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Wednesday, November 17, 2004

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, November 17, 2004

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

Prayers.

DISTINGUISHED VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before proceeding, I wish to draw your attention to the presence in the gallery of our former colleague, the Honourable Richard Kroft, his wife Hillaine, and members of his family.

Welcome to the Senate.

SENATORS' STATEMENTS

TRIBUTES

THE HONOURABLE RICHARD H. KROFT, C.M.

The Hon. the Speaker: Honourable senators, I received notice earlier today from the Leader of the Government, who requests, pursuant to rule 22(10), that the time provided for consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Senator Richard Kroft, who resigned from the Senate on September 24, 2004. I remind honourable senators of the time limits.

Hon. Jack Austin (Leader of the Government): Honourable senators, it gives me very great pleasure to speak today in tribute to the service of Senator Richard Kroft, who holds the Order of Canada.

Senator Kroft's political career has been a succession of solid contributions made, for the most part, out of sight of the public. It is a career dedicated to discovering the truth in order to reveal the best possible options, and is always guided by personal integrity and an impressive work ethic.

The statement I have just made I reserve for those public servants I find truly dedicated to improving the lives of their fellow Canadians. In my assessment, that is a compliment of the highest order.

We have had the opportunity to work with Senator Kroft, and we immediately noticed his incisive intellect, which he brought to bear on many policies that affect the Canadian public. These professional abilities have earned him public praise from members of the House of Commons, including from among opposition ranks there.

Early in his political career, Senator Kroft was Executive Assistant to the Honourable Mitchell Sharp, and they remained close friends throughout Mitchell Sharp's lifetime. Appointed to the Senate in 1998 by Prime Minister Jean Chrétien, Senator Kroft served here as Chair of the Standing Committee on Internal Economy, Budgets and Administration, and later as Chair of the Standing Senate Committee on Banking, Trade and Commerce. Under Senator Kroft's guidance, the Banking Committee produced an influential report on bankruptcy and insolvency that is now the basis for policy on this matter by the Department of Finance.

The internal administration of the Senate has greatly benefited from Senator Kroft's business-like approach. As a lawyer and a businessman, he founded Controlled Environments Ltd., an international company of a unique nature. Senator Kroft also served as President of Tryton Investment Company, and as Director of the Federal Business Development Bank and the Canadian National Railway Company, in addition to a number of other positions.

Senator Kroft is a community leader and has promoted worthy causes in his home province. He served on the Winnipeg 2000 Leaders Committee, the University of Manitoba, and as Honorary Council Member of the Royal Winnipeg Ballet. These community institutions have been fortunate to profit from his wise counsel and rare judgment, and these same qualities will be much missed by his colleagues here in the Senate.

Senator Kroft's early and voluntary retirement is regrettable from the point of view of honourable senators who remain. All of us share a great admiration of his professional and personal abilities. No doubt, however, his retirement will be a great benefit to his family, to whom I would like to offer sincerest best wishes — his grandchildren, his children Elizabeth, Steven and Gordon, and most of all, his wife, Hillaine. I would like to say to her that she will have him kicking around the house.

Maybe you will not want him there as much as you will find he is; you could send him back.

Hon. David Tkachuk: Honourable senators, I am pleased to say a few words about the retirement of the Honourable Richard Kroft — not that I am pleased to use the word "retired."

While Richard and I may have differed in some of our political views, when we worked together on the Senate Banking Committee, we always worked to represent the views of Western Canadians — something not easy to accomplish on the Banking Committee with Bay Street financiers and CEOs from all the big banks of Eastern Canada clamouring to appear.

• (1340)

This may surprise some honourable senators, but I was not shocked to hear of Richard's early retirement since he often warned that he would not stay at the Senate for a long time.

I hope, Richard, that it was a good time. I know I did my best to ensure your days as the Chair of the Standing Senate Committee on Banking, Trade and Commerce were always interesting. As Chair of the Banking Committee, Senator Kroft upheld the fine tradition of past banking chairs by leading the committee through a number of studies. One of the most

significant reports during his tenure was entitled *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*, which came about because the Bankruptcy and Insolvency Act was due for review and the House of Commons decided not to review it. I can attest to the complexity but importance of this study for the benefit of millions of Canadians, from students to small business people, to owners and seniors.

Senator Kroft, and I think most members of the committee, immediately saw that what we thought would be a rather arcane, dry subject was actually full of human complexity and of tremendous import to Canadians in general but specifically to the small business economy in Canada. He demonstrated true leadership. He led by example, as I realized from the joint press conference. When we would get away from the main principles and into the technical matters, I was like a deer in the headlights; but Senator Kroft understood and knew it all. He answered questions spectacularly. He could explain the rationale for how the committee arrived at each recommendation, and there were over 50 of them. It was quite impressive.

Richard, I do not know if you realized the "commotion" your resignation caused the Banking Committee. Let us just say there was some turmoil over replacing you, and perhaps that is fitting. You did not hold the position nearly long enough as far as I am concerned.

I want to wish you the very best in what I know is not a typical retirement. You will probably be busier now than you were before. I wish you all the best from our caucus, and warmest wishes to you and your family.

Hon. Wilfred P. Moore: Honourable senators, I wish to join colleagues in speaking in tribute to the Honourable Richard Kroft, who was my seatmate for nearly all of his six years in this place. I have known Richard for over 20 years. During that period we have collaborated on many fronts, and we became very good friends.

As has been mentioned, Richard distinguished himself in the service of Canada in his chairmanships of our Standing Committee on Internal Economy, Budgets and Administration and the Standing Senate Committee on Banking, Trade and Commerce. Perhaps his greatest contribution has been his talent to get colleagues together to canvass issues of the day over a meal somewhere off Parliament Hill. I shall personally miss that fellowship, Richard, and our many issue-solving sessions.

Since coming to the Senate, his administrative assistant has been Ms. Lisa Fisher. I know that Richard would wish me to record his appreciation and thanks to Lisa for her assistance. I am delighted to report that I am the beneficiary of that period of mutual tutelage as Ms. Fisher now works with me.

Richard, I have always found most interesting your many advices to me regarding your beloved hometown of Winnipeg, including the people and the events of national significance rooted there and which continue to emanate therefrom. However, despite those impressive facts, Richard, I still am not convinced that Winnipeg really should be the capital of Canada.

I wish you, Hillaine, and your family the very best of health and happiness in the years ahead, and I hope that your leisure time will permit you to come to Atlantic Canada to our fabulous, historic coast where our great country began.

Hon. Mira Spivak: Honourable senators, if there is one word in our community in Manitoba to describe Richard Kroft, that word is "perfect." He has heard that before. Life for him is not a farrago but the orderly pursuit of excellence in all endeavours. He is the very glass of fashion in a conservative way, of course, highly respected in business, wise in many varied ways, and an exemplary family man.

Respect and admiration is his due in Manitoba. As a fellow traveller and a friend of the family, I wish to comment briefly, in a manner I am not accustomed to, on that aspect of his career, which is the result of a quite extraordinary record of community service, not overshadowed by his national service, as attested to here.

How catholic that record is, embracing cultural, civic, provincial, educational and political causes. His support of the Royal Winnipeg Ballet enabled the erection of a splendid ballet school. He was involved in the Pan Am Games. He was named to the Premiers and Mayors Committee to determine the future of the Winnipeg Jets and a new arena. He was named as well to the Port of Churchill Task Force and to the Mid-Continent International Trade Corridor Task Force. That is just for starters for someone so young.

Hardly any of Winnipeg's venerable institutions have been left untouched by his influence: the University of Manitoba, the Asper School of Business, St. Pauls, Misericordia Hospital, the Jewish Foundation, the Jewish Museum — and the Liberal Party.

If there is one small flaw in this picture, one tiny imperfection, it is his political judgment. Too good, too good for my taste!

May I say that it has been a privilege and a pleasure to have had him here as a colleague in the Senate. I want to wish him well in all of his future careers that I am sure he will pursue, and of course Hillaine will have a golf partner.

Hon. Lucie Pépin: Honourable senators, it is not easy for me to stand here and say goodbye to our colleague Richard Kroft. Over the years, we have come to know this man and his extraordinary intellectual, moral and professional integrity. He has marked our institution by the force of his personality and the quality of his work. His familiarity with the ins and outs of the business world will be a sad loss to the Senate.

Senator Kroft is reserved but warm-hearted, quiet but effective. He is a courteous colleague who treats everyone with respect. An exemplar of what the word "pragmatism" means, he does not rattle the chandeliers or go off on long, lyrical flights, and yet the clarity and sincerity with which he expresses his ideas leave little room for confusion. He is someone who inspires trust. We always knew where we stood with him, and his word was his bond.

The fact that Senator Kroft is leaving before his official retirement age is emblematic of his character. He is his own man, someone who throws himself entirely into any job he has decided to take on. His legendary mastery of the issues is the result of this conviction that something worth doing is worth doing well. His own rich life shows that he has always been 100 per cent committed to the causes in which he believes for his community and for his country. Because of his dedication, he was invited in 1997 to become a member of the Order of Canada.

Senator Kroft, you are one of those of whom it can confidently be said that they will leave their mark.

Today we are losing a highly competent colleague and, above all, the daily companionship of a good friend, which is how I will always think of you. We will miss you here at the Senate.

I join with all my colleagues in wishing you the best of health and well-deserved rest, surrounded by your family: Hillaine, Elizabeth, Steven, Gordon and all your grandchildren. May the wind be always at your back and the sun on your face.

[*Translation*]

Hon. Céline Hervieux-Payette: Honourable senators, I agree completely with Senator Spivak, who has given us an extensive list of our colleague's many qualities, but I take issue with the tiny imperfection she found in him, suggesting that he was too Liberal. I think this is one of his greatest qualities. I am paying tribute to Richard in French since he will now have the time to take French courses, which will allow him to speak to his children and grandchildren in the language of Molière.

Having sat with him on the Standing Senate Committee on Banking, Trade and Commerce, I have been able to witness his leadership and wisdom in his dealings with others. The word "integrity" best describes Richard. He has served Canada well. He has represented the citizens of Canada, women in particular, and I thank him for everything he has done here in the Senate for Canada, for his province and especially for his community, where he was very active. Thanks to him, about 30 years ago I even learned to like the temperature in Winnipeg.

I wish him and Hillaine and his entire family much success, and I wish him much happiness in his new endeavours.

• (1350)

[*English*]

The Hon. the Speaker: Honourable senators, I regret that the 15 minutes for tributes have passed, but I mention that my understanding is that Senator Banks will ask for leave under Notices of Inquiries to return to that subject, should senators so wish at that time.

[*Translation*]

SOCIAL DEVELOPMENT

CONFERENCE ON CHILDREN'S EDUCATION AND DAY CARE

Hon. Rose-Marie Losier-Cool: Honourable senators, I would like to draw your attention today to a conference on early learning and child care that was held last weekend in Winnipeg.

This major event was organized by the Canadian Council on Social Development, with support from Social Development Canada, the Government of Manitoba and Status of Women Canada. The numerous speakers, most of whom were excellent, represented the various levels of government, our own Senator Pearson among them, as well as the private sector, unions, and proponents of education and child care.

[*English*]

The three-day conference alternated presentations, panels, plenary sessions, workshops and even a town hall meeting hosted by none other than the CBC's Mark Kelly. Many hundreds of participants dealt with a wide range of themes including child care and early learning as two national priorities, financing an infrastructure of child care and early education, unique communities such as Aboriginal children and linguistic minorities, and the enormous benefits of child care and early education to parents, children, society in general and to the Canadian economy.

[*Translation*]

The following are the five main points that came out of the conference. First, child care and early childhood education no longer concern only women or mothers, as they did in the 1970s, but society as a whole.

