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THE HONOURABLE DANIEL HAYS
SPEAKER

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THE SENATE

Thursday, February 3, 2005

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

Prayers.

VISITOR IN THE GALLERY

The Hon. the Speaker: I wish to draw to your attention the presence in the gallery of Lord Beaverbrook.

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

SENATORS' STATEMENTS

LIBERATION OF AUSCHWITZ-BIRKENAU

SIXTIETH ANNIVERSARY

Hon. Jerahmiel S. Grafstein: Honourable senators, Auschwitz holds a dark significance for both my mother's family and my father's family. All but two in my mother's extensive family who lived in Poland before the Second World War perished in Auschwitz.

My father's branch of the family went from Austria to Southern Poland over two centuries ago and settled in a small village not far from Auschwitz. One branch of my father's family emigrated to France and Belgium. My father, his sister and older brothers, save one, immigrated one at a time to Canada, starting at the turn of the last century. My father's oldest brother and all his sprawling family and cousinhood, some 63 in all, remained in Poland and were transported in 1940 not far from their peaceful village to Auschwitz — where all but two perished.

So, exactly what do we demand from ourselves when we commemorate on January 27, 60 years since the liberation of Auschwitz? What are we to do? What are we to remember?

The Hebrew word for memory is *zachor*. The rabbis tell us that *zachor* is not a passive word, that *zachor* looks backwards and forwards. Although we must never forget the past, we live in the present. *Zachor* is an imperative verb. *Zachor* cannot ignore the present because the root of Auschwitz and the Holocaust was hate of the "other" — unreasoned, impassioned fear and hate of the other.

Back in July 2002, the annual OSCE Parliamentary Assembly met in Berlin in the very Reichstag where the infamous Nazi laws were passed in the 1930s, considered and unanimously approved a resolution that I co-sponsored, urging parliamentarians in all member states — 55 in all — and others to study and address the insidious revival of anti-Semitism across the entire OSCE space, including Canada. In the last three years, anti-Semitic incidents have erupted and escalated across Canada — and all of those since the resolution against anti-Semitism was first introduced in the Senate.

I gave notice of a motion to study the OSCE resolution on November 21, 2002, which languished on the Order Paper for almost a year and a half. On February 3, 2003, the resolution was referred by unanimous consent for consideration by the Standing Senate Committee on Human Rights, which held hearings for several hours on April 19, 2004. There, the matter stayed until Parliament dissolved on May 23, 2004.

The OSCE resolution is a long one, but in part it urges — and I quote — consideration of the following:

> ...effective measures to prevent anti-Semitism and to ensure that laws, regulations and practices and policies conform to the OSCE commitments.

Canada now lags behind a number of other states who have considered and acted on this resolution and made recommendations. Why commemorate Auschwitz if not to move to eradicate the roots of anti-Semitism in our time? I urge the Standing Senate Committee on Human Rights to revive the resolution and give careful consideration to how this generation and future generations of Canadians can eradicate the contagious virus of anti-Semitism that animated and engineered Auschwitz and the Holocaust.

How can we teach our children to respect the "other"? Senators, how can we expect our children to respect differences if the Senate remains indifferent to ongoing egregious acts of hate and discrimination in our time?

Hon. Senators: Hear, hear!

NEWFOUNDLAND AND LABRADOR

AGREEMENT ON OFFSHORE OIL REVENUES

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I rise to congratulate all who participated in the negotiations for the offshore accord with Newfoundland and Labrador — first of all, the Prime Minister, who kept his promise and who kept it for all the right reasons.

He knew this was not just a deal about oil, but about rectifying past injustices and about helping a province in grave economic circumstances. He knew about our $10-billion debt and about how much, every year, goes toward paying down that debt. He knew we were weak and that he could help to make us strong. He knew what he had to do and he did it.

As well, congratulations go to Premier Danny Williams. He knew that we were not a have-not province but a keep-not province. He knew that, in spite of our resources, financially we were simply running on the spot with no hope of ever catching up. He knew that, given a fair start, we could not only support ourselves but be a strong contributor to the nation. He knew that although the fish were gone, the oil was still there, and that it

would be our last best hope. He knew it was now or never, and his determination and perseverance led him to succeed where his predecessors had failed. He knew what he had to do and he did it.

Those of us who kept close to the negotiations know that there were others who played significant roles. Minister John Efford brought his passion to the debate, and honourable senators should know that Senator George Furey played a key role in articulating the position of the province and providing a less emotionally charged channel of communication.

