant and substantial support from the Quebec public for its films, which are an outstanding expression of Quebec's identity, is one reason Canada may envy Quebec.

Honourable senators, while Canadian cinema has managed to attract only 2 or 3 per cent of the English Canadian audience in Quebec, Quebec cinema attracts nearly 15 per cent of Quebecers. For all of French-speaking Canada combined, this percentage might be greater. This is no doubt one of the reasons Quebec's filmmakers have been able to show the vitality of Quebec's cultural identity. They are helping to build the Canadian cultural identity in a major way and giving Quebec and Canada an international cultural presence worthy of admiration.

[*English*]

For those who missed it at the time of the Meech Lake Accord, this is exactly what we mean by "Quebec distinct society."

UNITED NATIONS COMMISSION ON HUMAN RIGHTS

ELECTION OF CANADA AS MEMBER STATE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to make a statement concerning the happy occasion that was alluded to yesterday during Question Period, namely, that Canada has been elected as a member state of the United Nations Commission on Human Rights.

Honourable senators will recall that, in 1945, at the San Francisco conference founding the United Nations, the decision was taken to create the first functional commission, and it indeed was the Commission on Human Rights. Canadians have played an active role in the work of the United Nations Commission on Human Rights from that date, including such outstanding contributions as that made during the process of the drafting of the Universal Declaration of Human Rights by the Commission on Human Rights, then chaired by Ms. Eleanor Roosevelt and so ably and creatively assisted by Professor John Peters Humphrey, to whom many attribute the first draft of the Universal Declaration of Human Rights.

Canada has, honourable senators, been elected on several other occasions to membership on the Commission on Human Rights, but not always, as a member of the UN Commission on Human Rights, has Canada played the leadership role that it, in my opinion, ought to be playing. On many occasions, Canada has played a leadership role and been very creative — for example, when our representative was our colleague Senator Andreychuk, and on many occasions when the representative of Canada was Ambassador Yvon Beaulne.

I would urge the government to take clear steps to ensure that the individual representing Canada on the UN Commission on Human Rights will be a Canadian who, with respect to human rights, is creative. Honourable senators, if there is an area of international public policy that needs creativity today, in the world of post 9/11, it seems to me it is the field of human rights.

I would therefore encourage the Government of Canada to send a most senior representative to fill the chair of Canada on the UN Commission on Human Rights.

QUESTION PERIOD

OFFICE OF INFORMATION COMMISSIONER

ADEQUATE FUNDING—BACKLOG OF FILES

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate and it has to do with the issue of access to information.

Two weeks ago, Mr. Chuck Guité told the House of Commons Standing Committee on Public Accounts that virtually no information was put on the sponsorship files to thwart Access to Information requests.

The same week, Information Commissioner John Reid told Parliament that the government is not adequately funding his office at a time when the "culture of keeping records in the Government of Canada has broken down." For example, he stated that his office has insufficient funds to track the impact of new legislation on the Access to Information Act.

• (1350)

Since Mr. Reid made his comments, has the Government of Canada taken any steps to verify their accuracy; and, if they are true, what steps will be taken to ensure that the Information Commissioner is able to adequately enforce Canada's access to information laws?

Hon. Jack Austin (Leader of the Government): Honourable senators, I will take the question as notice.

Senator Oliver: Honourable senators, I should like to ask a supplementary question, and perhaps the Leader of the Government in the Senate could also take it as notice.

Six years ago, the Information Commissioner's office could begin an investigation within four months of an allegation. Now, when someone files a complaint that a government official has withheld information, it takes six to ten months to commence an investigation. Currently, there is a backlog of more than 1,000 cases.

Does the government find this to be an acceptable delay, and if not, what steps will be taken to clear up the backlog?

Senator Austin: Honourable senators, I thank Senator Oliver for the question and I will add it to the notice.

PUBLIC SERVICE COMMISSION

FEDERAL STUDENT WORK EXPERIENCE PROGRAM— AVAILABILITY OUTSIDE OTTAWA REGION

Hon. A. Raynell Andreychuk: Honourable senators, as some of you know, the Federal Student Work Experience Program is in place to assist full-time students in universities, colleges, technical institutes and CEGEPs — in other words, full-time post-secondary students — to gain some work experience with the federal government during their summer break. This work helps students to understand what the federal service is; and they should be, therefore, one of the best pools of future employment for our public service.

I have been contacted by students who tell me that this program is not, in fact, a federal program in that it is mainly geared to the Ottawa area. Given that most of the jobs are in the Ottawa area for the federal service, it makes it difficult for students who live outside of Ottawa to participate.

Having been given this information, I looked up the details of the program on the Department of Justice Canada Web site, and I found the following description of the program:

> ...fair and equal access to student jobs offered by the Public Service of Canada and opportunities to learn about the federal government and gain valuable experience while developing and improving their employability skills.

However, if you contact the Justice Department, they will tell you that they place students from the capital region first.

This matter has been brought to the government's attention. Does it continue to utilize this entire federal program for the benefit of students from the Ottawa region only?

Senator Kinsella: Good question.

Senator Forrestall: We will get a good answer as usual.

Hon. Jack Austin (Leader of the Government): Honourable senators, I thank Senator Andreychuk for her detailed and specific question, and I will take the question as notice.

Senator Andreychuk: Honourable senators, as a supplementary question, there is some urgency because these are placements are being made now.

The number of jobs available in the Saskatchewan Justice Department is approximately two. Almost all of the jobs that are available are here in the Department of Justice, which is a very large department, and those jobs are going to Ottawa students.

Year in and year out, this has been brought to the government's attention. How can we equalize the opportunities for young Canadians? How can they go to school in a university in Saskatchewan or British Columbia and participate in a federal program to which they have absolutely no access? The jobs are being filled as we speak. Can the minister give some assurance that there will be equal and fair access to all Canadian students?

Senator Austin: Honourable senators, again, I will take the question as notice. However, I would say, without having any specific information to offer, that I take it that Senator Andreychuk is making a representation that the Government of Canada should fund both the transportation of students from other locations in Canada to Ottawa and their living costs while in Ottawa.

Senator Andreychuk: Quite the opposite. These students are willing, at their own expense, to come to Ottawa and to house themselves. All they are asking for is the chance to be treated equally in the job application process. They will make the effort to come here — and British Columbia and Nova Scotia are as much affected by this as Saskatchewan and Manitoba — to get the experience because they cannot get it any other way. They are willing to come here at their own expense and house themselves here; but their applications are not being treated equally because they are not attending post-secondary institutions in the capital region.

We know that there are only two universities in this city. There is anecdotal evidence that some students have taken up postal codes in this area in order to get fairer treatment. Surely this is not the way to treat students, our investment for the future?

Senator Austin: I would be delighted if Senator Andreychuk could enhance the representations I intend to make by providing me with names and examples so that I could press specific cases, as well as the general case.

CITIZENSHIP AND IMMIGRATION

REFUGEE CLAIM BY MR. ERNST ZUNDEL

Hon. David Tkachuk: Honourable senators, last February Ernst Zundel was deported to Canada from the United States. Despite promises from the government that he would be quickly dealt with, he is still here.

As many people had feared, he seems to be pleased to drag out the court process surrounding the issuing of a national security certificate against him for as long as possible. Mr. Zundel and his supporters have used the resulting media attention to promote his anti-Semitic ideas. It is disturbing to see some people presenting Mr. Zundel as a civil rights champion for putting our legal system through so many twists and turns when he was, in fact, declared a security risk to this country.

My question is — and I have asked this before and I will continue to ask it until I receive an answer — how much longer will Ernst Zundel be in our country, and how much has this cost the Canadian taxpayer to date?

Hon. Jack Austin (Leader of the Government): Honourable senators, the answer I gave previously is the answer again today. Mr. Zundel is the subject of judicial proceedings to determine the questions that Senator Tkachuk has presented. Our system of laws, as Senator Tkachuk knows, is balanced in favour of the presumption of innocence of the person who is the subject of the proceeding. The Crown has the obligation of demonstrating why he should be removed.

Senator Tkachuk: It may have that obligation, honourable senators, but all this wrangling over Mr. Zundel might have been avoided had he been deported to Germany as soon as Canadian officials verified his identity.

Could the Leader of the Government in the Senate tell us if the Department of Citizenship and Immigration has conducted some sort of review as to what happened when Mr. Zundel was initially deported here, and why he was not immediately turned over to German authorities, as they had requested?

Senator Austin: Honourable senators, Mr. Zundel has the right to the benefits of Canadian law, and he has the right to use our judicial process; and he is exercising that right.

ROYAL CANADIAN MINT

TRAVEL EXPENSES OF EX-PRESIDENT

Hon. Marjory LeBreton: Honourable senators, my question is for the Leader of the Government in the Senate. Last night on the CBC, we heard new evidence that George Radwanski is not the only public official who has abused public funds. Three years ago, Danielle Wetherup, then-president of the Royal Canadian Mint, billed Canadian taxpayers $6,000 for a two-week trip to Italy, of which only two days were spent on business — one day with Alfonso Gagliano and Gina Lollobrigida, and one day at a meeting with some regional officials in Sicily. In the meantime, she billed the Royal Canadian Mint for her stays at luxury hotels, and even sent the taxpayers a tab for a visit to the spa in one of the hotels.

Could the Leader of the Government in the Senate explain how it is possible for anyone to submit a bill for two weeks' travel and not be asked to justify how the time was spent? For that matter, could he explain how it is possible that Canadian taxpayers are asked to pay for a personal massage at a spa and not have someone in the department question the claim?

Hon. Jack Austin (Leader of the Government): Honourable senators, I am impressed that a number of honourable senators recognized the name Gina Lollobrigida — and I confess that I am one of them.

As for the balance of the question, I have not seen that news report, but I have no doubt that, if that is the case, the government will review the matter.

• (1400)

Senator LeBreton: Honourable senators, Ms. Wetherup has now left the mint. Does the government have any intention of trying to retrieve the money that was billed to the taxpayers for her European vacation?

Senator Austin: I will take that question as notice.