Second, child care and early childhood education are no longer a matter of just parking children somewhere, but a means of getting our future adults off to a good start.

Third, child care and early childhood education are not a business venture but a public service on a par with health or education.

Fourth, as the Minister of Social Development, Ken Dryden, said, our new national child care and early childhood education system must be irreversible, so that it cannot be diminished or done away with by future governments.

Finally, our new system must be capable of attracting, training, motivating and retaining more specialized workers.

Honourable senators, I will be returning to this matter within a few weeks in the form of an inquiry.

[*English*]

NATIONAL PHILANTHROPY DAY

Hon. Terry M. Mercer: Collectively, charitable organizations draw on over 2 billion volunteer hours and more than $8 billion in individual donations to provide their services. This year, hundreds of charities and over 50,000 people across North America will participate in ceremonies marking National Philanthropy Day which was first formally celebrated in 1986. It is a day for all Canadians to honour their volunteers and to recognize that when we choose to give and offer our time, our nation becomes better.

You will receive a copy of the supplement to the *National Post* which celebrates National Philanthropy Day and its history. I encourage you to read it. You will find that philanthropy truly is the "love of mankind." It simply means people helping people.

All 14 chapters of the Association of Fundraising Professionals celebrate National Philanthropy Day in their own way. In Halifax and Ottawa, awards are being presented to outstanding contributors to our sector, from large corporations to individual volunteers. I would like to congratulate the award recipients from Halifax: Volunteer Fundraiser of the Year, Ruth Goldbloom; Individual Philanthropist, Ken Rowe; Corporate Philanthropist, The Maritime Life Assurance Company and O'Regan's Automotive Group; Small Business Philanthropist, the Halifax Shopping Centre; Philanthropic Group, GIFT Atlantic; and the Rising Star Fundraising Professional Award to Jodi Swan.

I will be attending the Ottawa awards event this evening. I offer my congratulations to the Chair of the Organizing Committee, Neil Leslie, and the Ottawa Chair of AFP, Tim Kluke, on what I am sure will be a fantastic event. Similar events will be held in Vancouver, St. John's, Toronto, Winnipeg, Montreal, Regina, Windsor, Calgary and Victoria.

Honourable senators, a recognized National Philanthropy Day by the federal government will go a long way to increasing the awareness of charities and the important role they play in Canadian society. I will continue to pursue the goal of a federally recognized National Philanthropy Day during my tenure in this place and beyond, if I have to. That is how important charitable giving is to me and to all Canadians.

NUNAVUT YOUTH ABROAD PROGRAM

Hon. Laurier L. LaPierre: Honourable senators, the Nunavut Youth Abroad Program, or NYAP, is an exciting leadership development program that was designed a few years ago to meet the unique needs of northern youth in the area that has since become Nunavut.

NYAP developed out of a study that determined that the key to success for many Inuit students was travel outside of their remote home communities. Participants in the program gain an orientation to life outside their culture, and through work and travel are prepared for post-secondary studies in southern Canadian cities. This innovative, multi-phased program enables Nunavut youth to acquire concrete work skills, first, through work placements in communities across Canada and, second, through placements in southern Africa. Participants have developed skills in the areas of journalism, communication, environmental conservation, office administration and management, education, trade and health. These skills are crucial for youth to play a greater role in the decision-making process of their new territory.

The honorary patrons of NYAP are John Amagoalik and Susan Aglukark. The participants have developed the confidence and motivation to complete their studies and have forged new respect for the indigenous people of Nunavut, the Inuit. During the past seven years, NYAP has helped to develop leadership, cross-cultural awareness, career aspirations and international citizenship. I congratulate them.

[*Translation*]

QUEBEC

NATIONAL ASSEMBLY— ELECTION OF FIRST WOMAN OF COLOUR

Hon. Marisa Ferretti Barth: Honourable senators, as the first Italian-Canadian woman appointed to the Senate, I invite you to join me in applauding the election of the first woman of colour to the Quebec National Assembly.

For the past year, Yolande James, a young lawyer, has worked as a political attaché to the Minister of Health, Philippe Couillard. She was elected to represent the riding of Nelligan in a by-election held on September 20, 2004.

I am sure that Ms. James will work on behalf of her constituents with dedication and enthusiasm. Honourable senators, let us wish her great success in her new role.

• (1400)

[*English*]

THE LATE SHERMAN FENWICK HOMER ZWICKER

Hon. Wilfred P. Moore: Honourable senators, I rise today to make a statement in tribute to my friend Sherman Fenwick Homer Zwicker, who passed away on November 9. A proud son of Lunenburg, Nova Scotia, Sherman served as mayor of his historic hometown from 1971 to 1979. He had earlier served for eight years as a town councillor. Over the years, Sherman served on more than 30 volunteer organizations, often as chair, at the town, county, provincial and national levels. He truly led by example.

From 1960, he was president of Zwicker and Company Limited, the family firm that traded in salt fish in the British and Foreign West Indies and the South America trades. Prior to retiring in 1990, Sherman served for 10 years as the executive director of the Union of Nova Scotia Municipalities, his most cherished level of governing.

Sherman was the ideal candidate for every political party at the provincial and federal levels. Despite the many courtships, he chose to keep himself true to municipal government by not aligning himself with any party. However, he often reminded me of his willingness to serve in this august chamber and that he was ready to take that call. What a fine senator he would have been.

Early in October, Sherman was recognized for his exemplary community service when he was awarded the Order of Nova Scotia by Her Honour, Lieutenant Governor Myra Freeman. In continuation of the Zwicker family tradition of public service, Sherman saw his son, Peter, elected to Lunenburg's town council on November 16. A devout Anglican, Sherman's committal service was held in St. John's Anglican Church, our partially restored place of worship that he loved so much.

We express our deepest sympathy to Sherman's wife, Barbara, and his children, Peter, Lisa and Andrea, and we thank them for sharing him with us.

THE HONOURABLE LAURIER L. LAPIERRE, O.C.

TRIBUTES

Hon. Pat Carney: Honourable senators, I should like to add my comments on the impending retirement of my friend and colleague Laurier LaPierre. Due to unforeseen circumstances yesterday, I was unable to take part in the Senate tribute.

I have known Laurier since the mid-1960s when he was a shy and modest man. He was a university professor who taught Canadian history and he hosted a CBC program, *Inquiry*, produced, as it happened, by my twin brother, Jim.

Laurier was the first French Canadian to show me that an English Canadian from the West and a French Canadian could share the same vision of the country. Remember, senators, this was before Expo '67 and before Pierre Trudeau; this was the time when we were all young and committed, and Canada was being reinvented as a bilingual and bicultural country. Laurier was very much part of that. Both my brother and Laurier went on to *This Hour Has Seven Days*, one a star and the other a producer.

Through television, Laurier showed Canadians that across the language and cultural divide we could all contribute and enjoy a sense of country. He was so successful that *Maclean's* ran him on the cover as a potential Prime Minister of Canada. He was appointed to the Senate, and everyone knows that being a senator is better than being a prime minister. He has been travelling across the country to support that shared vision of a beloved country.

I want to say, Laurier, that we will miss you in this chamber and, until we meet again, adieu and God bless.

[*Later*]

Hon. Joyce Fairbairn: Honourable senators, I rise today to say a fond farewell to my seatmate, Senator Laurier LaPierre. I reminisced with him today that not his friendship with me but, rather, my admiration for him goes back a long time to the days when I was a young journalist in the Parliamentary Press Gallery. He and Patrick Watson were on *This Hour Has Seven Days* which, as those of you who are old enough will remember, was a true marker of a new form of television journalism in Canada. It was lively, controversial and outrageous. It introduced us to interesting people in other parts of Canada, such as a fellow named Pierre Trudeau and another named René Levesque. It debated on air and, in the end, it became the subject of a House of Commons inquiry. It was at that point that I actually saw these people alive, well and still aggressive in their protection of their program.

It is fair to say that part of Laurier is much within the Canadian soul. He has a passion unlike anyone I know when it comes to Canada and her institutions. He has made a contribution to young people across this country where he has worked diligently to try to spark an interest and a sense of pride in Canadian history and culture. Laurier has been a troubadour of extraordinary talent and heart for so many years. He has certainly added an element of interest, devotion and zip to this chamber. He speaks his mind; he is as straight as an arrow; and he is compassionate for the people of this country which he loves so dearly.

Laurier, it is sad to see you go, but I have a sense that you will just keep on marching, every step of the way, and we will march with you. Thank you for your friendship and your contribution to the Senate of Canada.

THE HONOURABLE ARCHIE JOHNSTONE

TRIBUTE

Hon. Elizabeth Hubley: Honourable senators, I know that when our colleagues in this chamber retire they are supposed to be "out of the picture," so to speak, and yet they are never far from our memory, especially those individuals who have made an indelible mark with their unique personalities, knowledge and abilities. One such person is the esteemed former Senator Archie Johnstone, who represented Prince Edward Island in the Senate briefly from 1998 to 1999 and who, coincidentally like myself, also calls the town of Kensington home.

Although Archie is no longer in the Senate, I can assure you that he continues to be a keen observer of government and politics. As one might expect of someone who has given much of his life to public service, he remains active in many community organizations. Always a proud Scot and a fervent family historian, Archie arrived at my door just last week with a genealogical chart demonstrating quite clearly and unequivocally that he and I are related.

Archie Johnstone is a man of many accomplishments. He is a decorated veteran who flew with the Royal Air Force during World War II. As his friend and neighbour, I know that November 11 holds great meaning for him. Recently, he published a collection of poetry called *Expressions* — reminiscences and little jewels from his life's experiences. One of the narrative poems in this little book is about the membership and composition of the Senate. Casting his eyes across these benches, Senator Johnstone notes:

> There are Protestant ministers, Catholic sisters and others almost Devine
> Whose profound thinking is oft thought to be ahead of its time...
> Among contractors and broadcasters, there are lawyers by the score
> Surely it would be inhuman to punish the Senate with one Q.C. more...
> There are re-treaded politicians, Aboriginals, and tillers of the soil
> Economists, trade unionists, and those versed in mining, gas and oil...
> There are esteemed former Premiers, too old to lead, too young to die
> Biographies are available, should you wish to apply...

Honourable senators, without a doubt the Senate is a place where Canadians from diverse backgrounds come together to fulfil a great and honourable constitutional responsibility. To the list of distinguished former senators we can surely add the name of Archibald Hynd Johnstone.

ROUTINE PROCEEDINGS

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

FIRST REPORT OF COMMITTEE PRESENTED

Hon. George J. Furey, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Wednesday, November 17, 2004

The Standing Committee on Internal Economy, Budgets and Administration has the honour to present its

FIRST REPORT

Your Committee recommends that the following funds be released for fiscal year 2004-2005.

Rules, Procedure and the Rights of Parliament (Legislation)	
Professional and Other Services	$ 9,000
Transportation and Communications	$ 500
Other Expenditures	$ 0
Total	**$ 9,500**
Scrutiny of Regulations (Joint Committee)	
Professional and Other Services	$ 2,340
Transportation and Communications	$ 1,650
Other Expenditures	$ 2,250
Total	**$ 6,240**

Respectfully submitted,

GEORGE FUREY
Chair

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

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

• (1410)

[*Translation*]

THE SENATE

RULES OF THE SENATE—NOTICE OF MOTION TO CHANGE RULE 135—OATH OF ALLEGIANCE

Hon. Raymond Lavigne: Honourable senators, I give notice that on Tuesday, November 23, 2004, I will move:

That the *Rules of the Senate* be amended by adding after rule 135 the following:

135.1 Every Senator shall, after taking his or her Seat, take and subscribe an oath of allegiance to Canada, in the following form, before the Speaker or a person authorized to take the oath:

I, (*full name of the Senator*), do swear (*or solemnly affirm*) that I will be faithful and bear true allegiance to Canada.