We became part of this country less than 60 years ago. We were the only independent country to join Canada. We brought with us to Canada a long coastline rich in marine life and petroleum reserves. We brought with us abundant hydroelectric power and vast mineral lodes. Yet, in spite of that, we saw ourselves slipping more and more into the slough of dependency.

Because of this accord, we will no longer reflect on the past but set our sights on new horizons. It does not mean that tough times are over — just paying down the debt will restrict our ability to educate people or to keep them healthy — but we now have a fair chance. Because of this accord, we can become full Canadians not just in name but in deed.

Hon. Senators: Hear, hear!

THE LATE ROY FRASER ELLIOTT, Q.C., C.M.

Hon. W. David Angus: Honourable senators, I rise today with much sadness to signal the passing last Wednesday in Toronto of a truly remarkable Canadian, a man I was privileged to know as a friend and loyal partner for close to 50 years.

Roy Fraser Elliott lived a diverse and productive life, and Canada is surely enhanced for his having passed this way. On Monday afternoon, Grace Church on-the-Hill in Toronto was full to capacity as individuals whose lives he touched in a myriad of ways came from near and far to celebrate his life.

As the French would say, Fraser Elliott "avait beaucoup de cordes à son arc." He had many strings to his bow. He was a brilliant lawyer, a canny businessman and entrepreneur, a sensitive patron of the arts and a generous benefactor to countless causes and institutions. He was also an astute art collector and an avid sportsman. He loved golf and salmon fishing. His ardent competitive spirit, so evident in his professional and business life, was also alive and well on the golf course.

• (1340)

Fraser was born here in Ottawa on November 25, 1921, the son of Colin Fraser Elliott, a lifetime civil servant, whose career included terms as Deputy Minister of National Revenue and Ambassador to Chile. Fraser's higher education included a B.Com. from Queen's University in 1943, a law degree from Osgoode Hall in 1946, and a Harvard M.B.A. in 1947. Although a proud son of Ontario, after Harvard, Fraser had ventured to Montreal in la belle province du Québec where his extraordinary career would take shape and evolve over the next 30 years, before he decided, in 1976, to continue his noble pursuits in Toronto. He quickly mastered the mysteries of le droit civil and was sworn in as a member of le Barreau du Québec in 1948. Fraser befriended his father's protege, a brilliant young tax lawyer named Heward Stikeman, who had just returned to Montreal after nine years as a government lawyer in Ottawa, including two years as special counsel to the Standing Senate Committee on Banking, Trade and Commerce, where he had a mandate to design a complete new set of tax laws for Canada.

In 1952, these bright and ambitious young men, as equal partners, founded their own tax and corporate boutique law firm, Stikeman Elliott. They complemented each other beautifully; Stikeman being the visionary intellectual and legal purist, and Elliott the pragmatic businessman. Today, Stikeman Elliott is a leading global law firm with close to 400 lawyers, and Fraser was still attending the office as recently as two weeks ago.

For Fraser Elliott, hard work, focus, loyalty, integrity and sound judgment were the key ingredients to success. He also earnestly believed that success and good fortune carry with them the obligation to put back into society. He always encouraged his colleagues and associates to get involved and to participate in community affairs and public service.

Fraser's incisive business acumen manifested itself outside the law firm through a wide variety of successful commercial ventures, through which he accumulated a substantial fortune. By far his favourite and best known business pursuit was Canadian Aviation Electronics Ltd., or CAE. He and Mr. Stikeman invested in CAE in 1951 as a small start-up technology company. Fraser went on to serve as its chairman.

The Hon. the Speaker: I apologize for interrupting, but the honourable senator's time has expired.

THE LATE LAWRENCE O'BRIEN

Hon. Ethel Cochrane: Honourable senators, I rise today in tribute to Lawrence O'Brien, Member of Parliament for Labrador, who recently passed away at the young age of 53. Although a young man, and only in Ottawa since 1996, Lawrence's list of contributions to the people of his home, his province and his country was anything but short.

Throughout his life, he was devoted to serving his community. Whether as a schoolteacher, an adult educator or a town councilor, Lawrence sought to make a positive difference. It was no different when he arrived on Parliament Hill to fill the seat vacated by our honourable colleague. Lawrence was involved in everything, from fighting for an increased seal hunt to keeping NATO training flights in Labrador, to helping create his region's flag.