ENVIRONMENT

SPECIES AT RISK LISTING PROCESS

Hon. Mira Spivak: Honourable senators, when the Species at Risk Act was before us some 18 months ago, not only senators on this side but also the environment committee in the House of Commons advocated that scientists should be given the responsibility to compile the official list of species at risk. The government should be given the responsibility of deciding what, if anything, to do to protect these species. We ended up with a compromise because we cannot always draft legislation that is logical and sensible. That compromise is an act that gives the Governor in Council the right to compile the official list within nine months of receiving the recommendation of COSEWIC, which is the committee of scientific experts.

The act was proclaimed last June. We are told that 12 of the 91 species most recently named by COSEWIC are in legal limbo. They are neither officially listed nor referred to by the Governor in Council. The species include Atlantic cod, Fraser River salmon and a Lake Winnipeg snail threatened by pollution and development. Harbour porpoises and bottlenose whales are also listed. They die in nets set for other species off the Atlantic Coast. The Sierra Club of Canada says that COSEWIC scientists have identified some of those species at risk for six years or more.

As nothing can be done to legally protect those species until they are listed, why have those dozen species not been listed? The more fundamental question is: Why is sound science not at the root of government decisions?

Hon. Jack Austin (Leader of the Government): Honourable senators, I was wondering what was the connection between Gina Lollobrigida and species at risk. I inquired of Senator Rompkey, but he did not have the answer.

With respect to the question, which is a serious one, I am sure that Senator Spivak is aware that the determination to list a species at risk in the schedule is based on science and other factors, including economic issues, issues with respect to communities and the connection of the activity that takes place with respect to that particular species.

If a species is clearly at risk, I am confident that the Governor in Council will list the species. Perhaps, in the case of the number of species — I believe it was 15 — that were part of the science committee recommendations that were not listed, the Governor in Council took other factors into account.

Senator Spivak: With all due respect, the point of the question is this: It is not that the government does not have the responsibility to decide what to do; the question is one of listing species at risk. It is now the government that lists these species on the advice of the committee, not the committee that lists the species. It would have been far better for the scientists to list species at risk based on their scientific information, and then the government would have the responsibility and the right to decide what to do with the list.

Will the opposition to scientific listing be reconsidered?

Senator Austin: Honourable senators, everything is subject to reconsideration. I will draw the attention of the Minister of the Environment to Senator Spivak's recommendations.

We both understand the question, but we may have a different way of proceeding with the answer.

FOREIGN AFFAIRS

SYRIA—POSSIBLE TARGETING OF EMBASSY BY TERRORISTS

Hon. J. Michael Forrestall: Honourable senators, last week a terrorist attack was directed at the United Nations offices in Damascus, Syria. The attack happened close to the Canadian Embassy. There has been some suggestion in the Israeli press that Canadians might have been the targets. Can the government leader shed any light on this view?

Hon. Jack Austin (Leader of the Government): Honourable senators, I have no specific information, but I have seen a view expressed that we were not in any way intended to be a target. However, I have not been able to speak with the terrorists who planned the attack.

Senator Forrestall: Honourable senators, when the minister establishes contact, would he please let us know?

Senator Austin: When I have the contact.

PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

PROTECTION OF FOREIGN SERVICE STAFF AGAINST TERRORIST ATTACK

Hon. J. Michael Forrestall: Honourable senators, Saif al-Adel, a top al-Qaeda military commander, has repeatedly stated that killing Canadians is a priority. Sadly, a Canadian was one of the people seriously wounded last weekend in a militant attack on a Saudi petroleum facility.

In light of what seems to be a growing trend of violence against Canadians individually and against Canadian property, what new steps is the government considering for the protection of property and, more important, the Canadians in those countries?

Hon. Jack Austin (Leader of the Government): Honourable senators, I have not seen any evidence to indicate that the attack in Yanbu, Saudi Arabia, was directed against a Canadian. It seemed that it was directed against foreigners without any concern for the Saudi Arabian citizens who were also there. No evidence that I have seen indicates that Canada is being singled out either with respect to our property or persons.

I do acknowledge that the honourable senator is correct in his reference to Canada being included as one of a number of countries on an al-Qaeda list.

FOREIGN AFFAIRS

IVORY COAST—DISAPPEARANCE OF JOURNALIST

Hon. Jack Austin (Leader of the Government): Honourable senators, while I am on my feet, I would like to respond to the question asked by Senator Prud'homme yesterday with respect to journalist Guy André Kieffer. I have the communiqué issued by the Assemblée parlementaire de la francophonie, which makes representations with respect to Mr. Kieffer.

I understand, but I do not have a document, that Mr. Kieffer has been reported as deceased. That is only a report; as to this time there has been no specific evidence in that regard.

• (1410)

PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

CORRECTIONAL SERVICES—USE OF REWARDS PROGRAM OCCASIONS FOR SMUGGLING

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate. It relates to a story published in an Ottawa newspaper on May 2, 2004.

It was reported that Correctional Service Canada has instituted a policy that allows inmates access to fast foods while in prison. According to the report, inmates at several federal penal institutions are able to choose food from McDonalds, Kentucky Fried Chicken, a submarine sandwich shop or even a Chinese restaurant. Correctional Service Canada has admitted that this is not a fixed program and that institutions are left with a wide degree of discretion. Correctional Service Canada has also admitted that these sorts of rewards are common practice in our institutions when a unit has been what is called "incident-free" for a long period of time.

The article goes on to report that inmates are abusing this special privilege to smuggle drugs into our facilities. One veteran correctional officer said, "There is always a risk that they will slip in some dope under the pizzas."

Would the Leader of the Government in the Senate explain why, if this program is posing more of a risk than anything else, it is being allowed to continue, and why are guards being used as pawns in a scenario that potentially places entire institutions at risk by the smuggling of weapons or drugs into the facility?

Hon. Jack Austin (Leader of the Government): Honourable senators, I have not seen the report. However, listening to the report as presented by the honourable senator, two points occur to me: First, in the penal system, as in so many other areas that require a psychological management base to their objectives, reward and punishment practices are part of the system. Second, in allowing prisoners access to fast food, I am not sure whether Senator St. Germain means that that is a reward or a punishment.

Senator St. Germain: Honourable senators, for those of us who come from Main Street and not Bay Street, fast foods have been part of our menu. I am sure that Senator Rompkey, being from Labrador, can verify that.

In the same report, we learned that, while most of the food is delivered, sometimes a staff member from the institution is dispatched to fetch the food.

Honourable senators, we have seniors in this country who are struggling to pay their rent and to eat properly. In certain cases, it has been pointed out that some seniors have resorted to eating food prepared for animals.

I am sure Canadians are asking what is going on, especially our seniors, when prisoners have fast food at their disposal, conjugal visits, clean needles, condoms and a host of other items.

As to a reward system, the reward is release from the institution. I am sure most Canadians would question these types of privileges for inmates.

In addition, when staff members are away picking up food for the inmates, who is left to protect the vault? The inmates are running the facility, by the sound of things. Could the Leader of the Government in the Senate provide a comment on that subject?

Senator Austin: Honourable senators, while I do not have any specific information in regard to the story in the newspaper, I do know that the purpose of our policy, as a government, with respect to people who are incarcerated, is rehabilitation. To provide a process of rehabilitation, people are encouraged to rehabilitate themselves and to behave in an appropriate manner that will allow them to serve as successful citizens in the normal community. If that is not the honourable senator's philosophy, then I do not share it with him.

There is a risk that materials brought into a prison may be used to hide improper goods. However, measures can be taken to discern whether those goods are being brought in.

Society is not perfect and prison guards will sometimes behave in ways they ought not. However I do not think there can be any denial that we want all of our citizens to be law-abiding and productive. When certain citizens have not been productive for a period of time, we wish to provide every foundation to encourage them to return to society as contributing citizens.

Senator St. Germain: Honourable senators, I agree that there must be a rehabilitation program. However, having fast food delivered to inmates or staff being required to pick up that fast food causes some problems. We know that there is generally a shortage of staff in these institutions.

I return to my original concern in regard to the seniors in this country. I have seen increases on the pension cheques of seniors. Those increases are a mere pittance. Most of these people cannot afford to buy food at fast food outlets, even if they wanted to, because of the small amounts of money they have at their disposal. We are spending money on providing what I would consider to be a privileged-type service to our inmates.

As much as I agree with rehabilitation and what the honourable senator has pointed out, this program goes too far. I do not believe that Canadians, who are understanding and compassionate and who also want people to be rehabilitated, would agree that this is a necessity.

Senator Austin: Honourable senators, let me hypothesize with respect to staff. Is sending a staff person not safer than allowing someone who has not been identified or cleared to bring products to the prison?

If it is the judgment of the warden and senior management of the prison that this is a step that enhances tranquility, then you have reduced the risk of harm to the staff. It seems to me that underlying what Senator St. Germain is addressing may be a sane and sensible policy.

With respect to seniors, an unrelated subject, the honourable senator ought not to compare the circumstance of a senior with the circumstance of a prisoner. With respect to seniors and taking the question as a separate issue, I would agree that some seniors are living in difficult circumstances in this country and the government must address that issue. However, it is a responsibility not only of government, but also of the community and the families of those seniors, when they have a family that can assist them. Government cannot do everything in society, as Stephen Harper has often said.

Senator St. Germain: That is the best quote of the day.

VETERANS AFFAIRS

ANNOUNCEMENT OF NEW CHARTER— COMMENTS BY MINISTER

Hon. Michael A. Meighen: Honourable senators, yesterday the government announced its new Veterans Charter designed to ease military veterans' reintegration into civilian life. While we on this side welcome this long overdue initiative, it does not come a moment too soon, since we also learned yesterday that an alarming number of our troops leave the Canadian Forces within the first year of joining up.

What intrigued me about yesterday's announcement was a statement by the Minister of Veterans Affairs in which he said that traditional veterans and their pensions would not be adversely affected by the announcement. He then said some, "... may well benefit by the work being done for our CF clients."

This is an interesting formulation. Once again, it points to the possibility of inequitable or unequal treatment of our military veterans. In making this announcement, the government was careful to distinguish between traditional veterans and their modern counterparts.