[*English*]

THE HONOURABLE RICHARD H. KROFT, C.M.

TRIBUTES—NOTICE OF INQUIRY

Hon. Tommy Banks: Honourable senators, with leave of the Senate and notwithstanding rule 57(2), I give notice that later this day I will call the attention of the Senate to the contributions to the Senate of the Honourable Richard Kroft, who resigned on September 24, 2004.

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

Hon. Senators: Agreed.

QUESTION PERIOD

JUSTICE

SUPREME COURT—
APPOINTMENT PROCESS FOR JUDGES

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, my question is to the Leader of the Government in the Senate. Could the honourable minister describe for the house the current government's policy concerning improvement of the appointment process in filling vacancies on the Supreme Court of Canada?

Hon. Jack Austin (Leader of the Government): Honourable senators, the Minister of Justice is holding consultations with parliamentarians with respect to the process. That is as succinct an answer I can supply to Senator Kinsella.

Senator Kinsella: I am glad to have that answer from the minister because it would appear to me that the Minister of Justice is doing just the opposite.

Honourable senators will recall that last May the House of Commons Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness tabled its very well-researched and concise report on improving the appointment process for Supreme Court judges. Last month, the Minister of Justice, Irwin Cotler, Senator Austin's colleague in the cabinet, responded with a two-page response. However, according to the *Ottawa Citizen* last week, the honourable member in the other place, the Liberal chair of that House committee — that is right, the member of Parliament who is in the government caucus and is chair of that committee — wrote a letter to the minister describing the brief and non-committal response from Minister Cotler as being "inappropriate in light of all the work that MPs put into their report."

There seems to be a disconnect between the government leader's answer to my first question, the comments of the Liberal chair of the committee that prepared the report last May and the position of Minister Cotler. Could my honourable friend please explain?

Senator Austin: Honourable senators, I see no disconnect. Obviously in a consultation process there will be a variety of views offered to the consulter, in this case the Minister of Justice. Perhaps there are some who have made submissions who are not as yet satisfied with the nature of the consultation, but that consultation process continues.

Senator Kinsella: Could the minister give us a sense of the timeline? We already have a detailed report submitted by the committee in the other place. The minister, according to Senator Austin, is in consultation and will look at this issue further. How much longer are we expected to wait until we hear a more definitive position of the policy of the Government of Canada on this very important matter that has seized the attention of all Canadians?

This issue has seized the government's attention because even as recently as today there is a rather startling headline in *The Globe and Mail* stating "Top court is asked to rule on conspiracy theory." I do not associate myself at all with the content of that article, but perhaps my honourable friend would want to use the opportunity while he is on his feet to explain the government's reaction to what is being alleged.

Senator Austin: Honourable senators, staying with the specific question, the Government of Canada introduced a novel procedure with respect to the appointments of Madam Justice Charron and Madam Justice Abella to the Supreme Court of Canada. The novelty of that procedure was that the Minister of Justice went before a committee in the other place to explain the reasons why he believed these two jurists were deserving of sitting on the highest court of Canada. That procedure is being evaluated in light of the comments and questions the members of that particular committee offered during the course of the observations and evidence given by the Minister of Justice and thereafter.

The government wants to achieve a transparent process in making these extremely important appointments while at the same time seeking to avoid introducing personalities and partisanship.

Senator Tkachuk: Please!

Senator Kinsella: Would the minister not agree that the committee to which he referred was an ad hoc committee that did not have any representation from this house of Parliament, and that under the process of review he alluded to earlier it may be prudent and advisable, if a committee model is to be used for ratification in the future, that this house be represented on such a committee?

Senator Austin: Honourable senators, I will take that representation by Senator Kinsella to the Minister of Justice as part of his process of consultation.

• (1420)

Hon. Anne C. Cools: Honourable senators, I have a supplementary question. I believe I heard the Leader of the Government say that the Minister of Justice appeared before a committee. Could the minister tell me what committee that was? At the same time, could the minister tell me what constitutional authority exists for such a committee?

Senator Austin: Honourable senators, I believe that any minister and any parliamentarian has the authority to consult with any Canadians that such minister seeks to consult.

As Senator Kinsella, the Leader of the Opposition, has just said, the committee was an ad hoc committee composed of members of the other place who were chosen by their parties to be members of that ad hoc committee.

Senator Cools: I think the minister misunderstood me. I was not speaking about any process of consultation, nor was I suggesting that consultation is not a desirable characteristic of modern governments. I was just seeking to know what constitutional or parliamentary authority exists for the creation of ad hoc committees. In other words, in a parliamentary way, what is an ad hoc committee? What is it a committee of? A committee is a subset of a larger set. What is an ad hoc committee a committee of? Is it a committee of the House of Commons?

Senator Austin: Well, honourable senators, I would like to answer the question as I have answered it. It was a committee of members of the other place constituted by agreement amongst the party leaders in that chamber.

Senator Cools: Perhaps I could find out the legal basis for constituting a committee by an informal agreement.

Senator Austin: Perhaps, Senator Cools, you could tell me why the organization of such a committee does not have parliamentary authority.

Senator Tkachuk: Do not ask us questions.

Senator Cools: I think the minister is a little confused, honourable senators. My understanding is that during Question Period, only a minister of the Crown can speak for the government in this place, so I believe the minister is confused and thinks that I am a member of the government.

Senator Austin: I have never been confused in that regard. I speak for the government but, in speaking for the government, I sometimes ask colleagues opposite to be clearer about their points. What I do not understand in Senator Cools' question is what legal or constitutional authority the honourable senator alleges may be missing in the organization of a committee in the other place.

Senator Tkachuk: She will tell you; you know that.

Senator Cools: I can tell you what is missing, honourable senators. In point of fact, the committee is a piece of fraud. The minister has provided me with an opportunity to say that the so-called ad hoc committee is a mimic. It is a parliamentary mimic. It is a parliamentary impersonation. That is what it is.

I will tell the minister what authority a committee needs in order to be constituted. It is called an "order of reference," and it is brought into existence by a vote of one or the other House. Then, perhaps, the minister can tell me what the order of reference was on the floor of the House of Commons that caused such a committee to be constituted.

Senator Austin: Honourable senators, I do not think it is within the normal processes of Parliament for this chamber to question the procedures adopted in the other House.

Senator Lynch-Staunton: Parliament was not even sitting!

PRIME MINISTER'S OFFICE

OFFSHORE OIL REVENUES—NEGOTIATIONS WITH NEWFOUNDLAND AND LABRADOR AND NOVA SCOTIA—COMMENTS BY MEMBER OF STAFF

Hon Gerald J. Comeau: Honourable senators, the Prime Minster's spokesperson has become an irritant in negotiations between the federal government and the Newfoundland and Labrador government in the question of an offshore revenue agreement. Twice now, Scott Reid, the Prime Minister's director of communications, has made comments that have caused setbacks in resolving this dispute. The situation has become so bad that Premier Danny Williams has called on the Prime Minister to put someone else in charge of handling communications on this file.

Given the sensitive nature of negotiations over this file and the fact that Mr. Reid's interventions have left the impression that Ottawa is conducting these negotiations with Newfoundland and Labrador in bad faith, is the government considering the removal of Mr. Reid from this file?

Hon. Jack Austin (Leader of the Government): Honourable senators, the answer is no.

Senator Kinsella: Why not?

Senator Austin: Senator Comeau's question is a bit stale-dated. The three governments, namely, the Government of Newfoundland and Labrador on the one part, the Government of Nova Scotia on the second part, and the Government of Canada on the third part, are in active discussions at this time.

Senator LeBreton: Well, it is not stale, then. It is only stale-dated if you come to a solution.

Senator Austin: I can assure you that all parties want to carry on those discussions without raising in any way the public temperature on this issue.

Senator Comeau: The minister indicates that the question is stale-dated, but I am quite sure that the other provincial governments have been following the negative approach by the Prime Minister's Office on this question. First, Mr. Reid had to apologize for threatening that Mr. Williams was making a mistake of historic proportions by not agreeing to the terms of the federal offer. This was perceived, of course, as a threat to the people of Atlantic Canada. Then, just last week, he pre-empted a meeting by telling CanWest news, in advance of this meeting, that there was no possibility of a deal being struck.

Given Mr. Reid's increasingly unhelpful interventions on this file, will this government stop the practice of using Mr. Reid to negotiate these issues through the media?

Senator Austin: Honourable senators, as I said, it is very much in the interests of the two provinces I have mentioned and the Government of Canada to conclude an arrangement that is satisfactory to all three parties. Mr. Reid has apologized for his comments. Those apologies have been accepted by the Premier of Newfoundland and Labrador, and that is where it rests.

FOREIGN AFFAIRS

SUDAN—CONFLICT IN DARFUR—EFFORTS OF GOVERNMENT—STATUS OF SPECIAL ENVOY

Hon. Gerry St. Germain: Honourable senators, my question is also to the Leader of the Government in the Senate. On the weekend, Prime Minister Martin once again chastised the United Nations for not acting fast enough in responding to the situation in Darfur. That is a fair comment. However, it seems clear from the news reports that the route the Liberal government has chosen is no more expedient. The African Union is assembling, according to reports, a 75,000-strong intervention force for Darfur, an effort that the Liberal government never fails to mention it is supporting. Yet, the force is clearly not ready for action.

After speaking to the head of the African Union on the weekend, Prime Minister Martin was quoted as saying that they are not quite sure what their needs will be. Mr. Martin then asked that a list of the needs be supplied to him.

Can the minister tell us when Mr. Martin expects to get the list of the needs, and when those needs will be fulfilled?

Hon. Jack Austin (Leader of the Government): Honourable senators, there is no country which has done more to try to alleviate the situation in Darfur than has Canada. Our very own colleague, Senator Jaffer, was the first person on the ground sent by any foreign government to deal with and review the Darfur situation.

Hon. Senators: Hear, hear!

Senator Austin: Canada was the first country to make a commitment of $20 million to organize a group on the ground to report back to the United Nations with respect to the situation there. Canada has provided training and material to the African Union force, as we discussed earlier in this chamber.

The Prime Minister will be travelling to Khartoum in the next few days to have discussions with both the leaders of the Sudanese government and the leaders of the communities in the Darfur and southern Sudan region.

As Senator St. Germain has pointed out, the Prime Minister spoke in the United Nations and urged the United Nations to take stronger steps to deal with a difficult and unhappy situation in the Sudan.

Senator St. Germain: Honourable senators, this is a replay of the Rwanda situation, in some aspects. The minister says there is a commitment of $20 million. We had our special envoy on the ground, which I see as an honourable move. Has any positive action been taken to help these people? Where did the $20 million go? If the minister is saying that the African Union is 75,000 strong and the Prime Minister is then asked to supply a list of needs, just exactly what is happening over there? Are we simply being spectators, mouthing words and taking no action?

• (1430)

Honourable senators, this issue is not a question of partisanship. It is a question of taking a forceful position, getting things done and not relying on the United Nations. The government has criticized other countries that have not relied on the United Nations, yet as a government we seem to be going back and relying on them when we know they are ineffective.

Can the leader explain to us where the $20 million went? Did it go to the people on the ground?

Senator Austin: I very much appreciate the question. The $20 million is a contribution to the African Union to organize its peacekeeping efforts and to allow for the capacity to assist people on the ground in Darfur.

We have also sent $250,000 worth of equipment to the African Union mission, and we have sent people to provide training for African Union forces in dealing with peacekeeping. As senators know, the African Union is the force designated by the United Nations to play that role and has the backing of its members in Africa.

Negotiations are also underway with respect to a separate peacekeeping mission in southern Sudan. While separate from the African Union process, it will require the authority of the United Nations. This is an arrangement insisted upon by the Government of Sudan, which is a member of the United Nations. We are proceeding here to support but not to override the activities of the United Nations.