However, the historic achievement that I think is most reflective of Lawrence's work came in 2003, when our province's name officially became Newfoundland and Labrador. It was no easy task. The name change required no less than a constitutional amendment. However, it was an act of lasting value and of tremendous symbolic importance to the people of our province. I had the pleasure of speaking in support of that amendment in this place and was only too happy to further the cause, which he so passionately presented.

However, aside from those things, which I am sure history will forever recall, it is the much more discreet gestures and acts that I will remember. I remember, for instance, all the positive stories I have heard from people about encounters they have had with Lawrence O'Brien: about him stepping in to make sure that stranded air travellers in Labrador made it home for the holidays; or how he ensured that a constituent, who was in desperate need of equipment to start a home-based business, had what she needed within two weeks.

Those are the things that we rarely read about and seldom see, but those are the truest reflections of Lawrence O'Brien. He made the news last October when, in ailing health, he left his hospital bed to vote on the Throne Speech here in Ottawa. Many were astounded by that act of loyalty and devotion, but, frankly, that level of dedication was indeed typical of Lawrence.

Honourable senators, the Prime Minister has said of Lawrence:

> He was a man of honour, he was a man of principle. He was a man of character....Above all, he was a man of Labrador.

I could not agree more.

To his wife, Alice, and their two children, I extend my heartfelt condolences.

BLACK HISTORY MONTH

Hon. Donald H. Oliver: Honourable senators, it is with great pride that I stand in this chamber today to call your attention to the importance of Black History Month.

We celebrate Black History Month each year to acknowledge the vibrance of Black history and culture and the rich contributions of Blacks to Canada. I also believe that Black History Month should be a period of reflection; it should be a period where all Canadians ask themselves how they can improve the condition of Blacks, and indeed, of all visible minorities across Canada.

Honourable senators, I am here to tell you that there is still much work to be done. Racism remains entrenched in Canadian society. It exists in our public service, in our schools and within our police forces.

In our public service, for instance, visible minorities occupy just 7.4 per cent of the workforce, despite making up more than 15 per cent of the population generally. Of the visible minority groups in Canada, the Conference Board of Canada recently reported that Black people are the most likely to be victims of racism, at 32 per cent.

Racial profiling also continues to be a cancer within our police forces. Successful Black men and women continue to be stopped, pulled over and interrogated, simply because of the colour of their skin. The Ontario criminal justice system reported in 1995 that 50 per cent of all African-Canadian males had been stopped or questioned by police in the past two years compared with 25 per cent of White males. In this very chamber, honourable senators, only three Black Canadians have ever been privileged to serve this country. What is more, of the 89 senators who currently sit in the Senate of Canada, only four are visible minorities — an unacceptable 4.5 per cent.

This year, Black Canadians celebrate the four-hundredth anniversary of our presence in Canada. Mathieu da Costa, a Portuguese navigator and explorer, came to the New World alongside Samuel de Champlain in 1605. In the 400 years since da Costa's arrival, there have been profound changes to Black culture in Canada. We have gone from slavery to freedom. We have taken part in two World Wars. Blacks have done their part to build Canada into what it is today, but they remain marginalized and unequal. Opposition to diversity still exists. Racism continues to block our advancement, and this must change.

We celebrate Black History Month to remind all Canadians, from coast to coast, that the quest for equality is far from over. It is a time of reflection, a reminder to Canadians that the fight against systemic racism must continue until it is exterminated from our society. It is a time to celebrate Black history and culture, but also a time to promote Canada, where everyone is treated equally, regardless of the colour of their skin.

Honourable senators, that is the Canada that I want, and that is the Canada we must build.

• (1350)

ROUTINE PROCEEDINGS

CRIMINAL CODE

BILL TO AMEND—FIRST READING

Hon. John G. Bryden presented Bill S-24, to amend the Criminal Code (cruelty to animals).

Bill read first time.

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

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

[*Translation*]

NATIONAL EARLY LEARNING AND CHILD CARE PROGRAM

NOTICE OF INQUIRY

Hon. Rose-Marie Losier-Cool: Honourable senators, pursuant to rules 56 and 57(2), I give notice that on Wednesday, February 9, 2005:

> I will call the attention of the Senate to the future national early learning and child care program, and in particular to the staff that will provide the services offered under this program.