My question for the Leader of the Government in the Senate is as follows: When the minister says that some traditional veterans may benefit, who does he mean and why only some? I thought that, since 1991, a veteran was a veteran was a veteran and anybody who had been trained in the Canadian Forces was a veteran.

Why did the minister say that? Why did he also say "may benefit" rather than "will benefit"? If I cannot be provided with an answer to this question today — and I suspect the Leader of the Government in the Senate will be unable to provide it to me — I would ask him to seek out the answer and to table the response in this house at the earliest opportunity.

Hon. Jack Austin (Leader of the Government): Honourable senators, I will certainly seek the more specific answer that the honourable senator has requested and, if he has a supplementary question, I will seek out a response to that as well.

• (1420)

NATIONAL DEFENCE

EFFICACY OF RECRUITMENT AND RETENTION PROGRAM

Hon. Michael A. Meighen: The Leader of the Government is very prescient. I do, indeed, have a supplementary. It is a follow-up to a point I referred to in my rather long-winded introduction.

It refers specifically to a May 4 article in the *Journal de Montréal*. The headline of that article is as follows:

[*Translation*]

> Up to 25 per cent of soldiers quit after less than one year of service.

This statistic comes from Department of National Defence internal documents.

[*English*]

My question for the Leader of the Government in the Senate is this: What is happening? Clearly, the vaunted recruitment and, in particular, the retention program is not working. What plans does the government have to make it work?

Hon. Jack Austin (Leader of the Government): I shall take the honourable senator's question as notice.

However, I should like to point out to the Honourable Senator Meighen that the Veterans Charter is pointed in particular at plans to help Canada's veterans reintegrate into civilian life upon discharge. I am not at all sure whether it is directed at people who serve for only one or two years, because the plan is designed, in the main, to assist military people who have carried out a full term of service.

Senator Meighen: Just to clarify my point, honourable senators, I asked two different questions, and they were not necessarily linked. I would point out to the Leader of the Government in the Senate that in 1945 we had a reintegration program for members of the Armed Forces that was the envy of the world. Let us get it back up to that.

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Bill Rompkey (Deputy Leader of the Government: Honourable senators, I have the honour to present delayed answers to five oral questions posed in the Senate.

The first two responses are to oral questions posed by the Honourable Senator Forrestall on March 29, regarding the Aurora Incremental Modernization Project and regarding the Maritime Helicopter Project. The third delayed answer is to a question posed by Senator LeBreton on March 22, regarding the status of Communication Canada. The last two responses are to questions posed by the Honourable Senator Meighen on April 21, regarding the Halifax class mid-life refit and acquisition of new supply and transport ships, and regarding the acquisition of new equipment for the Canadian Forces and its availability to troops deployed to Afghanistan in the fall of 2004.

NATIONAL DEFENCE

AURORA INCREMENTAL MODERNIZATION PROJECT— TENDER FOR DATA MANAGEMENT SYSTEM

(Response to question raised by Hon. J. Michael Forrestall on March 29, 2004)

The original Data Management System contract was awarded to General Dynamics Canada on 30 May 2002 for a value of $197,639,176.

The first Contract Amendment, adding the requirement to deliver one Operational Mission Simulator to Greenwood, Nova Scotia, to train tactical crews, was completed on 17 April 2003. This requirement was included as an option in the original Request For Proposals. The first amendment was valued at $39,421,654.

These values do not include the 15 per cent Harmonized Sales Tax payable as the equipment is being delivered in the province of Nova Scotia.

The second Contract Amendment, adding additional work requests required by the Crown, was completed on October 14, 2003. The second amendment was valued at $2,025,193, bringing the current contract value to a total of $239,086,023.

REPLACEMENT OF SEA KING HELICOPTERS— TENDER FOR DATA MANAGEMENT SYSTEM

(Response to question raised by Hon. J. Michael Forrestall on March 29, 2004)

The data management system being produced for the Aurora Incremental Modernization Project is not the same system that will be used for the Maritime Helicopter Project. It is impossible to compare the two programs as they are significantly different in scope and execution.

While there are some similarities in the basic technical requirements for data management in both projects, there are major differences in the sensors that will be managed, in the manner in which data will be presented and in the environment in which the system will operate.

The Maritime Helicopter Project is planning to select a single prime contractor who will provide a turnkey solution to DND. Schedule performance for the contract will be solely the responsibility of the prime contractor, whereas both the Crown and the company share responsibilities under the Aurora Incremental Modernization Project.

Therefore, it is inappropriate and incorrect to use the implementation plan for the Aurora project as an indicator of performance for the Maritime Helicopter Project.

If proposals are received from both bidders in response to the Request for Proposals for the Maritime Helicopter Project, they will both be assessed in a fair and proper manner. It would be inappropriate to carry out any evaluation before the proposals are received.

PUBLIC WORKS AND GOVERNMENT SERVICES

STATUS OF COMMUNICATION CANADA

(Response to question raised by Hon. Marjory LeBreton on March 22, 2004)

PWGSC is currently undertaking a review of those programs of the former Communication Canada which have been transferred to it. The objective of the review is to determine the most cost-effective way in managing these programs to best meet the needs of Canadians. While we don't know the final results of this review, and hence any costs associated with these changes, the important issue to keep in mind are the millions to be saved from the elimination of the sponsorship program, reduced funding levels for other programs, and a 15 per cent reduction is media placement spending over the next three years.

On April 1, 2004 the Government of Canada transferred from Communications Canada to the Privy Council Office control and supervision of the Regional Operations Branch, except that portion known as Outreach; the Public Opinion Research and Analysis directorate; the Information Services, forming part of the Communications Services Branch, with the exception of the Electronic media monitoring services; and the Communications Support Group, forming part of the Communications Branch.

While approximately 105 Full Time Equivalents (FTEs) were transferred to the Privy Council Office on April 1, 2004, costs associated with these changes have not been finalized yet.

NATIONAL DEFENCE

AFGHANISTAN—ACQUISITION OF NEW EQUIPMENT—AVAILABILITY TO TROOPS DEPLOYED ON NEXT MISSION

(Response to question raised by Hon. Michael A. Meighen on April 21, 2004)

The Prime Minister announced the Government's intention to purchase new equipment for the Canadian Forces, including Support Ships, a Mobile Gun System, fixed-wing Search and Rescue aircraft and Maritime Helicopters.

Because these capital equipment projects have long lead times, none will have entered service with the Canadian Forces by August 2004.

That said, prior to the Afghanistan deployment in 2003, and in order to be prepared for a variety of situations on the ground for our current mission, the Canadian Forces deployed a variety of equipment and vehicles, including new Unmanned Aerial Vehicles, light utility vehicles (G Wagon, ILTIS), light armoured vehicles (LAV III, Coyotes), counter battery radar and light artillery guns to Afghanistan.

After Canada's current military commitment ends in August, the Canadian Forces will remain in Afghanistan with a reduced presence. National Defence is in the process of determining what types of equipment will be required for this new role.

UPGRADE TO FRIGATES—ACQUISITION OF NEW SUPPLY AND TRANSPORT SHIPS

(Response to question raised by Hon. Michael A. Meighen on April 21, 2004)

With regard to Canada's frigates, the Navy has a plan in place to modernize the Halifax Class Frigates. This is planned to commence in 2010 and is expected to be completed by 2017.

The Halifax Class Modernization Program will ensure that the Halifax Class will remain a viable capability until the end of their service lives.

With regard to the Government's recently announced intention to purchase new ships for the Navy, no commercial off-the-shelf variant of the new Support Ships exists. Accordingly, these ships will be designed and built for the Navy in accordance with the current ship building policy, which states that federal ships will be built in Canadian shipyards should competitive conditions exist.

The Minister of National Defence has stated his intention to ask his officials to investigate building incentives into the contracts for the new Support Ships in order to accelerate the delivery date.

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 Morin, seconded by the Honourable Senator Downe, for the third reading of Bill C-24, to amend the Parliament of Canada Act.

Hon. Michael Kirby: Honourable senators, I rise to make a few brief comments on Bill C-24, which was considered by the Standing Senate Committee on Social Affairs, Science and Technology.

As honourable senators know, the committee attached to its report a series of observations that I would suggest honourable senators read. While we reported the bill without amendment, we think some of the points we have made in the observations are important for members of this chamber to understand. I should like to comment briefly on a couple of those observations.

In particular, the observations point out that the purpose of the bill is to allow parliamentarians aged between 50 and 55 to continue receiving health, dental and life insurance benefits even though they are not entitled to receive their pension benefits until age 55. When the Members of Parliament Retiring Allowances Act was amended at the beginning of this session of Parliament, restricting MPs from receiving their pension benefits until age 55, a gap was left between retirement and the time the retiring MP would be able to receive his or her health, life and dental benefits. That is so because under the existing program one cannot receive one's health benefits until one actually starts to receive one's pension. Thus, a period now exists between the ages of 50 and 55 when a retiring member of Parliament not only is not able to receive pension benefits but also is unable to receive health benefits. Bill C-24 addresses that gap which, frankly, occurred inadvertently. As the evidence before the committee pointed out, no one seemed to have thought about that.

Officials explained to the committee that the amendment to the Parliament of Canada Act would place parliamentarians on the same footing as public servants. However, evidence from other witnesses made it clear that public servants who decide to retire and leave the public service do not have the option of benefit plan coverage between the ages of 50 and 55, unless they also receive their pension. That is to say, public servants cannot retire, not take their pension and still receive this benefit. There was a clear conflict between some of the evidence given to the committee in part by public servants and in part by the unions who were involved.

Indeed, witnesses from the Public Service Alliance of Canada confirmed that this bill provides special treatment for members of Parliament, in that it gives them a benefit beyond that which is available to federal public servants.

On the other hand, it is important to note that federal public servants have an advantage that retiring parliamentarians do not, in that federal public servants can take their pension earlier than age 55, albeit a reduced pension, thus becoming eligible to receive their life, health and dental benefits.

Therefore, in its observations, the committee noted that the act regarding pensions should have been amended as opposed to the Parliament of Canada Act. In so amending the pension legislation, retiring parliamentarians would be allowed to take a reduced pension between the ages of 50 and 55, in which case their health, life and dental benefits would have flowed automatically. Since that was not done, the cure approached is through Bill C-24. Thus, we recommended that, in the next session of Parliament, changes be made to the Members of Parliament Retiring Allowances Act.