As Senator St. Germain has noted, the Prime Minister appeared before the General Assembly of the United Nations and stated that the doctrine of state sovereignty is not by itself to be taken to limit the responsibility of the world community to assist populations that are endangered as a result of failed states or the actions of authoritarian and malevolent governments toward minorities. This, as Senator St. Germain also knows, is a Canadian value that was laid before the United Nations General Assembly by Prime Minister Chrétien when he appeared there last year.

Senator St. Germain: The question boils down to this: What is being done to help the people in Darfur? They are being attacked by vigilante groups. Is the Canadian government doing anything definitive other than trying to persuade the United Nations, which has failed dismally in Rwanda and other places? Is anything actually being done?

We have a special envoy. Are we allowed to ask her questions about what is transpiring? What is her status as a special envoy? Is she part of the executive branch of government or is she part of the legislative branch? These are all important questions because, if we have a replay of Rwanda, we cannot just stand back and say that it happened again. I ask these questions out of a sincere concern for the people on the ground in Darfur.

Senator Austin: I do not doubt for a moment the sincerity of the questions and their importance. We have had an exchange in the Senate on this topic before, and I pointed out that Canada is acting in the vanguard of any nation in terms of endeavouring to facilitate the safety of the people in Darfur. We are obliged to act within the context of the United Nations. We cannot simply organize a force and land it in Sudan against the wishes of the world community and against the wishes of the Government of Sudan; nor could we make a meaningful contribution even if we did that. A contribution that is meaningful must be made by the world community, and we are in the field urging the world community to come to this task. The Prime Minister will be in Khartoum so that he can report to other world leaders with respect to the situation there. In the circumstances, the Prime Minister's visit to Sudan to personally view the situation demonstrates the goodwill and commitment of Canada.

Hon. Terry Stratton (Deputy Leader of the Opposition): That was a rather interesting answer because it did not respond to the first part of the question asked by Senator St. Germain. Under what authority did Senator Jaffer travel to Sudan? Who paid for the trip? With whom and with how many others did she travel? Those questions need to be answered on the floor of this chamber by the minister.

This occurs on a continuing basis, so we are told, yet nothing seems to transpire other than that we get these little reports.

If the honourable senator is travelling, is she given an annual budget for her visits? If so, what is that budget? If she is given this authority to travel and work in this field, how many additional staff does she have? Those questions need to be answered.

Senator Austin: Honourable senators, I have no hesitation in answering those questions. I have answered them here before.

Senator Jaffer is not a member of the executive. Senator Jaffer is a member of this legislature as is well known here. In addition to that membership, she has been asked by the Minister of Foreign Affairs to act as a special emissary to Sudan. She is an eminent Canadian lawyer. She speaks some of the languages of

that area. She has developed a substantial credibility to assist in the dialogue with the parties there. She cannot be asked questions in this chamber because she does not fall within our rules as one of those persons who can be asked questions. I am sure Senator Stratton is very clear on that point even without asking the question.

Having said that, I will ask Senator Jaffer to make a statement, which she can do as a senator, with respect to the work she is doing there.

Senator Stratton: I appreciate that very much. There is a need to clear the air, particularly as to exactly how much travel Senator Jaffer is doing. It must be fairly large in scope to that area of Africa. I am not denigrating her efforts except to say that if she is, in essence, representing Canadians as an emissary of the government and of the Prime Minister, she should make a statement. She should tell us what her annual budget is, how much she travels, what this costs the people of Canada, how many additional staff she has in her office and, if she travels, who she travels with.

It is critical to lay that information on the table so we can determine what is taking place.

Senator Austin: Honourable senators, Senator Jaffer is an adviser to the Minister of Foreign Affairs and, like any other person, those communications are not public.

With respect to her expenses and the other questions that Senator Stratton has asked, the current rules require them to be disclosed within defined timeframes.

• (1440)

Hon. David Tkachuk: Have any other senators been special envoys?

Senator Austin: In the past, there have been senators who were special envoys. Honourable senators may recall that Senator Lois Wilson was a special envoy, originally to Sudan and then to North Korea.

Honourable senators, I hope I am not hearing an implication from the other side that senators should not be employed to assist Canadian interests where those senators have special qualifications.

Senator Tkachuk: I never said that. I asked if there had been other special envoys. The minister mentioned one. I ask if there were any others. Also, when the honourable senator says "employed," exactly what does he mean by that?

Senator Austin: The word "employed" means "used" or "retained." I will get a thesaurus if the honourable senator does not understand the word, but it means "engaged in."

Senator Stratton: Don't go getting thin-skinned here again!

Senator St. Germain: This is not a question of denigrating the work that is being done. What I want to know is: under what authority are these people appointed? Ambassadors are appointed under a certain authority. Is this a Governor-in-Council appointment? These people are going out, and Parliament, or the Senate, does not have the ability to scrutinize these appointments. These appointments are made arbitrarily by the minister. There is no process for us to access information from these individuals, and as the official opposition, we have the right to know. Is this just a special scenario that the government has that they do not have to explain to the official opposition, or the official opposition does not have the right to know and get reports back from these people?

I am concerned about the authority. I do not wish to take away from the good works that are being done, but I would like to know what authority there is for these decisions.

Senator Austin: Honourable senators, I thought it was very clear, because the rule applies to all honourable senators with respect to compensation, that if a person such as Senator Jaffer is asked to carry out a role as a special emissary, no additional compensation is paid. I thought that was so obvious that I did not understand what Senator Tkachuk was asking when he asked me what I meant by the word "employed."

In response to the second question, Senator Jaffer, vis-à-vis the minister, is in the same position as any person who is not a senator who is asked to be a special emissary. I am not talking about compensation, but reporting.

Honourable senators should know that it might be possible for someone opposite to be a special emissary; there is talent on that other side.

Senator Robichaud: They don't believe it themselves!

Senator Stratton: If you only knew!

Senator Austin: That role does not change the role of the senator who might be an emissary. To be very clear, the appointment of Senator Jaffer is a ministerial appointment, not a GIC appointment.

Hon. Noël A. Kinsella (Leader of the Opposition): Is it the minister's view that the payment of travel in this kind of circumstance is consistent or inconsistent with section 14 of the Parliament of Canada Act?

Senator Austin: I believe that the payment of expenses is not an infraction of any rule applying to the senator.

Hon. Pat Carney: My question is for the Leader of the Government in the Senate. I am fascinated by the possibility that some of us who sit in opposition could be appointed as emissaries of the government in areas of our expertise.

As the minister knows, I have expertise in an area of common interest, China. I am certainly willing to entertain such an offer, should one come forward. Could the honourable senator elaborate on the terms and conditions of such an offer made to an opposition senator?

Ireland is another area in which I am very interested. We could all give our requests to the minister for the areas in which we would like to be named as special emissaries, particularly since we will be marked present in the Senate chamber while we are off in Dublin or Beijing.

Senator Austin: Honourable senators, I understand that Senator Carney would like to be a special emissary, from what she has said, and I will pass her representation on to the Minister of Foreign Affairs. I am sure due consideration will be given to that issue.

Senator Carney: Or international trade.

Senator Austin: Due consideration will be given to that issue, as well.

Honourable senators, I do not wish to leave outstanding any implication — I am sure Senator Carney did not mean it — that someone who is absent from this place on public business is in any way behaving contrary to the rules of this chamber.

The Hon. the Speaker: Honourable senators, I regret to advise that the time for Question Period has expired.

Some Hon. Senators: Oh, oh.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour of tabling three delayed answers to oral questions raised in the Senate; the first in response to the question raised in the Senate on October 19, 2004, by Senator Oliver regarding Indian Residential Schools Resolution Canada.

[*English*]

I have a second delayed answer to questions posed in the Senate by Senator Gustafson, on November 4, 2004, regarding the Northwest Territories negotiations to clean up Giant Mine.

I have a third delayed response to questions raised in the Senate by Senator Keon, on November 3, 2004, regarding water quality on reserves.

OFFICE OF INDIAN RESIDENTIAL SCHOOLS RESOLUTION

ALTERNATIVE DISPUTE RESOLUTION PROCESS

(Response to question raised by Hon. Donald H. Oliver on October 19, 2004)

Administrative Costs of Alternative Dispute Resolution Process (ADR)

The Government of Canada is committed to resolving proven claims of physical and sexual abuse of former Indian residential schools students as expeditiously, humanely and compassionately as possible, giving priority to the sick and the elderly.

As of October 22, 2004, the Government of Canada has received over 900 application forms for the Alternative Dispute Resolution (ADR) process and we continue to receive application forms, schedule hearings and resolve claims. In addition we continue to settle litigation claims; nearly 1,730 claims have been settled, the vast majority through out-of-court processes.

One of the biggest challenges facing the Government is finding the most effective way to respond to the 13,000 individual claims of sexual and physical abuse at Indian residential schools in a timely and effective manner.

The Resolution Framework, launched in November 2003, contains a suite of approaches that is composed of an ADR process to resolve claims of physical and sexual abuse; health supports; commemorative initiatives, and litigation. The Government estimates that over the next seven years, the cost of the Resolution Framework will total about $1.69B. This cost includes $955M for settlements; $335M for the ADR process (research, Adjudicator Secretariat in Regina, et cetera); $74M for health and safety supports; $10M for commemoration and $285M for litigation, since it is always an option for claimants.

The Government of Canada cannot confirm the reported cost of $18,000 to resolve an ADR claim since it is unsure how this figure was calculated. What we can confirm is that the first hearing took place at the end of May 2004, and it is too early in the process to know the average cost of resolving an ADR claim. The Government of Canada will provide an average cost of resolving ADR claims once it has reached 50 resolutions with former students — we anticipate that this will be early in the new year. Although the cost is unknown at this time, we remain convinced that the costs of the ADR process will be less costly than litigation.

Another important element of the Resolution Framework is the opportunity for former students to participate in commemoration initiatives if they so desire. IRSRC has dedicated funds to commemoration as a way of honouring and paying tribute to all former students.

Investing now in resolving claims in a timely and effective manner will save taxpayers money in the long term.

The Government is pleased with the uptake and progress of the ADR process as we are where we forecasted when we launched the ADR process. We announced that applicants could expect it to take nine months from the time of application to a hearing. The first application form was received in December 2003 and the first hearing took place six months later in May 2004.

The Government is open to dialogue about ways to improve the ADR process to ensure we resolve the legacy of IRS schools in a meaningful way for former students. We are mandated by Ministers to review the National Resolution Framework in 2006.

Form Fillers

The underlying premise of the Alternative Dispute Resolution (ADR) process is to offer former students a choice about how to resolve their Indian residential school claims. The ADR is a voluntary process that offers a timely and alternative method to resolve claims of physical abuse, sexual abuse and wrongful confinement at Indian residential schools. If claimants choose to enter the ADR process, they need to complete and submit a detailed application form to Indian Residential Schools Resolution Canada.

The Government of Canada advises former students to hire a lawyer, however, claimants do have the choice to represent themselves. In fact, we have heard that some former students do not want a lawyer. Stakeholders have highlighted the requirement for the ADR process to provide basic support services to those former students who do not hire a lawyer.

Therefore, we are trying to identify neutral, objective Aboriginal service providers to assist former students in completing the application form. The types of services provided by form fillers include: explaining what questions the application form is asking; discussing generally how the ADR process works; and identifying counselling supports for follow up with the applicant. We have also been clear that this support does not replace the advice a lawyer could provide and is not intended to interfere in the relationship between former students and their lawyers.

INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

NORTHWEST TERRITORIES—NEGOTIATIONS TO CLEAN UP GIANT MINE

(Response to question raised by Hon. Leonard J. Gustafson on November 4, 2004)

Indian and Northern Affairs (INAC) continues to ensure that Giant Mine is safely and effectively managed to protect the health and safety of northerners and the environment.

A large amount of work has been invested in the creation of a thorough and effective remediation plan for Giant Mine. In the winter of 2004, INAC selected the Frozen Block method as the best alternative for the long-term management of the arsenic trioxide stored underground at the site. This decision was the result of more than four years of intensive research and public consultation. INAC is currently finalizing an overall remediation plan for the site. Once that remediation plan is complete and approved by appropriate levels of government, it will be submitted to a regulatory body. The implementation of the plan would follow regulatory approvals.

The remediation of Giant Mine involves a very complex set of issues, including shared jurisdiction and corresponding responsibilities between Canada and the Government of the Northwest Territories.

Renewed efforts are underway as we speak to negotiate a fair and reasonable solution that allows the remediation efforts to proceed. Senior officials from the federal government and the Government of the Northwest Territories have agreed to set aside the legal debate and are working to achieve a practical and fair agreement that will allow the project to continue to move forward.

There is a mutual understanding at this point that recognizes the importance of progressing with a remediation plan that effectively addresses both the surface and subsurface issues at Giant Mine, and is supported by both levels of government.

It is our goal to make significant progress on these negotiations by early in the new year. This is a high priority for the federal government. The work done at Giant Mine is an excellent example of this government's commitment to addressing federal contaminated sites and protecting the health and safety of northerners.

WATER QUALITY PROBLEMS ON RESERVES

(Response to question raised by Hon. Wilbert J. Keon on November 3, 2004)

In May 2003, the Government of Canada announced the First Nations Water Management Strategy, a comprehensive plan comprised of seven key elements designed to help achieve a clean and safe water supply for First Nation citizens. Indian and Northern Affairs Canada, Health Canada, Environment Canada, and First Nations are partners in this initiative.

Indian and Northern Affairs Canada has undertaken various activities to meet its objectives under the First Nations Water Management Strategy. In 2004-2005 alone, Indian and Northern Affairs Canada will spend $255.1 million to improve drinking water quality. Of this amount, $173.1 million will go to infrastructure, $73.4 million to upgrade operations and maintenance, $4 million for operator training, and $4.6 million for other water management priorities, including the improvement of monitoring and reporting regimes. In the Government of Canada's February 2003 budget, $600 million was identified for the First Nations Water Management Strategy (from 2003-2004 to 2007-2008). When combined with Indian and Northern Affairs Canada's A-Base funding for First Nation water, and Health Canada's contribution, this brings a total investment of $1.6 billion over five years to the First Nations Water Management Strategy.

In 2006, Indian and Northern Affairs Canada will undertake a comprehensive progress report to review the First Nations Water Management Strategy. The monitoring of the First Nations Water Management Strategy, in addition to the committed resources, ensures the government can proceed with confidence in achieving the collective goal of providing safe and potable drinking water to First Nation communities.

On September 28, 2004, a few of the Neskantaga (Lansdowne House) First Nation's members vandalized the water treatment plant. It was feared that they may have deposited chemicals into the community's water reservoir. Upon notification, Indian and Northern Affairs Canada immediately reacted and offered to provide five litres a day of bottled water to all residents of the First Nation for drinking and cooking purposes. This was beyond the allocation of two litres of water per day, per person, that is provided to "persons at risk" (i.e., elderly, infants, immuno-supressed) that is normally provided under Boil Water Advisories. Under a Boil Water Advisory, the amount of two litres of bottled water provided per day, per person at risk, has been set by Health Canada.

On October 23, 2004, the emergency at the Neskantaga First Nation ended. Since a Boil Water Advisory is still required at the First Nation, the department is currently providing two litres of water per day, per person, not only to those at risk, but to every on-reserve person, until the testing can been completed by Health Canada.

With respect to the issue of washing the mould, bleach and water is no longer the recommended remedy for this problem; the use of soap and water is considered a safer solution.

ORDERS OF THE DAY

STATISTICS ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Losier-Cool, for the second reading of Bill S-18, to amend the Statistics Act.

Hon. Gerald J. Comeau: Honourable senators, I would first like to acknowledge the work of Senator Milne and her legion of census patrons who have mounted an aggressive and capable campaign to have confidential census records made public. I do not doubt their sincerity and their belief in their campaign. I also do not dispute that census records are a valuable source of information to people who wish to trace their ancestry. One cannot be faulted with the desire to trace one's background and there is no doubt that open access to census records is valuable to historians.

I acknowledge the value of research data but, in turn, I would also like the proponents of Bill S-18 to recognize that parliamentarians do have a duty to consider the implications of legislative changes. My role is not to rain on their parade, but to express legitimate concerns. I ask to be given a fair hearing without being accused of not being a proud Nova Scotian.

The purpose of Bill S-18 is to repeal the secrecy provisions, section 17 and 18, of the Statistics Act, to allow for information in the census no longer to be confidential 92 years after the census is taken. Allow me to read into the record the relevant provisions of section 17 and 18 of the current Statistics Act which is to be repealed. The title of these two sections, written right into the act, come under the heading "Secrecy." Section 17(1) has the margin description, "prohibition against divulging information."

Section 17(1):

> (*a*) no person, other than a person employed or deemed to be employed under this Act, and sworn under section 6, shall be permitted to examine any identifiable individual return made for the purposes of this Act; and
>
> (*b*) no person who has been sworn under section 6 shall disclose or knowingly cause to be disclosed, by any means, any information obtained under this Act in such a manner that it is possible from the disclosure to relate the particulars obtained from any individual return to any identifiable individual person, business or organization.

• (1450)

Section 18 of the Statistics Act, also to be repealed, has the margin description, "Information is privileged." It reads:

> **18.**(1) Except for the purposes of a prosecution under this Act, any return made to Statistics Canada pursuant to this Act and any copy of the return in the possession of the respondent is privileged and shall not be used as evidence in any proceedings whatever.
>
> (2) No person sworn under section 6 shall by an order of any court, tribunal or other body be required in any proceedings whatever to give oral testimony or to produce any return, document or record with respect to any information obtained in the course of administering this Act.

Most of us in this chamber have probably at one time or another filled out a census form. I would like to read into the record the statutory promise written right on the census form itself. It states:

> As Canada's national statistics agency, Statistics Canada uses census data for producing statistical tables, analytical reports and for selecting samples or following up responses for some of our surveys. These uses are strictly for statistical purposes and no one outside the agency can have access to your identifiable information.

Again, right on the form it says:

> By law, Statistics Canada must take a census every five years and every household must fill in a census form. Also, by law, Statistics Canada must protect the confidentiality of the personal information you provide. Our employees, including census takers, are personally liable to fines or imprisonment should they break the confidentiality of your information.

This form is signed by Ivan P. Fellegi, Chief Statistician of Canada, who, we learned yesterday from Senator Milne, now supports the release, in spite of his signature on the form.

Further down the form it says:

> Confidential when completed.

The last page of the census states:

> The law protects what you tell us.
>
> The confidentiality of your census questionnaire is protected by law. All Statistics Canada employees have taken an oath of secrecy. Your personal census information cannot be given to anyone outside Statistics Canada — not the police, not another government department, not another person. This is your right.
>
> Your census questionnaire will be retained in accordance with legislative requirements and will be stored securely.

In spite of all of this clear, concise, unambiguous wording, Minister David Emerson, in his promotional package forwarded to us, states:

> This enactment will remove a legal ambiguity in relation to access to census records for the period 1911 to 2001 inclusive and to future census records starting with the 2006 Census.

In spite of what we see in the act and on the census forms, Minister Emerson says it is quite ambiguous as to whether or not this information was protected.

Minister Emerson admits in the promotional package that:

> Justice Gibson of the Federal Court in his June 25, 2004 decision ruled that the care and control of the 1911 Census rests with the Chief Statistician. Furthermore, Justice Gibson suggested that the balance between privacy rights of Canadians and public access was a policy matter for the government to address.

The court ruling means that the government needs us — parliamentarians — to authorize the release. The purpose of Bill S-18, therefore, is to break the promise of confidentiality made by our predecessors — a promise made to our grandparents, parents, and to us in more recent years.

The U.K. and the U.S. are often cited as countries where the census is released after a certain number of years. This is true, but there was no legislative promise to keep them permanently secret. The citizens of these countries knew what the stakes were when they responded to the census.

Proponents of this bill also argue that those who responded 92 years ago have raised no complaints. There is little doubt that most of these people are deceased or too old to follow this debate, but it is a rather disrespectful argument to be making at this point. Should one's right to privacy be disrespected because one is dead, old or sick?

For those honourable senators who may not be aware, I would like to draw attention to certain questions in the 1911 census regarding family members. This is one reason we should consider seriously before opening up this census. This was a different age.

One question was: Is the person deaf or dumb? This census was taken by neighbours who visited houses and wrote down their impressions of the people there. Other questions were: Is the person crazy or a lunatic? Is the person idiotic or silly?

As I say, that was a different age, but if we do pass this bill, we will be able to access those old census forms and find out if Aunt Matilda was in fact silly. That information would be right in the census form. We always thought she was a little bit batty, but now we will know for sure.

Other questions on the census form at that time included: Name your race or tribal origin and religion. Your tribal origin? Give me a break.

Senator Joyal raised the issue yesterday of such information getting into the wrong hands, and Senator Milne responded, quite rightly, that one's religion is irrelevant after 92 years. However, if we are breaking the promise after 92 years, why not break it in a few years, after ten years or five years? What is stopping us at that point? How will the people who come after us act once we have established the principle that promises can be broken?

Further to the concerns stated by Senator Joyal yesterday, I would like to read excerpts from an article in *The Boston Globe* of November 10. The article is entitled "Census official seeks to reassure rights groups on privacy concerns." This is very important. The subtitle is "Arab-Americans data was shared." It reads:

> Census officials sought to reassure minority and civil rights groups yesterday that the agency keeps names, addresses, and other personal information confidential from other government departments. Some critics remain skeptical.

Further on it says that the Census Bureau shared population data with the Homeland Security agency. Officials at the headquarters said that if there is any perception that this kind of information is shared, it can be an extreme problem to the bureau. It goes on further to say:

> But hearing that data are being shared with an agency like Homeland Security's customs bureau "scares people the most" and may lead some to stop answering census surveys...
>
> Confidentiality of census data is of paramount importance...

Further on it says:

> Arab-American groups contend that the information sharing undermined the public's trust in the Census Bureau.

The article really speaks for itself.

The Chief Statistician of Canada finally gave up the fight to maintain the confidentiality provisions of the census, and this is understandable. The government has twice tabled a bill to break the promise. Justice lawyers have reversed themselves completely in their legal advice and now apparently suggest that the legislative confidentiality promise might not stand up in court.

Honourable senators, there are no voters in cemeteries, and therefore Minister Emerson, like his predecessor, issued a press release in support of breaking the promise. What else could the Chief Statistician do? Given that reality, the Chief Statistician is no doubt trying to salvage an illusion of credibility of the confidentiality promise. He hopes that the consent provisions of this current amendment whereby Canadians can request that future censuses not be divulged without their consent might encourage Canadians to keep faith in the credibility of the census.

He is dreaming in technicolour, honourable senators. Once we establish the principle that a promise of confidentiality is only as good as the current crop of parliamentarians, can we expect Canadians to believe in other false promises?

Parliamentarians should be mindful that the Chief Statistician's concern is not with the impact on our image as breakers of promises. His concern is with the impact that this breach will have on the integrity of future census data. Will Canadians respond truthfully and helpfully if legislative promises of confidentiality are worthless?