[*English*]

QUESTION PERIOD

TRANSPORT

BRITISH COLUMBIA—EFFECT OF CONGESTED COMMERCIAL CORRIDORS—DUAL TRACKING OF CANADIAN PACIFIC RAILWAY LINE

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, as the time allocated for Question Period yesterday overcame us in the midst of a very interesting exchange of questions and answers from the Honourable Leader of the Government in the Senate concerning transportation issues affecting the West Coast, I wanted to ask this question.

The issue of rail transportation through the Rockies to the West Coast was mentioned in yesterday's exchange. Currently, Canadian Pacific Railway has a single track that runs through the Rockies. It is very difficult terrain and often there are accidents of nature such as slides, and we read in the paper of the track being blocked. It is amazing how quickly the track can be backed up. It was brought to our attention that consideration is being given to dual tracking the Canadian Pacific line.

My understanding from the exchange yesterday was that individuals involved in the British Columbia railway industry and those who use the railways in their trade are hoping to see the process of dual tracking along the rail line sped up. Sometimes there is a lot of bureaucratic red tape that holds back the process. All Canadians are aware that no matter where one lives in Canada, economic spinoffs for the whole country can result from dual tracking. Also, given that Canadians from coast to coast to coast are proud of the fact that the Winter Olympics is slated for Vancouver in 2010, a sense of urgency might be added to the question of dual tracking CP lines.

Is the federal government prepared to further collaborate with Canadian Pacific to expedite the process of dual tracking in the province of British Columbia?

Hon. Jack Austin (Leader of the Government): Honourable senators, I appreciate the question. I think it was in my answer that I referred to consideration being given by Canadian Pacific Railway to increasing its rail carrying capacity, partly through dual tracking, in the line that runs from the Port of Vancouver through to the Rockies. I did not mean to suggest that the entire line would be dual tracked but that Canadian Pacific Railway, in managing the two-way flow of rail traffic, could increase capacity by additional dual tracking. I was given a number that indicated that enhancing railway capacity would cost probably in excess of half a billion dollars.

The matter of railway capacity from the Port of Vancouver is under study in the federal government by the Department of Transport and by other departments affected. I have no further information that I can give the honourable senator at this time.

CANADIAN BROADCASTING CORPORATION

UKRAINE—RADIO CANADA INTERNATIONAL CUTBACKS

Hon. A. Raynell Andreychuk: Honourable senators, I have risen before to speak about RCI programming to Ukraine. In 2004 there was an announcement that the programming would be cut back effective January 28, 2005. Due to realignment of the RCI budget, programming for Ukraine was cut back and other countries were added, with which I have no dispute.

However, in light of what has transpired since the Canadian government made that decision in consultations with the CBC, there is an opportunity to revisit and strengthen the necessary international services to Ukraine. The previous programming was of varying types, and I do commend RCI for putting emphasis on public service, as this is very important.

The election in Ukraine taught us that there was a lack of even-handed information into all parts of Ukraine. While President Yushchenko is sounding a hopeful sign for democratic reform in Ukraine, I believe that the Canadian government must support this endeavour. It is inappropriate to cut back the Ukrainian programming service at this time.

The honourable leader's answer to my previous question was that this is a hands-off CBC issue and that the CBC is at arm's length. However, in looking into this matter by way of further discussions with CBC and others in the government, it is apparent that the issue is not quite that simple.

DFAIT, on behalf of the Canadian government, sits down with the CBC to negotiate and discuss what programming will fall under the rubric of international services. I do not quarrel with the choices they made a year ago, but the landscape has changed entirely. An appeal to both the government and the CBC has not borne fruit. On January 28, the programs were dramatically cut back.

CBC has indicated to me that they have no further money and that they have not received a signal from the Canadian government that the government wishes to revisit this issue.

Is the Canadian government willing to revisit this issue to determine whether further funds could be injected into Ukrainian programming at this important time to assist in the momentum for reform and change in Ukraine?

• (1400)

Hon. Jack Austin (Leader of the Government): Honourable senators, I have no quarrel with Senator Andreychuk's description of the facts. I, too, have looked into the issue since that exchange of questions and answers and have discovered that RCI does have a continuing dialogue with Foreign Affairs Canada with respect to priorities for Canada to reach foreign communities through broadcasting.

As Senator Andreychuk has said, this was a priority set more than a year ago, and the CBC, seeking to serve Canada's interests, accepted the recommendation of Foreign Affairs Canada with respect to a change of broadcasting priorities.