Honourable senators, I should point out that this issue arose because there is a member of the House of Commons who is retiring for health reasons, who is under the age of 55 and who, therefore, would not be eligible for medical benefits until the age of 55. This is a very serious case, which this bill attempts to address.

The way the bill is written, it applies to all members of Parliament. Instead of addressing the isolated incident, it has turned into a broad policy change.

The committee pointed out what, typically, would have happened in the private sector under these same circumstances. That is to say, there would have been a negotiation between the employer of the individual who was retiring early and the insurance company that was providing the benefits. They would have found a way to deal with the single one-off case as opposed to having to make a broad policy change.

At the committee, we pressed officials hard on why that was not done. They said it could not have been done. That might be true, given the conditions that are attached to providing benefits to parliamentarians. On the other hand, those of us on the committee did think there probably could have been a way to deal with a one-off situation, without going into such a basic policy change.

We are also concerned that neither the government nor the committee knows what the implications of this bill will be with respect to future collective bargaining. When there is a situation where the government says before the committee that this benefit is exactly the same as that available to senior public servants and the unions come forward and say that it is not, it seems to me that if I were sitting on the side of the unions I would say, "Automatically, you have given us that in the next round of negotiations because you have already said we have it; since you are wrong, we presume you will give it to us gratis, as it were." It is not clear what the implications will be in the long term.

• (1430)

Finally, honourable senators, I should point out that one reason the committee took this bill seriously, why we had two sessions dealing with it and heard from a series of witnesses, is that this bill was fast-tracked in the other place. It went through all three stages in less than 60 minutes. I think it was closer to 25 minutes, but it is hard to tell when you read Hansard. Our view was this: Why should a bill that confers a benefit on parliamentarians be zipped through that quickly and not be subjected to the rigorous process that normally ought to go with any piece of legislation? Hence, we decided to do a thorough and competent job with respect to the bill.

In conclusion, honourable senators, in light of the fact that there is a parliamentarian who must retire because of severe medical problems and who needs the coverage, the committee decided to report the bill without amendment. However, we do so pointing out that we think there was probably a way to handle it as a single transaction and that, if it were to be done, it should have been done by changing the Members of Parliament Retiring Allowances Act to allow members to take a reduced pension before the age of 55 rather than doing it in this way.

On behalf of the committee, I will be writing to the various ministers involved, pointing out that we should like to see that change introduced when, as typically happens following an election, the issue of benefits to members comes forward. I hope that at that time the committee will deal with that issue. If it is not dealt with in the package, I would think the committee will want to add to it.

Finally, while we realize this bill was important because it fixed a gap that was totally inadvertent, it would be fair to say on behalf of the committee that we would be extremely reluctant to deal with a bill that addresses the issue of benefits to members of Parliament in such a rapid fashion, if we were asked to do it again. If that happened, we would want to make haste very slowly, because, frankly, this kind of thing should not be jammed through. If it were not for the specific case for which every committee member has considerable sympathy, we would have been more reluctant to approve it.

Having said that, I would urge the chamber to pass Bill C-24. I hope we will deal with it this week.

Hon. Donald H. Oliver: Honourable senators, I have a question for Senator Kirby.

I should first like to commend Senator Kirby on what I think is an excellent report. Both in the written report and in his comments today, he referred to the so-called private sector method of dealing with such cases, which is to approach the insurer to see if something could be worked out. Did he or anyone on his behalf make such an inquiry? If there were a private sector method of dealing with this, there would be no need to pass the bill.

I am aware of Senator Kirby's background in mathematics. Both in the report and in his oral comments today, he indicated that he does not know the full implications, mathematically or financially, of what this measure might cost in the next set of negotiations.

Could the honourable senator give us any figures as to the magnitude of the cost of this public policy change?

Senator Kirby: Honourable senators, on the second question, no, I cannot. It would depend, first, on whether it is ultimately included in a collective agreement and, second, on how many people decide to retire early and not take their pension until age 55. To the best of my knowledge, there is no data on that proposal, because everyone who has retired early has taken his or her reduced pension in order to keep the health benefits.

With respect to the first question, the dilemma is that in a private sector situation, even in a union contract situation, it is quite legitimate for the employer to decide to give an increased benefit, which is what this amounts to, out of compassion to an individual retiring employee. However, under the acts that govern payments to parliamentarians, that degree of flexibility does not exist, because all monies paid to parliamentarians, both through the retirement program and through parliamentarians still serving, have to come under specific pieces of legislation. Hence, there cannot be a situation where the employer, whether it is deemed to be the House of Commons or the Government of Canada, can make a one-off agreement for a single individual. That is just not allowed.

The Hon. the Speaker: Honourable senators, I should perhaps clarify, before I put the motion, that even though Senator Lynch-Staunton, as Leader of the Opposition, has unlimited time, the first speaker on the opposition side by agreement shall have 45 minutes, in the event it is not Senator Lynch-Staunton.

It is agreed, honourable senators?

Hon. Senators: Agreed.

On motion of Senator Lynch-Staunton, debate adjourned.

WESTBANK FIRST NATION SELF-GOVERNMENT BILL

THIRD READING

Hon. Ross Fitzpatrick moved third reading of Bill C-11, to give effect to the Westbank First Nation self-government agreement.

He said: Honourable senators, I rise today with a strong sense that we are participating in a very important step in history with third reading of Bill C-11, to give effect to the Westbank First Nations Self-government Agreement. As I mentioned at second reading, this is the culmination of a process started over 14 years ago by Chief Robert Louie and council, a model process in democracy involving the band members both on and off the reserve, as well as non-band members living on the reserve, and being inclusive of the youth and elders. I believe it will resonate across this country and provide a positive and constructive path to other self-government agreements under the federal government's inherent right policy.

Honourable senators, the implementation of this agreement will benefit not only members of the First Nation and residents on Westbank lands but also other bands across the country. This self-government agreement will show by example what can be accomplished and how it can contribute to a viable economy and good governance for First Nations of Canada.

A key objective of self-government is to create a stable, legitimate, accountable and progressive First Nation-governance regime to replace reliance on the Indian Act. A significant aspect of this improved First Nation governance involves providing certainty for all persons having interests in First Nations lands, as well as improving the foundation for economic and social development.

Honourable senators, under the Indian Act, much of the decision-making power rests with the Minister of Indian Affairs and Northern Development rather than with local First Nation governments. Decision-making power is thus removed from the local environment. The existing decision-making process can be lengthy, complicated, and dispute resolution mechanisms may be unclear. This leads to delays, indecision, uncertainty and the appearance of a lack of transparency for investors; as a result, investors may feel that investment on-reserve is risky.

Enacting the Westbank First Nation Self-government Agreement will remove the Minister of Indian Affairs and Northern Development from the decision-making process and will replace him or her with a First Nation government regulated by a locally developed constitution that will reflect the customs and aspirations of the Westbank First Nation. Decisions will be timely, transparent and accountable. Investors will be assured by the certainty that vesting power locally will provide.

The agreement also sets forth clear dispute resolution mechanisms for those having an interest in Westbank First Nation lands. Any Westbank law, action or decision may be challenged in the Province of British Columbia's courts. Westbank First Nation will be able to sue and be sued.

Westbank First Nation must operate according to the terms and conditions of the agreement, which clearly provides that Westbank First Nation government and its institutions will be bound by the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act.

Westbank First Nation government will be regulated by a community constitution.

• (1440)

As required by the agreement, Westbank First Nation has developed and ratified a constitution that provides for democratic and legitimate elections of government, internal financial management and accountability to members, conflict of interest rules and public notification of Westbank First Nation laws and land rules. It also provides for the removal of elected councillors for violation of the constitution or breach of oath of office. The constitution was developed by Westbank First Nation members and reflects the needs and aspirations of the community. Simply, it represents the community's vision of how it should operate now and in the future.

Under the provisions of the agreement, Westbank First Nation may assume jurisdiction over areas that, for the most part, already exist under the Indian Act. Westbank First Nation will establish an accountable and effective government capable of exercising law-making authority in a number of agreed-upon subject matters, including culture, language, education, and land and resource management.

The agreement provides for the continuation of the terms and conditions of all existing leases while enabling Westbank First Nation to grant interests and licences on its lands as well as to regulate and provide appeal procedures for landlord and tenant matters. It will provide the freedom to establish partnerships and conduct business in a manner that meets local needs.

Westbank First Nation has already demonstrated an exceptional ability to manage its affairs responsibly. This is one of the most successful, business-oriented and progressive Aboriginal communities in Canada. The First Nation opened some of its lands to development several years ago and has become a busy and respected landlord. Today, Westbank's commercial district features a number of shopping centres that generate substantial rental income and provide numerous job opportunities for band members. The commercial activity has also fostered a sense of entrepreneurship among Westbank First Nation members. More than 100 Aboriginal-owned businesses are now members of the local chamber of commerce.

Honourable senators, Bill C-11 will also have a positive influence on the regional economy. Westbank First Nation is already an active member of the Central Okanagan Regional District's Economic Development Commission. Following self-government, Westbank First Nation will be able to more fully contribute to the Economic Development Commission as well as to create new and stronger ties with other surrounding municipalities. Westbank will be able to fully participate in the Green Economic Sustainable Development and the Okanangan Partnership, both of which are collaborative regional approaches to make the Okanagan-Similkameen economy more diverse and competitive while adhering to the principles of green sustainable development.

Honourable senators, economic development is best sustained in the long term when decisions are made locally by the people most affected by them. Upon implementation of the agreement, the people of Westbank will be able to identify emerging opportunities, select those that are acceptable to the community, and then pursue them promptly and decisively. With a stable, representative and effective government in place, the First Nation will be better able to attract investors and business partners. Local entrepreneurs can expand existing partnerships and establish new ones, thus stimulating the economy.

Westbank's growing prosperity has produced benefits for all band members. The First Nation runs its own school and community centre, a provincially licensed daycare and early education centre, and an intermediate care facility for the elderly. Westbank also maintains several recreational facilities, including beaches, campgrounds and baseball diamonds.