• (1500)

To use an analogy, imagine the credibility that an official of the witness protection program would have if parliamentarians were to start fooling around with the secrecy and confidentiality of that program. Similarly, are we not damaging the Chief Statistician's primary public policy tool, namely, the promise of privacy?

There is no question that Parliament is, supposedly, supreme. We can retroactively break promises whenever we want; but do we want to? I am the product of a time and a culture in which one's promise is considered sacred, even the promise of a politician. Senator Milne stated yesterday that she had been informed that the current Privacy Commissioner apparently now supports breaking the promise. We should seek to learn why she has taken this position.

The previous commissioner, however, had problems with the implications of this bill. Unlike the Chief Statistician, his concern was not with the negative consequences of broken parliamentary promises, but rather with the impact on the privacy of Canadians.

I look forward to learning how the current Privacy Commissioner can both protect privacy and yet support breaking a promise of privacy. If she supports the release at 92 years, would she support the release at 90 years, or 50 years, or 20 years? Where does she draw the line? These are the types of questions to which our Privacy Commissioner needs to respond, if in fact the person who reported to Senator Milne was correct in saying that the commissioner now supports the release of this data.

The Department of Justice could not care less whether we break our promise. Their interest is in making certain that Parliament passes amendments that will legally absolve the government of the breach of faith.

Obviously, family historians would have no cause to be concerned with the negative implications of parliamentarians breaking promises.

Therefore, it is up to us, as parliamentarians in this chamber, as well as those in the other chamber, to assess the consequences of breaking our legislative promises to Canadians.

We wonder why Canadians do not trust parliamentarians. Would we not somehow feel violated if our doctor suddenly decided that our private medical files are to be opened to the public? Would we not feel violated if our lawyer started breaking client confidentiality, or if our priests started to break the silence of the confessional? Why should we hold ourselves to a lesser standard of trust than doctors, father confessors and lawyers? Why should we accept that our promise is only as good as the current group sitting in this place today? Why is it that our promises are not worth the paper they are written on?

The premise of Bill S-18 is that your privacy dies with you, but this bill goes way beyond breaking promises made to the dead. In fact, as of 2001, there were 77,000 Canadians aged 92 and over who were still living when their census was released. Furthermore, this bill breaks the promises to all Canadians living today who have ever filled out a census return.

Bill S-18 provides withholding consent to future census returns. However, this withholding consent is worthless if we establish the principle that parliamentarians can break promises at will and simply retroactively break the consent provisions in the future. Why else would we be reviewing this provision over the next few censuses, which is written right into the law and which is proposed in the package sent to us by Minister Emerson?

Furthermore, the consent provisions for censuses after 2005 may be quite difficult to administer. Only if consent is given would the person's information be transferred to the archives after 92 years. However, it is typical in most dwellings for only one person to complete the form for the entire household, raising questions as to who had and had not given consent to either release or not release. The one signing the form is signing on behalf of others.

Lawyers from the Department of Justice are now of the view that the legislative promises of confidentiality under the current Statistics Act might be broken by the courts. This is the same group of lawyers who provided legal advice to the government on the Pearson bill in support of taking away citizens' rights to their day in court. It is the same group of lawyers who joined Allan Rock in an eight-year political vendetta against the former Prime Minister. Their track record leaves a lot to be desired.

Honourable senators, should we roll over and accept the Justice Department's opinion that the courts can break our parliamentary promises? Is this the pitiful excuse we offer for our breach of trust? Are we, as parliamentarians, ready to accept that judges are so powerful that we have to cower before them and break our word because these judges might make us do it? Are they so much above Parliament that this is what we have come to? Will we say, "The judges made us do it"? I would suggest not.

I read the confidentiality declarations earlier. There is no room for doubt at all. If Department of Justice lawyers now suggest that the wording in the act was not sufficiently clear, then let us make it so. Let us not hide behind the fear that the courts might misinterpret the meaning of confidentiality and cause us to cower under their watchful gaze. If we as parliamentarians want to break the promise to Canadians, let us not do it meekly and blame the courts. Let us do it out of conviction.

For those of us who may not have reviewed the testimony at committee when we last looked at this bill, allow me to quote from a few comments made by some of the experts.

The previous Privacy Commissioner said:

> This bill, if passed, will violate a promise repeatedly made to Canadians by successive governments and eliminate existing privacy rights retroactively.

He went on to say:

> For censuses taken after 1918, there is neither ambiguity nor inconsistency. The 1918 Statistics Act stated explicitly that the material would be kept confidential. That prohibition has been repeated in every Statistics Act since.

Still quoting from the testimony of the Privacy Commissioner:

> Breaking the promise of confidentiality made to Canadians could seriously erode public trust in undertakings made by the Government of Canada. Some people might say that the promise of confidentiality will still hold for 92 years after the census. However, the rest of us might well wonder. If a commitment made in perpetuity can in fact be broken after 92 years, what makes 92 years such a magic number? Might a future government next time break promises after 50 years or 25 years or 10 years?

In referring to Canadians, the Privacy Commissioner said:

> We have always been able to assure them that the government has undertaken to respect the confidentiality of their answers and that Statistics Canada has a very good history of protecting confidential information.
>
> We will not be able to give any more such assurance in the future if this bill, as it is presented, is passed.
>
> If people cannot trust that confidential information will remain confidential, they will lie. Wouldn't you? It is common sense.
>
> ...I believe that privacy will be the defining issue of this decade.

Let me refer to the Chief Statistician, who said:

> Would I be more comfortable as Chief Statistician if the aspect of confidentiality was protected forever? Of course, I would.

He went on to say:

> The compromise goes as far as I dare to go. No one knows how the public will react. However, what I do know is that trust is a very fragile commodity. This is as far as I dare to go. Am I concerned? Yes, I am.

Honourable senators, I am not making up these remarks. They are on the record and you can check them, should you choose to do so. It is in the testimony of the committee in the previous Parliament and these are the professionals. These are the recommendations and comments that they made at that time.

Where will our disregard for privacy end? Which files will be opened next? Will it be student loan applications, application information for immigration or refugee status, EI benefits, passports, jobs, firearms licence applications, income tax or pardons? Where will it end?

• (1510)

The fact that legislation is needed to break the promise is evidence that the promise was in fact made, if any further evidence should be needed. The government needs our approval. To absolve itself from breaking the promise, the government needs Parliament's permission. The government might well be open to libel if it did not have this permission from us.

Honourable senators, I can understand that some may not share my passion for keeping promises, legislative or otherwise. The release of private and confidential information, in their view, may be more important than keeping our word. However, I should like to remind honourable senators that statistical information is only as good as the information that is gathered. I fear that many Canadians, when they become aware of this bill, will provide information as worthless as our promises. Do we not invite false promises to our false guarantees? I would urge honourable senators to carefully consider the consequences.

It is true that a well orchestrated lobby has been mounted to seek your support. The proponents are articulate, and their commitment is strong. I know, since I have been on the receiving end. I also know I am not popular with this very articulate group of historians and genealogists. Also, little opposition has been shown to this bill. I wonder, however, how Canadians will react when they eventually find out what is actually at stake here. What will happen when Canadians learn that this is not only breaking a promise made to dead people but also breaking a promise made to those still living today? Will they accept and forgive?

This bill is not necessary to provide access to legitimate users. A compromise had been made whereby access could be provided to families of deceased census respondents and responsible historians. I believe it was mentioned yesterday that some people would like to be able to access these files in order to find out if there is any kind of medical situation in their history, and I think an honourable compromise had been offered. However, this was rejected out of hand.

The current legislation could also mimic what is extant in the United Kingdom and the United States. However, the U.S. and the United Kingdom did not make promises that their information would be kept in confidentiality forever. The people who signed those documents, therefore, knew exactly where they stood and thus this question of confidentiality does not arise.

These compromises were rejected out of hand, and it was all or nothing, resulting in this current bill. I would urge honourable senators to seriously consider the stakes when we start fooling around with retroactive legislation. There was no "best before" date when the Statistics Canada Act was enacted. Unlike milk, our promises should not sour with time. Do we really want to be parties to breaking our faith with Canadians? Could we, as parliamentarians, ever hope to expect or have the trust of Canadians with our word in the future? I will let you be the judge.

Hon. Lorna Milne: Would the honourable senator accept a question?

Senator Comeau: Absolutely.

Senator Milne: My question is in the form of a letter that I received from Dr. Fellegi this morning. I wonder if the honourable senator would like to hear what is in the letter.

Senator Lynch-Staunton: That is not a question.

Senator Milne: It is not long.

Senator Comeau: That is not a question.

Senator Milne: The answer to the question can be no.

Senator Comeau: No. This is work for the committee. If Dr. Fellegi wants to swallow himself whole, as I said yesterday, or has thrown in the towel, fine, by all means. He is an employee of the Government of Canada. He obviously knows who signs his cheques at the end of the week. Let us get this to committee.

Senator Milne: Very well, I will move that this bill be —

Hon. John Lynch-Staunton: Just a moment. I would like to move the adjournment of the debate.

On motion of Senator Lynch-Staunton, debate adjourned.

TAX CONVENTIONS IMPLEMENTATION BILL, 2004

SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Harb, seconded by the Honourable Senator Adams, for the second reading of Bill S-17, to implement an agreement, conventions and protocols concluded between Canada and Gabon, Ireland, Armenia, Oman and Azerbaijan for the avoidance of double taxation and the prevention of fiscal evasion.

Hon. John Lynch-Staunton: Honourable senators, I do not have anything to add to what Senator Harb has already said about the content of the bill itself. It is a bill that is intended to continue the policy of signing tax treaties with various countries, and that by itself is certainly commendable, as the purpose of these tax treaties is to prevent double taxation and, we hope, establish mechanisms to stop tax evasion.

I want to remind the honourable senator and others that, for several years now, some of us on this side have certainly felt uncomfortable with officials dealing with countries known more for their abuse of human rights than for protecting them. These concerns were last raised when the Banking Committee, two years ago, studied a similar bill, also entitled Bill S-17, which was the last tax treaty tabled in Parliament before this one. The then Parliamentary Secretary to the Minister of Finance agreed at that time to share government studies of human rights in countries subject to future tax treaties. I very much regret — and I hope that others share this regret — that this commitment has not been kept. An attempt to explain its dismissal by pleading changes in senior parliamentary positions following an election is just not acceptable, because the issue is too important to be treated in this way.

I should like to make a plea here to the government and to the Chairman of the Standing Senate Committee on Banking, Trade and Commerce, to which, I assume, the bill will go, that the committee take it upon itself to call as witnesses officials responsible for tracing human rights activities internationally so that the Senate can get a better appreciation of the policy which sanctions agreements of any kind with countries that violate fundamental human rights.

I know this brings up the old argument of business and trade versus human rights. Some claim it is like comparing apples and oranges. On the other hand, if Canada, as a leading proponent of human rights around the world, is willing to enter into agreements with countries whose record is just abominable, its concern can seriously be challenged, because it might be diluting its commitment by abandoning certain principles for immediate business gain.

Those are my comments, honourable senators. I urge that witnesses along the lines that I have suggested be called so that we can thrash this out and hopefully get some assurance that my concerns are poorly based.

Senator Robichaud: Question!

The Hon. the Speaker: I will put the question. It was moved by the Honourable Senator Harb, seconded by the Honourable Senator Adams, that this bill be read the second time. Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second.

REFERRED TO COMMITTEE

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

On motion of Senator Harb, bill referred to the Standing Senate Committee on Banking, Trade and Commerce.

• (1520)

[*Translation*]

CONSTITUTION ACT, 1867
PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED—SPEAKER'S RULING

On the Order:

> Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Comeau, for the second reading of Bill S-13, An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate).—(*Speaker's Ruling*)

The Hon. the Speaker: Honourable senators, on Thursday, November 4, Senator Murray raised a point of order during second reading debate on Senator Oliver's Bill S-13, which seeks to introduce an election process for the offices of the Senate Speaker and Deputy Speaker as well as provide the Chair with a casting vote in instances where there is a tie. Without being definitive about his position, Senator Murray asked for a ruling to clarify whether Royal Consent was required for this bill.