As Senator Andreychuk has said, events in Ukraine overtook the decisions that were made by RCI and the advice given by Foreign Affairs Canada, and no adjustment to their priorities was made by either of those parties in view of the changing circumstance.

I have had discussions with an official of the CBC and an official of the Department of Foreign Affairs with respect to the matter. I cannot report that any change has taken place, but I can say that I made strong representations that the previous service be restored.

Finally, I did not suggest new financial resources be given to the CBC. Funding to the CBC is a matter of incredible complexity. I simply asked them, through their own means, to restore the service because clearly, in light of today's events, it is a major priority to have the values of Canada and Canada's interest in Ukraine and its democratic development reflected through these broadcasts.

Senator Andreychuk: Honourable senators, I fully understand the current position of the CBC. They have apportioned among a number of countries the money that was provided for international services. They simply could not, at this late hour, withdraw it from programming elsewhere. However, I would plead for a one-time, one-year injection of money for international services. The Canadian government spent a minimum of $5 million — and I would suggest that it was much more than that — on election monitoring. This is a critical point in the life of Ukraine, and Canada can do something to make its investment profitable. The people of Ukraine must hear from Canada that we continue to support them and continue to want a strong, reformed Ukraine.

Continuing this service at this critical time would top up our investment in election monitoring. This is a special case. It does not have to be CBC funding because we are talking about international services. I ask the Leader of the Government in the Senate to raise this matter with the government and the Prime Minister.

Senator Austin: Honourable senators, I would be pleased to do so.

As the honourable senator indicated, once the decision was taken, different resources were assembled to broadcast to Brazil and other parts of South America, as it turns out, and resources dealing with Ukraine were transferred. It takes time to put all of those resources back in place, if in fact we can achieve the necessary decision.

I assure the honourable senator that I am making representations to the Minister of Finance to make this a special item. The honourable senator has again raised the matter, and the support of other senators would be of assistance.

Senator Andreychuk: As a footnote, I think the CBC is looking for a signal from the government, so there is some room for discussion. This request must be taken up as a special concern. Extending service to Ukraine would be a good example of what we could constructively do in other cases, perhaps. It would not be difficult to readjust the existing staff component and availability of resources to a more public services-oriented format, which is critically needed at this time.

Senator Austin: This series of questions and answers obviously demonstrates the importance of public-owned broadcasting in Canada.

FINANCE

GUARANTEED INCOME SUPPLEMENT— POSSIBLE INCREASE

Hon. Gerald J. Comeau: Honourable senators, last month Senator Downe wrote to the Prime Minister to request an increase in the Guaranteed Income Supplement benefit paid to Canada's poorest seniors. I want to commend Senator Downe on his initiative, but I find it curious that he would need to write such a letter given that during last year's election the Prime Minister promised to increase the GIS by a total of $1.5 billion over five years.

Could the Leader of the Government in the Senate explain why there has yet to be any announcement on either the timing or the details of that increase, and could he tell us what the holdup is on this increase in the GIS?

Hon. Jack Austin (Leader of the Government): Honourable senators, the obvious answer is that the government has a large number of requests for the expenditure of the fiscal surplus. The Minister of Finance is in his pre-budget cycle now; therefore, these representations by Senator Downe and Senator Comeau are timely. I will ensure that Senator Comeau's question is drawn to the attention of the Minister of Finance.

SOCIAL DEVELOPMENT

GUARANTEED INCOME SUPPLEMENT— COMMUNICATION OF INFORMATION

Hon. Gerald J. Comeau: Honourable senators, I commend Senator Downe for the inquiry he launched last October. At that time, he raised the concern that several thousand needy seniors are not getting the Guaranteed Income Supplement because they do not realize that they are eligible for it or had otherwise failed to apply.

In the three and a half months since this concern was brought to the attention of the Senate, has the Leader of the Government sought any information on what is being done to address this problem, or has he learned of any new initiatives? If so, does he have anything concrete to report to the Senate with regard to enabling these potential GIS recipients to access this initiative? They are the most needy in society, and we must make every effort possible to ensure that they get what is due them under Canadian law.

Hon. Jack Austin (Leader of the Government): Honourable senators, the issue of making public information available to potential applicants has been under review since the question has again arisen. Obviously, the starting point is the responsibility of every Canadian to be informed of what is available. The question, then, is how proactive government officials can be and the cost of that "proactivity."