I believe this self-government agreement will result in even greater economic opportunities that will produce more social dividends to the band members and non-band residents, as well as to the surrounding communities.

I urge all honourable senators to lend their support to Bill C-11 and to support the Westbank First Nation as it moves to realize its potential and fulfil its aspirations of self-sufficiency and stability. Clearly, all Canadians stand to benefit.

Hon. Gerry St. Germain: Honourable senators, I am pleased to rise today and conclude my remarks on the third reading debate of Bill C-11. As Senator Fitzpatrick said, this is a huge and positive step for all Canadians, but a giant step for the people of Westbank, some of whom are with us today. They will at last control their own destiny. As a leading businessman in the community, Senator Fitzpatrick knows how much opportunity there is in that area, not only for British Columbians but also and especially for the Westbank First Nation.

I have made my views known on where I stand and where I believe the vast majority of Canadians stand. We must rectify and restore the rightful place of Aboriginal peoples in our nation's make-up. I believe that the courts got it right when they determined that the Crown and the Aboriginal people must negotiate how the Aboriginal people are to govern themselves under the sovereign nation state of Canada. I believe that all honourable senators want this chamber to always consider the views of all Canadians and to do what is right for Canadians. Canadians demand to be heard, and I believe that Parliament must hear them. Government must stop using its majority in a dictatorial form to ram legislation through. The information we were given indicates that too many residents of Westbank were kept in the dark to a degree. When they asked for someone to listen, they were turned away and, in effect, silenced. It is important to listen to minorities because we can learn a lot.

I am grateful that the Senate committee addressed this aspect of the government's behaviour. My political leader, Stephen Harper, the Conservative caucus and, I am sure, the majority of colleagues in this place support the purpose of Bill C-11. However, there are two lingering concerns for some people. One is that the adoption of the bill will create a third order of government and that non-Aboriginal residents and some Aboriginal members will lose or have their Canadian constitutional rights diminished in some measure. The present government of Westbank has repeatedly assured Parliament that non-member and non-Aboriginal residents will have real input on the matters that affect them.

The creation of the advisory council will be one of the first actions of the new government. The elected members of the council will be democratically responsible to the Westbank government, which, in turn, is democratically responsible to the people on the land.

The other major concern is that a third order of government will be created. The Canadian Constitution does not contemplate and does not allow a wholly new third order of government, yet the fear exists. Some believe that they will be governed by a whole new entity and that they will lose something they once had. People have been made to feel that they will be uprooted and lose their investment in the community. That, honourable senators, is just plain wrong. However, it is another compelling reason for Parliament to rid the country of the failed social experiment that has so poisoned the relationship with Aboriginals — the Department of Indian Affairs and Northern Development.

I believe that the new Westbank government will govern by doing the right things. There are many types of government in Canada, and Westbank will be its own unique form of government. There is no template. First Nations, municipalities and provincial governments are all different. Westbank First Nation will have some municipal-type powers, some federal-type powers, some provincial-type powers and some uniquely First Nations powers. The jurisdictional areas or powers of operation are detailed to the extent possible in the agreement and constitution that was ratified by the First Nations and the federal Crown, and the Westbank First Nation members democratically voted on its adoption. Electors voted in favour three times, with three majority decisions.

In short, honourable senators, adoption of Bill C-11 will not create a wholly new third order of government. One may say that a new order of government will exist for two areas; namely, that the Westbank First Nation government will hold sovereign constitutional powers over their culture and their lands, which I believe they should. All other powers of government remain under the sovereign constitutional powers of the federal Crown and, in certain areas, the provincial Crown. The creation of First Nations self-government does not create sovereign states independent of the sovereign state of Canada. The constitutional description of the divisions of power has not been altered. We must all remember that the assertion that Aboriginal peoples have a right to self-government has in fact come from Canada's highest court, the court charged with the interpretation of and protection of Canada's Constitution and our system of law making.

• (1450)

Honourable senators, there are solutions to the issues raised by Canadians. Parliament need only listen. Again, I would like to thank Senator Fitzpatrick for his professionalism in dealing with this bill and the way he has dealt with our ability to summon witnesses.

To conclude, honourable senators, I would ask that the question be put and that Bill C-11 be passed so that the residents of Westbank can build a better future for themselves and all those British Columbians who live in and around Westbank. Thank you, honourable senators.

[*Translation*]

Hon. Aurélien Gill: Honourable senators, I, too, want to express my satisfaction and congratulate my colleagues from both sides of this chamber for their constant support and non-partisan attitude when it comes to First Nations issues. I particularly want to thank them in connection with the Westbank agreement.

I thank Senator Fitzpatrick for his constant work and his unflagging determination in promoting the cause. I thank Senator St. Germain, who always supports First Nations causes. I would like to thank the current council, led by Chief Robert Louie, and all the previous councils of the community that worked on this agreement.

Honourable senators, it is always an accomplishment to conclude such an agreement. This is what we need: this agreement will serve as an example of courage, tenacity and innovation. Let us recognize the work of all those who made a contribution. Nothing is perfect. It is normal that there be concerns and even major disagreements. We are moving into unfamiliar territory; we are moving slowly but surely.

We must leave the status quo behind. We must create our own governments to manage our affairs. The Westbank First Nation has succeeded, against all the odds, in staying the course by harnessing the respective abilities of one and all. The disagreements are understandable and the questions are relevant, but I am confident that the Westbank self-government will grow and find positive answers to all the questions, particularly those raised by opponents.

There is no magic formula, only good intentions. And there is every indication that the Westbank government has good intentions.

[*English*]

Once again, congratulations to the Aboriginal and non-Aboriginal people of Westbank, and good luck.

Hon. Edward M. Lawson: Honourable senators, I have a brief intervention. It is refreshing and pleasing to hear a presentation such as the one made by Senator Fitzpatrick on this issue. I would also compliment the quality of the presentation by Senator St. Germain on the other side on this historic matter. I will vote for the bill. It seems to me fitting that presentations of this quality by senators result in a unanimous vote in favour of third reading of the bill.

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

Hon. Senators: Question!

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

Motion agreed to and bill read third time and passed.

INTERNATIONAL TRANSFER OF OFFENDERS BILL

SECOND READING

Hon. Ione Christensen moved second reading of Bill C-15, to implement treaties and administrative arrangements on the international transfer of persons found guilty of criminal offences.

She said: I appreciate the opportunity move second reading of Bill C-15, entitled the "International Transfer of Offenders Act." The proposed measures will replace the current Transfer of Offenders Act of 1978. I am pleased to offer my support to this bill because it will further the commitment of humanitarian objectives for which Canada is internationally known, and it will ultimately contribute to public safety. Some 25 years ago, member states of the United Nations agreed that the international transfer of offenders was desirable because of the increased global mobility of individuals and the need for countries to cooperate on criminal justice matters.

Soon thereafter, the Canadian government brought forward the Transfer of Offenders Act to authorize the implementation of treaties between Canada and other countries through the negotiation of both bilateral treaties and multilateral conventions for the international transfer of offenders.

Central to the current act and the replacement that we are considering today is its humanitarian purpose. This becomes apparent if one considers the circumstances of a citizen of Canada incarcerated in a country where the language and culture are unknown to him, the environment is unfamiliar, and unsatisfactory health and sanitary conditions may prevail. These factors, in many instances, make imprisonment more onerous than might be the case had a similar penalty been imposed in Canada. For every person incarcerated abroad, there are family and friends at home concerned and, in most instances, unable to maintain regular contact and offer support to the offender.

There are also other reasons that justify the international transfer of offenders, honourable senators. The Transfer of Offenders Act provides a significant level of public protection. An offender incarcerated in a foreign state may have no opportunity to rehabilitate himself either because of language barriers or due to the absence of treatment or training programs.

In foreign jurisdictions, opportunities for any form of conditional release are significantly impaired. Because of this, the chances for successful reintegration of the offender and the ultimate public safety are greatly reduced. By allowing Canadian offenders to serve their sentences in Canada, the Transfer of Offenders Act ensures they are immediately delivered to the authority of the Correctional Service of Canada or the provincial correctional authority that can proceed toward gradual and controlled reintegration of the offender into society. Gradual and supervised release under sentence is far better than having the offender simply deported back to Canada at the end of his sentence with no controls whatsoever.

As in many other areas of international cooperation, most nations wish to cooperate with one another in areas of criminal justice. All states prohibit certain conduct and attempt to control it through the enforcement of criminal law and penalties. It is evident that countries have a common interest in working together to prevent and to respond to criminal conduct. This is exactly what arrangements for the transfer of offenders allow states to do. Such cooperation actually protects the sovereignty of both states involved by preventing offenders from escaping justice. Once returned to Canada, the offender must complete the foreign sentence. At times there may be confusion about the mechanisms of extradition, deportation and provisions for the movement of offenders under the Transfer of Offenders Act. It is important to explain the differences.

• (1500)

Extradition occurs when a person is surrendered by a state at the request of another state where that person is accused of having committed a crime or has been convicted of a crime and has left the jurisdiction in which the sentence should be served. Extradition to or from Canada is carried out under the Extradition Act.

Deportation involves the removal of a non-Canadian citizen from Canada under the Immigration and Refugee Protection Act. A non-Canadian citizen serving a custodial sentence in Canada for a crime committed in Canada may be deported to his or her country of citizenship if the requirements of the act are met. However, unlike offenders transferred under the Transfer of Offenders Act, deported offenders are not subject to their Canadian sentence upon returning to the country of citizenship.

As in the case of the extradition proceedings, deportation will often take place without the consent of the individual who is subject to the deportation order. However, under the Transfer of Offenders Act, consent is required by the citizen in custody, by the country of origin, and by the country imposing the sentence. They are all required to give consent to the transfer, and, if a province or a territory is involved, then a fourth party must also give consent.

As has been noted, honourable senators, the Transfer of Offenders Act came into force in 1978. Since then, only technical amendments have been made to the act, although more substantive issues have been identified. Policy questions relating to international transfers have expanded because of Canada's greater experience with treaties and legislative amendments brought about by the Corrections and Conditional Release Act in 1992; Bill C-41, on sentencing, in 1995; and Bill C-45, on sentence calculation reform, in 1996.