[*English*]

Following a request from Senator Kinsella, the Leader of the Opposition, to provide some explanation to support the point of order, Senator Murray then cited section 34 of the Constitution Act, 1867, which states that the Governor General may from time to time, by instrument under the Great Seal of Canada, appoint a senator to be Speaker. In Senator Murray's view, the election of the Speaker would remove a prerogative now exercised by the Governor General and turn it over to the Senate.

Senator Austin, the Leader of the Government, then intervened to support the request for a ruling. Senator Joyal spoke next to suggest that based on previous rulings of the Speaker when confronted with a point of order respecting the possible need for a Royal Consent to a bill, the point of order need not impede debate since the chair is not required to provide a ruling until the vote for third reading. This position was subsequently supported by Senator Stratton, the Deputy Leader of the Opposition.

After some brief exchanges relating to the election of the Speaker of the House of Commons, Senator Cools also spoke about the recent rulings on Royal Consent in the Senate. Senator Cools explained that it has been the consistent position of the Speaker, as expressed in several rulings, that Royal Consent can be given at any time during the proceedings, and that a bill is not rendered defective for want of Royal Consent at second reading, nor does it impede debate on the bill. Senator Kinsella then cited some decisions from *Rulings of Senate Speakers, 1994-2004* that confirmed this assessment.

[*Translation*]

Once the arguments had been made, the Speaker *pro tempore* agreed to take the matter under advisement. Since then, I have had time to read the exchanges on this point of order, consult the relevant procedural authorities, and review the recent rulings that have been made in the Senate on Royal Consent. I am now prepared to give a ruling.

[*English*]

The issue of whether Royal Consent is required for this bill is not new. It has been raised in debate with respect to prior versions of this bill, on September 30 and October 21, 2003. No ruling, however, was actually sought or made at that time.

Royal Consent is a feature that has been incorporated into our parliamentary practice from Westminster. As is stated in Marleau and Montpetit, *House of Commons Procedure and Practice*, page 643:

> Royal Consent...is taken from British practice and is part of the unwritten rules and customs of the House of Commons of Canada. Any legislation that affects the prerogatives, hereditary revenues, property or interests of the Crown requires Royal Consent, that is, the consent of the Governor General in his or her capacity as representative of the Sovereign.

In the twenty-third edition of Erskine May's *Parliamentary Practice*, the Royal Prerogative is described as being

> ...powers exercisable by the sovereign for the performance of constitutional duties...

This is found at page 708. Many of these prerogatives, in turn, have been vested, as Dicey explained in his study of the Law of the Constitution, in the office of the Governor General.

[*Translation*]

Both the Canadian and British authorities explain the consequences of failure to signify Royal Consent for a bill requiring it in a similar way. Erskine May at page 710 states:

> If Queen's consent has not been obtained or is not signified, the question on the relevant stage of a bill for which consent is required cannot be proposed. Similarly, where a bill affecting the interests of the Crown has been allowed, through inadvertence, to be read the third time and passed without the Queen's consent being signified, the proceedings have been declared null and void.

[*English*]

Erskine May goes on to explain that the Queen's consent involves the willingness of the Crown to place its prerogatives or interests at the disposal of Parliament for the purpose of the bill.

There is an element to this procedure that is very much pro forma. In the United Kingdom, at least, it would appear that the government will invariably provide the consent even to bills of which it disapproves. As Erskine May explains:

> The understanding is that the grant of consent does not imply approval by the Crown or its advisors, but only that the Crown does not intend that, for lack of its consent, Parliament should be debarred from debating its provisions.

As was noted, one objective of Senator Oliver's bill is to amend section 34 of the Constitution Act, 1867, by providing for the election of the Senate Speaker by secret ballot. This would effectively extinguish the authority of the Governor General to appoint the Speaker. Such an action clearly affects the prerogative power exercised by the Governor General. Accordingly, it seems to me appropriate that Royal Consent be obtained for this bill.

A review of Senate practice, as decided in recent rulings by both my predecessor, the late Senator Molgat, and myself, clearly show that the requirement for Royal Consent need not be signified in both chambers. In fact, in most precedents, consent was signified in the other place only. There are a few notable exceptions to this, one being in 1951 and two others of more recent date. As honourable senators will recall, the Senate was advised of Royal Consent to Bill C-10, the Clarity Act, in the second session of the Thirty-sixth Parliament and Bill S-34, the Royal Assent Act, in the first session of the Thirty-seventh Parliament. Further, the Senate rulings by the chair show that the requirement for Royal Consent is not an impediment to debate since it need only be given before final passage of the bill. There is no reason for me to dispute either of these assessments.

To clarify the point raised by the Honourable Senator Murray, Royal Consent will indeed be necessary. It will not, however, prevent debate on second reading from continuing.

Hon. Donald H. Oliver: Honourable senators, I would move that this bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs for further study.

Hon. Lowell Murray: What about reading it first?

The Hon. the Speaker: Yes, I will come to this in a moment. No senators rising to speak to the bill, I then ask, are honourable senators ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Honourable senators having indicated they are ready for the question, I will put it.

It was moved by the Honourable Senator Oliver, seconded by the Honourable Senator Comeau, that this bill be read the second time.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

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

[The Hon. the Speaker]

• (1530)

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Madeleine Plamondon moved second reading of Bill S-19, to amend the Criminal Code (criminal interest rate).

She said: Honourable senators, Bill S-19 has two objectives. The first objective is to review the criminal interest rate currently set at 60 per cent in the Criminal Code, which has not changed since 1981. The second one is to change the definition of "interest" in paragraph 347(2) of the Criminal Code. In my opinion, it is essential that the criminal interest rate be brought down to a realistic level and that the charges actually paid by the borrower be taken into account.

Let us start by taking a look at how interest rates, usury and, finally, the legislation came to be. In the past, money represented a medium of exchange, and no interest was charged on loans. No community or culture used this practice. In time, interest started to be charged, and the rates increased to the point of becoming plain usury.

Usury is the act of lending at interest at an excessive rate, as compared to the financial norm. It then became necessary to take legislative action. One of the first pieces of legislation respecting interest and usury was passed in England in 1571. In Canada, the first Interest Act was enacted in 1777, setting the maximum interest rate at 6 per cent. This act evolved to become the Interest Act as we know it today.

Section 2 of the current Interest Act recognizes the freedom to contract and the right to agree on any rate of interest, while section 3 provides that, when no rate is specified in the contract, the maximum rate is 5 per cent.

I am all in favour of the freedom to contract, but this freedom to contract is no reason to abuse it. In fact, it was in that spirit that, during the 20th century, the lawmaker intervened, first in 1906, then in 1939 and, most recently, in 1981, to try to limit abuse viewed as criminal.

The legislative intentions for curbing abuse are as valid today as they were in 1906. The same intentions have motivated every subsequent piece of legislation, while taking into account the fiscal context at the time.

[*English*]

The legislators' intention to limit abuses, which was conveyed by the 1906 legislation and subsequent measures, is still very relevant today.

[*Translation*]

In fact, an excerpt from the preamble of the 1906 legislation clearly indicates the objective sought, namely to protect inexperienced and abused borrowers. The preamble reads in part as follows:

> Whereas on the part of some money-lenders a practice has obtained of charging exorbitant rates of interest to needy or ignorant borrowers, and whereas it is in the public interest that the transactions of money-lenders should be controlled by limiting their rates of interest...

This is the preamble that provides protection to borrowers. As we can see, the 1906 act, and those of 1939 and 1981, all seek the same objective. A maximum rate is set and the various costs assumed by the borrower are taken into consideration in order to protect him.

Today, in 2004, the situation is not the same as it was in 1981. As honourable senators may remember, in 1981, the central bank rate was headed for historical highs. The legislator then decided to repeal the Small Loans Act of 1939, which had become obsolete. At the same time, it adopted section 305.1, now section 347 of the Criminal Code, which I want Parliament to amend. This section sets the criminal rate at 60 per cent. It must be understood that when section 347 came into effect, on April 1, 1981, the Bank of Canada rate was at an exceptionally high level, reaching a maximum of 21.03 per cent in August. Today, the rate is at 2.5 per cent, exactly the same as in 1939. You will agree with me that this criminal rate of 60 per cent is really out of proportion now. Therefore, it is important to review it, because it leads to abuse.

The discussions and testimonies heard by the Standing Senate Committee on Banking, Trade and Commerce during the review of the legislation in 1979 and 1980 show that traditional lenders no longer wanted to grant loans of less than $1,500, because they did not make a profit. The tightening of credit criteria had the effect of making some borrowers turn to finance companies that were charging high interest rates. In 1981, we legislated the criminal rate to eliminate abuse and protect consumers. The relevant section included provisions to prosecute criminals and avoid the problems associated with these criminal activities.

Professor Ziegel referred to the matter of charging usurers in his commentary on the bill. He indicated that the rate was determined after consultation with the Montreal Police Department.

Today, as 2004 winds down, we are very far from the context of 1981 from a number of points of view. The amendment I am proposing to section 347 will make it possible to keep its application up to date. It also addresses the total real cost of a loan. The calculation of interest must include the cost of insurance paid by the borrower, because mandatory insurance has become a major component in credit costs.

This is, moreover, the approach used in the various laws in Canada that relate to disclosure of the real cost of a loan to the borrower. A typical example of this is the case of a person in my region. He borrowed $4,468.09 in 2002 for a period of 48 months. This will end up costing him $10,491.36. The interest rate given on the contract is 35.99 per cent, but is in actual fact 50.63 per cent once the cost of mandatory insurance is added in, along with the interest paid on that insurance. The Bank of Canada central bank rate at the time he signed the contract was 3 per cent.

The cost of credit absolutely must include the cost of insurance. I will use Quebec as an example of what I mean by the cost of credit. Its Consumer Protection Act describes the costs of credit as credit charges which include insurance premiums. Other jurisdictions in Canada also include other costs in the cost of credit.

• (1540)

That is the most logical and the most usual way to consider the cost to the borrower. To state things simply and referring to Alberta's law on this principle, the cost of credit is the difference between the value paid by the borrower and the value received. Alberta also includes the cost of insurance among the various costs taken into consideration in calculating the value paid.

Let us now look at a related issue, the indebtedness of Canadians. While interest rates are low at the moment, we are seeing an increase in the debt levels of Canadian households. The household debt ratio is at its highest level, around 106 per cent of income. In a telephone call this morning, someone from a Montreal consumers' group said that it was around 115 per cent.

In a recent study, the Vanier Institute of the Family reported that a growing number of households live on the edge of financial disaster. Other studies have confirmed this over-indebtedness of Canadians.

This is a very disturbing situation. In my opinion, it may lead to disaster because interest rates will not remain at the current level. Even a tiny increase in the mortgage rate may lead some households to a financial disaster. If mortgage rates increase, payments will be higher, and there will be less money available for other expenses, and after that, there are some who, reaching their credit limit, will turn to high-interest loans although their ability to repay is already stretched to the limit.

[*English*]

Despite current interest rates in the mainstream financial sector, access to credit at a sensible rate is far and away from being available to everyone.

[*Translation*]

Banks are not very interested in providing small loans. Many consumers who do not have a credit card or a line of credit have to turn to finance companies. Others resort to alternative, short-term credit with very high interest, as high as 60 per cent. The situation is clear: we must act in order to protect the growing number of people who are unable to access regular credit channels. However, I must mention an initiative by the Caisses Desjardins in Quebec. The Desjardins Group, has started up a self-help fund, in conjunction with consumer groups, that provides budgeting advice and follow-up. The average loan made is $548, often interest-free, and 92 per cent of people pay back their loans, which is excellent in risk financing, according to a Desjardins spokesperson. I am told of similar experiences in Vancouver and Toronto. These initiatives are commendable, but do not cover all the needs or every region in Canada.

In passing Bill S-19, we are following in the footsteps of our predecessors, who were concerned about abuse by lenders. Let us follow their example because by maintaining the status quo we are contributing to a situation that has become a cancer for many low-income people. In addition to indebtedness, there is another phenomenon which signals the current unhealthy situation: the growing number of class action suits filed over the past few years in Canada targeting the high interest rates. The institutions targeted are alternative credit companies and credit card companies affiliated with major chain stores.

Class action suits have been filed in British Columbia, Quebec, Ontario and Newfoundland and Labrador. These suits condemn the exorbitant cost of credit. Why leave the entire decision to a judge when we know full well that a 60 per cent interest rate is unrealistic? This criminal interest rate has given rise to an entire alternative credit market. From 1994 to 1999, the number of pledge loan institutions in Montreal went from 50 to 200. The leading alternative credit company in Canada stated in its annual report in 2003 that it had 290 offices across the country and covered 60 per cent of the market.

In 1997, we learned from the Association des corporations financières de Montréal that its members were serving 1.7 million clients. According to a study conducted in Winnipeg, the number of institutions involved in alternative credit in the United States went from 2,000 in 1986, to close to 19,000 in 2002. In Winnipeg, according to that same study, the number of institutions cashing cheques and lenders collecting on pay day went from 3 in the year 2000, to 33 in 2003. In 2002, there were 33 pawnbrokers doing 8,750 transactions per month. According to the same study, it is less fortunate people who do business with alternative credit institutions.

As senators, we represent all these regions. One of the conclusions reached by the research group that looked at the experience of people who use alternative credit in the region north of Winnipeg is that they quickly get deeper into debt. It is not a favour to them, considering the high rates and fees demanded. This debt load leads the person into a spiral of debt and poverty from which they cannot escape. Maintaining the current criminal rate encourages such institutions to go up to the limit set by the provisions of the Criminal Code.

To give ourselves points of comparison, let us examine at what level the criminal interest rate is set in other jurisdictions. This comparison is another argument convincing me that what I am proposing is right. In California, the interest rate for personal loans must not exceed 10 per cent. In Florida, the rate is 18 per cent and, in Texas, between 18 and 28 per cent, depending on the loan category. In New York, the criminal rate is 16 per cent in civil cases and 25 per cent in criminal cases. You can see that we are far from these examples with our 60 per cent. The same in Europe: Canada sticks out just as much. In France, the rate is 20.85 per cent for a small loan; in Italy, it is 19.28 per cent, and in Germany, 17.4 per cent.

In conclusion, in Canada, we must preserve the freedom to contract while at the same time protecting consumers against abuse. We need regulations suitable to the current financial context, maintaining a 35 per cent difference between the Bank of Canada bank rate and the criminal rate. This way, no matter what happens to the bank rate, there is fairness and equity for all.

We are taking into account the increasing uneasiness across Canada, the class actions showing that Canadians have had it with being charged rates which they perceive to be criminal, the provincial laws which factor in all that consumers have to pay to get a loan, courts decisions, the debt load of Canadians, the aggressive advertising for credit loans and the explosive growth of alternative lending institutions. In fact, in 2001, the federal government legislated on the borrowing rate under the Bank Act, and included the disclosure of insurance costs.

The time has come not only to disclose these costs but to factor them into the interest rate. Section 347 of the Criminal Code has not been reviewed in 23 years. The time has come. The Senate is here to speak for those who do not have a voice. Will we be up to the task for the thousands of citizens who are counting on us, and on you?

On motion of Senator Rompkey, debate adjourned.

• (1550)

[*English*]

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

BUDGET AND REQUEST FOR AUTHORITY TO ENGAGE SERVICES—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Senate Committee on Energy, the Environment and Natural Resources (budget—study on emerging issues related to its mandate—power to hire staff) presented in the Senate on November 4, 2004.—(*Honourable Senator Banks*).

Hon. Tommy Banks moved the adoption of the report.

Motion agreed to and report adopted.

THE HONOURABLE RICHARD H. KROFT, C.M.

TRIBUTES—INQUIRY

Hon. Tommy Banks: I rise to call the attention of honourable senators to an important missing voice — the voice of the Honourable Richard Kroft, who has left us. When I first came to the Senate, I was thrown into a confusing sea and asked to swim. It was thus for a long time on every issue that arose until, in each instance, a voice rose up and made sense of it all, even to me at the beginning. The voice of Richard Kroft always made sense to me, no matter the issue.

Later, as I became less ignorant but never entirely understanding the procedures of this place, I actually began to get my oar in the water. The rest of us, it would seem to me, would be floundering about, roiling the waters and making incremental progress, if any, not just in this chamber but also in caucuses and in committees. Then, a voice would speak up. It was a voice of calm assurance and certainty, one of careful reasoning. Then, with a crystal clarity, the question, the options and the course of direction that needed to be taken became clear, I think, to all honourable senators.

I came to rely as a matter of course on that voice and on the many unfailing courtesies on the part of the man whose voice it was. Since September, I have missed that voice a great deal. It is a voice that all in this chamber have missed but will be long remembered here, Richard.

Hon. Jerahmiel S. Grafstein: Honourable senators, I first encountered Richard Kroft in Ottawa almost four decades ago in 1965 when I came to serve as John Turner's executive assistant. John Turner then was the most junior minister to the Pearson government. Richard, on the other hand, was the lofty executive assistant to the powerful and most senior Minister of Finance, the Honourable Mitchell Sharp. In those days, Richard — always called Richard and never by a diminutive of the name — was ever elegant and suave. He sported a graceful pipe, which was allowed in the halls of Parliament in those days, and was clothed in immaculate English-cut jackets. He spoke in quiet, measured tones, befitting all the magisterial sounds that emanated from a mandarin minister's lair. Always debonair, Richard came from a most distinguished Winnipeg family whose father and mother held august positions in the Winnipeg Liberal establishment. His family was multitalented. I, on the other hand, was a rather green, inexperienced, impatient, political activist from the streets of Toronto, ever-anxious to change the world. Despite our differences in approach, we always shared one common political objective, to further the policies and principles of the Liberal Party, and so we became fast friends and confidants.

Now, while Richard was a loyal member of the Sharp-Chrétien circle, I became successively a member of the Keith Davey crew, the Turner clan and then the Trudeau tribe. When Richard was finally summoned by Mr. Chrétien to serve in this chamber some six years ago, I asked him what had taken him so long. It did not take Richard long to catch up. He rose swiftly through the Senate ranks to hold the position of Chair of the Standing Senate Committee on Banking, Trade and Commerce, which I now hold. Although we disagreed on measures from time to time, especially the role of the Senate in the clarity bill, Richard was always sound and considerate in all of his views.

We will miss his wise counsel but are consoled by the fact that now that he has been liberated from the travails of the Senate, he will speak up freely and wisely in Canada's interests in the future as he has done so ably in the past.

I extend to him safe passage as he returns to the arms of his wife, Hillaine, to his wonderful and talented family and to the tranquility of private life. No doubt we will hear words of wisdom from Richard in the future.

Finally, honourable senators, I confess that Richard and I share a deep, dark secret — a love of Winnipeg. My daughter-in-law and the mother of my three grandsons was born and bred in Winnipeg. I have observed that the wind and the cold at Portage and Main has enlarged the warmth in the hearts of all Winnipeggers. We are so grateful to share the warmth of Richard's friendship.

Hon. George J. Furey: Honourable senators, I would like to offer a few words of farewell to our colleague and friend, Richard Kroft. Richard came to the Senate in 1998 and distinguished himself while he was here with his balanced, thoughtful and practical appreciation of the public issues that we all face during our time here. It is in the nature of the Senate as an institution that we are continuously faced with changing membership. Richard Kroft spent six years here and during that time he contributed significantly to the well-being of our institution and, indeed, to Canada at large.

While in the Senate, he contributed extensively to issues on the Standing Senate Committee on Banking, Trade and Commerce. I was both happy and privileged to serve with him on this committee and to have heard his views on corporate governance and ethics. Hearing what Senator Kroft had to say about Enron and other corporate ethics matters gave me a greater appreciation of the issues facing our modern corporate world. His appreciation was developed, no doubt, over his many years as a corporate director, investment fund manager and chair of numerous associations. I am especially regretful that the Senate is losing a person with this kind of experience. It seems to me that the role of the Senate is to leaven public policy debate with comments and attitudes from just such people as Richard Kroft.

While we are all aware of the many public service roles that Senator Kroft filled over the years, from the Jewish Foundation of Manitoba, the Royal Winnipeg Ballet, the University of Manitoba, the Pan Am Games and, indeed, even the Winnipeg Jets, it would appear that after his brief period in the Senate he will be back deeply involved once again in those core community-building activities. We wish him luck.

Richard, our very best wishes to you, Hillaine and your family.

The Hon. the Speaker: Honourable senators, it being Wednesday, we are subject to an order of the Senate such that I leave the chair at four o'clock if we have not adjourned by that time. I have another senator on my list under Inquiries. Is it your wish that I not see the clock for one additional intervention?

Hon. Senators: Agreed.

Hon. Joyce Fairbairn: Honourable senators, I rise to say farewell to someone whom I have admired for many years. Senator Grafstein, others in this chamber and I go back decades on Parliament Hill. I remember when we were all young and enthusiastic. I remember Richard serving quietly and carefully, and with great skill, ministers of former administrations. I, however, did not really know Richard as an individual and friend until he came to this chamber about six years ago. Senator Spivak noted today that he was the absolute picture of elegance and class in Winnipeg, and he certainly has been here in this chamber and in Ottawa as well.

• (1600)

The thing that really touched my heart about Richard was the maiden speech that he made in this chamber. As a Westerner myself, it struck me as almost the kind of thing students should read in school. He came here with all the intentions that we all do. We want to make a contribution and we are delighted to be

asked. However, he came here for another reason, too, because, as someone who lived west of the Ontario border, he had a tremendous desire, if not a sense of mission, to create a better understanding of that region we call Western Canada.

Now, I would be more inclined to be found, as His Honour knows, in a Stetson and boots, but I think that Senator Kroft managed to get his message across in many ways that were perhaps understated. Certainly, by his very presence here, he exuded a sense of being a worthwhile, intelligent person committed to this country and to his region.

Honourable senators, I want to go back to Senator Kroft's maiden speech because, oddly enough, he made it just before the weekend of the Grey Cup in 1998, which event is upcoming this weekend as well. In his speech he used the unifying force of sports — a great sense of pride and entertainment in this country — but he gave it a sense of bringing a country together, and he wanted to talk about that because it was his part of the country that was bringing Canada together for that particular weekend. Senator Kroft talked about his strong belief in the importance of Manitoba and the city of Winnipeg and their very centrality in the whole idea of Canada. He said:

> We are a natural part of both halves of our country. We live on the edge of the great western prairies, and holiday where the Canadian Shield spills over the Ontario border into Manitoba. Our English and French languages and cultures mix easily, in a way that enriches us all.

That was his motivation in coming here, and he was one of the strongest images of the reality and success of those words that I can think of. He made a contribution to this place on the Banking, Rules and Internal Economy Committees, but for me, always, his sojourn here in the Senate of Canada was an important statement about the pride and the worth of Western Canada, the province of Manitoba, the city of Winnipeg. We all thank him for that and wish him a glorious next career back in the place he loves, with his wonderful wife, Hillaine, and family.

The Senate adjourned until Thursday, November 18, 2004, at 1:30 p.m.

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