As a result, in 1997, officials of the Department of the Solicitor General began consultations with 91 private sector and government agencies that then conducted a comprehensive review of the Transfer of Offenders Act. The consultations and review process yielded proposals to amend the Transfer of Offenders Act that would reflect traditional international treaty principles, close identified gaps in the act, ensure consistency with other legislative provisions and improve efficiencies.

In recent years, statements of purpose and principle have been added to the federal legislation to provide a clear indication of the intent of the legislation, to ensure parliamentary endorsement of the approach and policy behind the legislation, and to serve as an aid to the implementation of the provisions. Bill C-15 would do exactly that. It would specify that the purpose of the proposed international transfer of offenders act is to contribute to the administration of justice, to the rehabilitation of offenders and to the reintegration of offenders into the community by enabling them to serve their sentences in their home country.

Over the years, Canada has promoted key principles to guide the international transfer of offenders, in particular the notion of voluntary consent of the offender, which is based on the traditional humanitarian objective of treaties. The prospects of an offender's successful rehabilitation, institutional adjustment and community reintegration likely would be compromised if an offender were forced to transfer against his or her will. As well, foreign states might be less inclined to approve a transfer on humanitarian grounds if the offender did not provide willing consent.

Honourable senators, Bill C-15 would also contain the important principle that offenders are to be informed in advance of the terms and the manner in which their sentences will be completed in Canada. Similarly, the bill would require that a foreign offender in Canada requesting transfer to his or her home country must be provided with the information received from the foreign state describing how the sentence will be served in that state. This would ensure that the offender's consent to the transfer is truly informed.

All treaties that Canada has signed under the existing legislation reflect the principle of verified consent. This principle requires the sentencing state to give the receiving state an opportunity to verify, prior to the transfer, that the offender's consent is given voluntarily. This is important because the prospects of the offender's reintegration into the community likely would be compromised if he or she did not wish to be transferred. This is why Bill C-15 contains the requirement that all reasonable steps be taken to determine whether an offender's consent has been given willingly. Key to voluntary consent is the offender's right to withdraw consent any time before the physical transfer takes place. Bill C-15 would incorporate this right in legislation, which is consistent with the humanitarian and consensual underpinnings of the transfer process.

Honourable senators, the treaties signed by Canada reflect certain obligations that are considered essential from a legal perspective. For example, treaties generally include the requirement that countries inform foreign nationals in their respective jurisdictions of the existence and substance of a treaty. Without such knowledge, the offender would not be in a position to request a transfer to his or her home country. Currently, there is no legislation to compel Canada to meet this obligation with respect to foreign citizens sentenced in Canada. To address this failing in the current legislation, Bill C-15 would require that a foreign offender under federal or provincial jurisdiction in Canada be informed of the existence and substance of an international transfer treaty between Canada and the offender's country of citizenship.

Honourable senators, as you can see, the modernization of the existing Transfer of Offenders Act involves a number of matters that are necessary in law, even though they may appear to be matters of pure common sense. One of these is continued enforcement, which is recognized in most transfer of offenders treaties. This administrative procedure allows the receiving state to continue enforcing a foreign sentence according to its domestic laws. Bill C-15 would explicitly incorporate this important procedure in the proposed international transfer of offenders act.

Transfer of offenders treaties generally provide that the receiving state shall not interfere with the findings of guilt and the sentence imposed by that state. Non-aggravation of the sentence is a concept that underlies criminal law. Non-aggravation means "not extending the total length of a sentence." It can be more broadly defined as "no aggravation of the administration of the sentence." This would also take into consideration parole eligibility dates. Bill C-15 would maintain this important principle. Foreign sentencing could not be aggravated after the transfer to Canada has taken place.

In some foreign states, the sentence begins from the date that the individual is taken into custody, rather than from the sentencing date. In Canada, correctional authorities calculate the parole eligibility date from the date of imposition of the sentencing. Bill C-15 would make it clear that an offender transferred to Canada is given credit for any time spent in confinement in the foreign state that has been credited by that state toward completion of the sentence.

Honourable senators, in respect of specific offences, the current Transfer of Offenders Act does not distinguish between offenders convicted of a single murder and those convicted of multiple murders. To ensure consistency with the Criminal Code, Bill C-15 would ensure that offenders transferred to Canada serving multiple life sentences for murder would be subject to the 25-year parole eligibility rule as prescribed by the Criminal Code. This would further the important objective of the legislation that offenders transferred to Canada do not escape justice.

• (1510)

Honourable senators, the rule of dual criminality is satisfied where an act is "criminal" in one state and has the same general qualifications in the other. This is a rule recognized by international law and is a requirement of most treaties signed by Canada because the enforcement of a foreign sanction for an offence that does not exist in Canada — the consumption of alcohol, for example — could violate essential constitutional principles or contravene protected fundamental human rights. Bill C-15 would set out dual criminality as a condition of transfer.

The current Transfer of Offenders Act makes provisions for the transfer to Canada of young offenders committed to custody but not for young offenders on probation. This is inconsistent with the provisions that allow for the transfer of adult offenders either on probation or in custody. Bill C-15 would address this anomaly by providing for the transfer of young offenders on probation.

Moreover, honourable senators, there is no provision in the current act that allows for the transfer of Canadian children. Bill C-15 would provide for the transfer to Canada of children less than 12 years of age. The bill would also specify that children transferred to Canada would not be detained by reason of the foreign sentence and would be dealt with in accordance with the law of the receiving province or territory.

No provision is made in the current Transfer of Offenders Act or in any other Canadian statute for the international transfer of persons judged not criminally responsible on account of mental disorders or unfit to stand trial. To address this issue, Bill C-15 would authorize the negotiation of administrative arrangements with the authorities of a foreign state for the transfer of persons with mental disorders to or from Canada. This change would also further the humanitarian purpose of the transfer of offender scheme.

Honourable senators, as children, mentally disordered people and offenders serving sentences under provincial jurisdictions would also be included in the new transfer scheme, Bill C-15 would ensure that due deference is shown to our provincial partners in making it clear that their consent would be required in all cases under their jurisdiction.

As mentioned, both countries involved in the transfer of the sentenced offender, as well as the offender, must consent to the transfer. Obviously, one or the other may refuse to consent to the transfer. At present, there is no legislative requirement that a foreign offender in Canada be informed of the reasons the minister decided not to grant his or her request to transfer to his or her home country. It is vital that the offender be advised of the reasons of a negative decision and be given the opportunity to present observations to have that decision reversed. By setting out this requirement, Bill C-15 would ensure consistency with the Corrections and Conditional Release Act, the common law "duty to act fairly," and our Canadian Charter of Rights and Freedoms.

Honourable senators, most transfer of offenders treaties contain clauses for appropriate action to be taken by the receiving state when the sentencing state has granted a pardon to the offender or reduced the offender's original conviction or sentence. Bill C-15 would clarify that Canada must defer to the foreign state's decision to grant relief. Canada would then take appropriate actions to grant relief in accordance with the foreign sentence. Conversely, the bill would require that a foreign state be advised of any relief granted by Canada in respect to a foreign offender so the offender may benefit from that measure.

In deciding to approve or disapprove the transfer of an offender, the transfer of offenders regulations currently set out considerations that must be taken into account, for example, whether the offender left Canada with the intent of abandoning Canada as his or her place of permanent residence or whether the offender had social or family ties in Canada. Since the considerations for transfer are important to the decision making process, Bill C-15 ensures that they are expressly stated in the new international transfer of offenders act.

Honourable senators, the current Transfer of Offenders Act provides that Canada may enter into a treaty, international agreement, arrangement, or convention for the international transfer of offenders only with recognized states. The dissolution of the U.S.S.R. and Yugoslavia highlight the problem of dealing with territories or jurisdictions not yet recognized as foreign states. Several years may pass before some jurisdictions are formally recognized as "foreign states." In the interim, under existing law, Canada cannot enter into a treaty with them. There may also be instances where a treaty has been negotiated but its ratification may be years away. Canadians incarcerated in these jurisdictions and offenders from these foreign entities do not have access to the international transfer process.

Also, some foreign states may be less inclined to consider a more formal arrangement with Canada but are willing to negotiate less formal arrangements for the transfer of offenders on a case-by-case basis. To give offenders access to international transfers in such circumstances, Bill C-15 would authorize the negotiation of an administrative arrangement with a foreign state or a non-state entity. This would make the legislation more responsive to international developments. It would allow Canada to bring its citizens home, particularly where compelling circumstances exist. However, let it be clear that these transfers will always result in the foreign sentence being served under the supervision of Canadian correctional authorities so that the subject may be gradually and safely reintegrated into society.

Honourable senators, the development of transfer arrangements is beneficial to most offenders. To date, a limited number of states are bound by treaties and conventions on the transfer of offenders. On average, about 85 Canadians are transferred annually to Canada under a treaty or a multiple convention for the transfer of offenders as put in place under the Transfer of Offenders Act. However, the proposal will broaden the class of offenders having access to international transfers. On humanitarian grounds alone, this is highly desirable.

Again, the priorities of the legislation before us are to ensure that Canada remains a full-fledged international participant in matters of criminal justice and to take a humanitarian stance that is not only the right thing to do but also will serve as an example to others. Serving the sentence in a foreign state often increases its severity. I would emphasize that this is a matter of interest not only to Canadians in foreign jails but also to any national who may wish to transfer between countries that are signatories to a multiple convention. If an offender is obliged to serve a sentence in a foreign state and is then deported home at the end of the sentence, there is neither the opportunity nor the encouragement to reintegrate into his or her community in a controlled manner. Public safety is put at risk, and it is in the interests of the community nor the offender.

The government is making every effort to obtain humane treatment for its citizens incarcerated abroad by participating fully in the international community. By providing for the negotiation and implementation of administrative arrangements in addition to regular treaties, Bill C-15 would allow for the promotion of humanitarian objectives in significant areas that are not now accessible. Moreover, there is no doubt that, by broadening the category of state and non-state entities with which Canada could transfer offenders, Bill C-15 would better serve the objectives of public protection through rehabilitation.

Objections based on the belief that the enforcement of foreign sentences will infringe Canada's national integrity or that the foreign sentence will be improperly enforced in Canada are unfounded. These objections are fuelled by fear of the unknown

rather than by informed policy reasons. This chamber should not allow such objections to stand in the way of forward-looking efforts to modernize legislation that has already proven its worth in its current form.

• (1520)

Honourable senators, Canada's Transfer of Offenders Act and the treaties that it implements have been successful in achieving their goals. For this reason, in their new form, they will continue to be a meaningful feature of international relations between Canada and many countries.

In closing, it should be pointed out that the progress made in the area of the transfer of offenders in terms of the number of offenders transferred and the treaties and the conventions implemented is considerable. Since 1978, approximately 1,000 Canadians have been brought home to Canada, and over 100 foreign offenders have been returned to their countries of citizenship. Although the numbers are not large, honourable senators, the individual hardships that have been alleviated are great. Bill C-15 will enable the government to continue enhancing its pursuit of humanitarian ideals.

Finally, honourable senators, let me say that there is clearly a need for Canada to realign its legislation to better reflect our humanitarian objectives, which are, first, the return of Canadian nationals; second, international cooperation in matters of criminal justice; and third, public protection by the safe and gradual reintegration of offenders into society. Bill C-15 would do all of this by incorporating traditional international treaty principles, closing identified gaps, and ensuring consistency with other legislative provisions. Bill C-15 would also contribute to these important objectives by including additional types of offenders who are now not covered and by increasing the number of jurisdictions with which Canada would enter into arrangements for the transfer of offenders.

Honourable senators, I urge your support of Bill C-15 and the establishment of the international transfer of offenders act. This is good, common sense legislation; it is humanitarian and it is forward looking. I commend it to all of you, and I ask you for your support of this bill.

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

Senator Christensen: I would be pleased to take a question. I do not guarantee that I can answer it, but I would be pleased to take it.

Senator Cools: That is not a problem. Questions can be answered now or later.

The Hon. the Speaker: Just to clarify, we are still on Senator Christensen's speech. Our rules provide for questions or comments, and Senator Christensen has agreed to take a question.

Senator Cools: This bill is interesting in that it introduces quite a collection of novelties into the law, and I hope that will be examined in committee. One of the novelties it introduces is the concept of making an offender an equal partner or equal party with Her Majesty in this country and also with the heads of state and sovereigns of other countries with whom these agreements are made. That is problematic because, when an offender is seeking a transfer, as an offender is prone to do, it is not the consent of that offender that is given; rather, it is a request to both governments that that offender is submitting. The other government's response is a granting of a request. That is hardly consent as equal parties. There is something very wrong with that.

My question relates to a section in the honourable senator's speech in which she was speaking about young offenders or children, one or the other.

Senator Christensen: Both.

Senator Cools: I am curious about young offenders. Perhaps the honourable senator could enlighten us about the numbers of young people we are talking about. I am curious, for example, to know how many young offenders Canada has serving in foreign prisons or incarcerated abroad.

I wonder whether the provisions of this bill apply in the example I am about to give. There is a case where three members of a family living in Toronto were supposedly fighting with al-Qaeda, a father and two sons. The two sons are minors. The father is dead, one son is in Guantanamo, and the 14 year old — it is a sad thing — is paralyzed, but he was fighting. I am curious if the provisions of this bill would have applied to that 14 year old. Is this bill intended to cover such instances? If the honourable senator does not have the answer, I understand, because the case is quite new.

How many Canadian young offenders will be transferred in accordance with either the terms of the treaties or by the administrative provisions of this proposed act?

Senator Christensen: I thank the honourable senator. Just to make a comment on the first observation, which relates to the consent of the offender, the provision in the proposed legislation is to ensure that, when an application is made from either Canada to a foreign country or from a foreign country to Canada, the offender has in fact consented to being transferred. Prisoners will not be transferred without giving their consent, as would be happening in an extradition situation.

With respect to children, I do not have the number of children over the age of 12 who are now incarcerated in other countries or who have been transferred back. I only have group figures for a total number of persons who have been brought back and those who have been sent to other countries.

The change in this proposed legislation relative to children over the age of 12 is found in the probation section. The existing legislation does not provide the option for the return of a child who is over 12 and on probation in another country. That is being added because that provision already exists for adults.

The proposed section for children under 12 is new. Again, I do not have figures, and I apologize for that. It allows for children under 12 to be brought back to Canada. Although they would not serve a sentence in an institution here, they would be integrated back into society under supervision.

Senator Cools: I am always amazed when I see provisions being created in statutes when in fact very few people or no people require the application of those provisions. I should like to know how many Canadian children under 12 years of age or even older are being detained abroad. Having said that, I understand that this is something that can be explored at a later time.

My second question is with regard to the number of inmates.

Hon. Bill Rompkey (Deputy Leader of the Government: On a point of order, I would point out that we have a very short day today. Senator Kelleher is here today and ready to speak.

Senator Kelleher: The honourable senator makes it sound like I am never here.

Senator Rompkey: He is here today, as is his usual custom, and he is prepared, as is his usual custom, to speak. The bill will be referred to the Legal and Constitutional Affairs Committee, on which Senator Cools sits, and there will be adequate opportunity to explore the important points raised in this bill.

Would Senator Cools agree to hear Senator Kelleher now? I am not trying to stifle questions but to suggest that we address them in another forum.

• (1530)

Senator Cools: I did not think that we were short of time. I do not think Senator Kelleher will speak for too long. My questions are not that lengthy.

I appreciate that the bill will go to committee, but I must tell honourable senators that I do not believe that committee study replaces the kind of debate that should happen here. To my mind, with all due respect, Senator Rompkey has just occupied as much time saying that as I would have occupied in putting my questions. I wish to ask a question. Why bother to have any debate at all? What has this place become?

My second question is this: Does the chamber have some idea of the number of inmates — I am saying "inmates," but they call them "offenders" — serving abroad and the number of foreign offenders serving in Canada, and some information about the relative rates of the transfers? In other words, is it possible that we have a situation where the foreign offenders are opting to stay in Canada and Canadian prisoners abroad would be opting to come back here? That would be saying something about our penitentiaries here. Could we get this information for the record?

Senator Christensen: Honourable senators, very briefly, as of the year 2002, we had 3,076 Canadians in foreign jails. Of those, 2,712 were eligible to be transferred back to Canada. At the same time, we had 952 foreign nationals in our penitentiaries, of which 278 were eligible to be returned to their countries of origin.

Senator Cools: Therefore, the exchange process is largely a one-way process, is it not? In other words, Canadian offenders who are serving abroad want to serve in penitentiaries in Canada, and foreign offenders are opting to stay in Canada.

Senator Prud'homme: Foreigners like it here.

Senator Cools: It would appear so. Perhaps it is something we could look at. I am interested in your numbers. I know a fair amount about this subject matter, and it is important for this chamber to have this information and to debate it.

I would also like to say to Senator Christensen that I thank her very much. It has been a long time since this chamber or Parliament in general has done a serious study on penitentiaries, on remission or parole, or on any of those vast areas of study. Having said that, I would be happy to listen to — and I am eagerly awaiting to hear — every single word that Senator Kelleher will utter.

Some Hon. Senators: Hear, Hear!

Hon. James F. Kelleher: Honourable senators, it is nice to receive applause from both sides of the chamber before I even speak.

I want to thank Senator Cools for stepping aside with her questions and allowing me to rise to speak at second reading of Bill C-15.

We in this chamber are probably more aware than most Canadians that time is precious. This feeling must be particularly acute for our Liberal colleagues in these, the waning days of their government. Indeed, there is very little time left in this parliamentary session to deal with important issues facing the nation, so by all means, let us spend a portion of it dealing with legislation that cuts a better deal for convicted criminals — criminals that have seen the due process of law and for their crimes are ensconced in prisons here in Canada and abroad.

As honourable senators know, Bill C-15 repeals and replaces the 1978 Transfer of Offenders Act. That act allows for implementation of treaties between Canada and other countries for the international transfer of offenders. The bill before us is intended to further the humanitarian purposes of this legislation, and of the treaties signed between Canada and foreign states. It adds Macao and Hong Kong to the number of states with which we will have such arrangements and allows for the transfer of a broader range of Canadians. Children will be included, along with those suffering from mental disorders.

It bears repeating, honourable senators, that the purpose of this legislation and of the transfer treaties is essentially humanitarian, as the government emphasizes in the background document accompanying this bill.

As my fellow senators are aware, I have long championed the introduction of Canadian criminals, especially corporate criminals, to the humanitarian environment of our prisons, but, of course, this begs the question: What do we consider to be a humane or inhumane environment when it comes to prison?

Judging by the recent news concerning our prisons, this is a very open question. For instance, if a Canadian languishing in a foreign jail cannot get takeout food delivered to his cell, would that be considered inhumane? Or perhaps it takes more than 30 minutes for delivery — is that inhumane? What if you do not get exactly what you ordered? Would that be reason enough to apply for a transfer to a Canadian jail, where the food delivery service, I hear, is excellent?

Of course, I am being somewhat facetious, but it underscores a serious issue. Prisons, some people might argue, are by their very nature inhumane environments. Other people might argue that simply locking up a person in a cage is, in itself, inhumane.

Honourable senators, let me assure you that I am not among those people — even though I am an orange-suit person, for anyone who is wondering. That does not mean there will not be serious debate about this issue, especially when the conditions in different prisons around the world and even within countries — not to mention within prisons themselves — vary.

However, there are more reasons to be concerned about this bill. I, for one, am concerned about the type of criminals we might be importing back to Canada. Is there any acknowledgement in this bill of the types of crimes that might have been committed and against whom? It is one thing to transfer back model prisoners who show promise of rehabilitation; it is quite another to return to Canada hardened criminals who themselves may contribute to the worsening of the prison environment here in this country.

This raises another issue. Who consents to the transfer? In the other place, my Conservative colleagues drew attention to subclause 8(1) of the bill, which identifies Canada, the foreign entity and the offender as those who must consent to a transfer before it takes place. Where, however, is the voice of the victim or their family? In some cases this may not be an issue, but in others such as murder, rape, assault and armed robbery, there are, more often than not survivors — family members, friends and the victims themselves — people who have been traumatized by the crime. Under this legislation, they have no say in the transfer process. Without giving them a voice, will we be compounding their suffering? The answer in some cases, perhaps the majority of cases, is surely yes.

Remember, honourable senators, that Bill C-15 insists upon strict conformity within the Canadian criminal justice system. This means that the sentence settled upon where the crime is committed may no longer hold when the prisoner is transferred here. It is the Canadian sentencing guidelines that will be used, meaning that, in cases where the foreign sentence exceeds the maximum sentence allowable in Canadian for the same crime, the lesser sentence will apply.

Humane indeed, but for whom? Imagine being the mother of a murder victim, having to stand idly by while the murderer of your son or daughter is transferred to a cushier prison where the sentence for the crime is reduced? It would be hard not to conclude that in some measure justice has been denied and the criminal has played the system.

• (1540)

You will forgive me, honourable senators, for suggesting that perhaps clause 8(1) needs to be revisited. I do not think it is too much to ask that victims or their survivors be given a voice in the transfer process.

I think, too, that we might want to take a look at the sentencing issue. It is important to be humane by all means, but at what cost? In casting aside the original sentence, are we not bending over backwards to accommodate — and I will say once again — convicted criminals? In trying to do so, the outcome may be the reverse of what is intended by this proposed legislation. Indeed, what we may be doing inadvertently is reducing the chances that a criminal will be transferred, given that the consent of the foreign entity is required. The consent will surely be less forthcoming if the foreign entity is being told not only that its prisons are not up to snuff but also that its sentences are out of whack. This is certainly the message implied by this proposed legislation.

Honourable senators, that concludes my remarks on Bill C-15 at this time. Suffice to say that, in my opinion, this bill needs a little work. Thank you.

Some Hon. Senators: Hear, hear!

Senator Cools: Would the honourable senator take a question?

Senator Kelleher: It would be a pleasure.

Senator Cools: Honourable senators, Senator Kelleher was a former Solicitor General.

Senator Oliver: And diplomat.

Senator Cools: That, too. As such, Senator Kelleher certainly would have an extensive knowledge of our penitentiary system and of the transfers of offenders. Hence, given that a former Solicitor General is speaking for the other side on this bill, I would love to put my question to him. My question is essentially a repeat of that which I had asked of Senator Christensen.

The word "consent" is used in this bill in respect of the offenders. In matters of this type, agreements between sovereign states are at issue. The sovereign states make the agreement, but it is the offender that is requesting of the sovereigns of both of those states permission to return to Canada to serve his or her sentence.

My reading of that clause, honourable senators, is that offenders are being elevated as equal parties in this so-called agreement. There is something very wrong with that because an offender who is incarcerated, quite frankly, under the power of Her Majesty and the Solicitor General, cannot be an equal party in those kinds of deals. I fear that these clauses will open up a plethora of creative lawsuits that we have not yet begun to consider.

I will be pleased to hear Senator Kelleher speak as a former Solicitor General, because the term "Solicitor General" has disappeared from Canadian popular usage. When Senator Kelleher was Solicitor General, he was called just that — the Solicitor General. I am not sure many senators know who is the current Solicitor General, because the language has disappeared.

Senator Oliver: Minister McLellan.

Senator Cools: But she is not referred to as the Solicitor General. What is she called?

Senator Kinsella: Minister.

Senator Cools: The Solicitor General is one of the three law officers of the Crown. It is a huge and different thing.

Has Senator Kelleher wrapped his mind around the dangers and troubles that would flow from this concept of equating a request from an offender for a kind mercy from two sovereigns to be allowed to change countries to serve in prison at home with a legal contract among three equal parties? I wonder if the honourable senator has given that any thought. If not, I appreciate that. Perhaps he could think about it and give me some thoughts on it later.

It is put in terms of being humanitarian, but it seems to me that the drafters of Bill C-15 have not paid sufficient attention to the articulation of what they are intending to effect in those clauses.

Senator Kelleher: Honourable senators, I thank the honourable senator for her very perceptive question. She has raised an important issue, one that should be addressed when we discuss this bill in committee.

I am pleased to see Bill C-15 going to committee. I hope Senator Cools will attend those hearings and raise this issue. In the meantime, I will think about it.

Senator Cools: Honourable senators, I am pleased about that, because it is not often that we have a former Solicitor General speaking to a bill of this nature.

Another anomaly can be found in this bill, honourable senators. As we know, treaties are really agreements between two sovereigns — usually two, if it is bilateral. The anomaly I refer to, or unusual occurrence, in this bill is that it has to do with treaties with foreign entities.

I do not know if Senator Kelleher has a copy of the bill in front of him, but the definition section addresses the question of foreign entities. That causes me some concern. I think honourable senators should raise some alarms about that.

Does Senator Kelleher have any knowledge as to whether this bill is a precursor to power in respect of transferring offenders between Canada and, say, the international criminal tribunals or the International Criminal Court? I definitely do intend to get some clarification at the committee as to what "foreign entities" means. I know what other expressions mean, such as a "foreign state," a "foreign country" and a "foreign nation," but I am not sure we know what a foreign entity is.

I notice these oddities in the law, where it seems some of this is made up as they go along. Perhaps Senator Kelleher has not given this any thought but, if he has, could he share some of that with me?

Senator Kelleher: I wish to thank Senator Cools, once again, for another excellent question. I will be quite honest: I have not given that question any thought. I have been out of that ministry for a number of years. I am not able to follow it the way I once did. However, given the various tribunals that have arisen, particularly those sponsored by the UN, it is important to determine what interests a foreign country or a country like Canada has in decisions of that tribunal. I am sure this is not something to which we have given enough careful consideration.

Senator Cools: Honourable senators, I am grateful to Senator Kelleher for that, because there is much opinion forming now that we would not have thought was possible some years ago. For example, a group in England is trying to bring about the prosecution of President Bush. Many Europeans also wanted to see retired L.Gen. Roméo Dallaire prosecuted. I belong to that group of people who believe that international criminal courts and tribunals have not been truly debated in this chamber. Those tribunals are about selected prosecutions of selected persons in selected countries and that causes me great distress. Bill C-15 will be referred to committee, where I hope it will receive a fair hearing. Often, a bill referred to committee will be back before the house within 24 hours.

• (1550)

The issues in this bill are not trivial. Many involve overturning the principles of Canadian jurisprudence that the Canadian administration has relied on for many years. Some years ago, when a certain bill was being debated in the house, I cited a passage related to the international criminal tribunal. There was talk of overcoming the burden of proof and altering many aspects of common law. That concerns me because our common law tradition is among the finest in the world. I have a problem with legal systems that attempt to overturn that tradition. Thank you, Senator Kelleher, former Solicitor General.

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

Some Hon. Senators: Question!

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

Some Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

[*Translation*]

QUESTION OF PRIVILEGE

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, last Thursday, Senator Cools raised a question of privilege to challenge a Speaker's ruling of April 28, regarding the validity of proceedings on Bill C-250, to amend the Criminal Code (hate propaganda). The conclusion of that ruling was that there was no prima facie question of privilege. According to Senator Cools, there was an error in the ruling that is "egregious and fundamental and founds a new breach of privileges."

[*English*]

According to Senator Cools, the error is in the summary of her position stated in the first paragraph of the ruling on page 965 of *Debates of the Senate*:

> It is the senator's position that the *Rules of Senate* do not provide any opportunity for any closure or guillotine motion to be moved by a private member or on a private member's bill.

Senator Cools contends that this summary misrepresents her view.

[*Translation*]

I have had a chance to review the arguments that were made April 27, as well as the ruling of the Speaker *pro tempore* of April 28. I am now prepared to make my ruling.

[*English*]

Senator Cools is correct that the summary of her position in the ruling is not entirely accurate. In her arguments of April 27, the senator equated the guillotine with time allocation and the previous question with closure, and she recognized that private members can move the previous question. The summary did not accurately reflect her understanding. However, I believe that it is worthwhile to distinguish between the terms "previous question" and "closure." As noted in *A Glossary of Parliamentary Procedure, Third Edition*, "closure" is a "procedure forbidding further adjournment of debate on any motion or on any stage of a bill and requiring that the motion come to a vote at the end of the sitting in which it is invoked." However, the previous question is defined as "a debatable motion preventing any further amendment to the motion or bill before the House." They are related, but not identical, concepts.

When challenging the right of Senator Murray to have proposed his motion, the senator said, "...the Senate's rules 38 and 39 are crystal clear." I quote the senator in *Debates of the Senate*, page 934:

> Outside of that, there is no power within any rule of the Senate for a private member to move a guillotine motion."

This is a power, according to the senator, that can only be exercised by a minister following rules 38 and 39 on time allocation. The senator did not, however, challenge the right of a private member to move the previous question, though she did explain that both the motions of Senator Murray and Senator Joyal were an abuse of the house and a breach of senators' privileges. Senator Cools had also suggested that it was a responsibility of the Speaker, as Chair, to protect the Senate "...from motions that are unusual or irregular, particularly questions of closure and guillotine, which are exceptional procedures..."

The clarification that Senator Cools has brought to the attention of the Senate does nothing to undermine the reasoning of the decision or its result. If any senator wished to challenge the ruling, the correct procedure would have been to appeal the ruling immediately. Since there was no appeal of the Speaker's decision when it was made last Wednesday, April 28, it stands as a decision of the Senate itself. It is not appropriate to try to appeal the ruling indirectly through a question of privilege.

[*Translation*]

Rule 43 stipulates the criteria that must be met in raising a question of privilege. Among other criteria, it must be raised to "correct a grave and serious breach" of the privileges of either the Senate itself or any of its individual members. While there was indeed an error in the summary of Senator Cools' position, it does not, in my opinion, have any effect on the substance, logic or conclusion contained in the ruling of April 28.

[*English*]

Therefore, it is my ruling that there is no basis of a prima facie question of privilege.

The Senate adjourned until Thursday, May 6, 2004, at 1:30 p.m.

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