Is it easy to find the constituency to which you are referring, Senator Comeau? How do we approach them? How much assistance do we give them and what is the cost of that particular activity? Obviously, everyone wants seniors who need the GIS to get the GIS.

Senator Comeau: Honourable senators, I am glad that the leader asked those questions, and I do have a suggestion. I think this was brought forward by Senator Downe as well, and I commend him for this initiative.

• (1410)

The Canada Revenue Agency does have regular contact with Social Development Canada. They do talk on a regular basis. Similarly, when the Government of Canada wants to collect income tax, for example, it does have communications with certain provincial departments. Obviously, if the federal government can talk to provincial departments in order to collect revenue from citizens, it should not be much more difficult for one federal agency to talk to another federal agency.

I agree entirely that we have to leave the onus on Canadians to inform the federal government, but some people may not be as familiar with government programs as we are. We have to go the extra mile to encourage government to act the same way it does in accessing information from another department when it wants to collect taxes. Why does the federal government not encourage those departments to contact seniors to collect what is due to them under the GIS?

Senator Austin: I am entirely in accord with the sentiment, but I do want to comment on the process that has been outlined. Tax information is kept confidential and is not shared with other government departments except in the most restricted of circumstances.

The honourable senator referred to the provinces. The agency acts as a tax collector for most of the provinces and therefore does work with those provinces in respect of certain kinds of information given.

One of the problems with reaching people who are eligible for GIS is essentially this whole question of tax privacy. How much searching does one do? The program under consideration appears to be again limited to some form of public notice and public advertising. Hopefully, other Canadians who know of senior citizens who are eligible for GIS could play an important role in forwarding the information available to the applicant.

Senator Comeau: One final suggestion is that when those seniors apply for GST rebates, and most of them do, perhaps at that point the GST department, which does not fall under the income tax department, might issue to those individuals a notice asking if they have considered applying for GIS.

Senator Austin: Thank you. I will pass that suggestion along.

FOREIGN AFFAIRS

CHINA—PRIME MINISTER'S VISIT— FUNERAL OF FORMER PREMIER ZHAO ZIYANG

Hon. Donald H. Oliver: Honourable senators, my question is directed to the Leader of the Government in the Senate.

During his recent trip to China, the Prime Minister said:

> You do not defend human rights by simply making statements. You defend human rights by being persistent and consistent.

It would seem that the Prime Minister did neither during his trip to China with respect to the death of the former Communist Party leader Zhao Ziyang. There was very little mention of Mr. Zhao by the Prime Minister except to criticize a member of our Parliament who wanted to pay his respects to Mr. Zhao's family and offer support to the pro-democracy movement.

Could the Leader of the Government in the Senate tell us in what way the Prime Minister's apparent reluctance to speak about Mr. Zhao during his visit to China could be categorized as being part of the persistent and consistent defence of human rights?

Hon. Jack Austin (Leader of the Government): Honourable senators, let me answer the question with a preface. I knew the former premier, Zhao Ziyang, very well. I negotiated Canada's Expo 86 invitation to China in the fall of 1983. Premier Zhao came to that negotiation and participated in the concluding part of it.

I also negotiated his state visit to Canada in December 1983 and in January 1984, and I was the minister in attendance to Premier Zhao for nearly three weeks of that visit.

Subsequent to 1984, I was able to visit with Premier Zhao in Beijing once or twice a year. I knew Premier Zhao and Jason Kenney did not. Jason Kenney accompanied the Prime Minister to China for the purpose of assisting and facilitating the development of Canada-China relations.

Premier Zhao is an important figure in Chinese political history. His role will be studied for a very long time.

Prime Minister Paul Martin expressed his condolences to the Chinese leadership in private meetings. He was not called upon to make a public gesture with respect to the political standing of Premier Zhao in China.

I felt that I, too, should at that particular time last month express my condolences to the Chinese leadership, and in both cases it was graciously received. It was not the subject of negativity on the part of the Chinese leadership. However, as for public gestures by a representative of the Government of Canada, which is the Prime Minister or myself as members of the Government of Canada, this is not in accordance with our international role and responsibilities.

I return to Jason Kenney, who decided for his own reasons to make an overt political gesture. There are precedents, of course, in China. A former parliamentary colleague, Svend Robinson, made a dramatic gesture in Tiananmen Square by unrolling a banner. It is very easy to capture headlines with gestures of that type, and it is a little harder to build a relationship of confidence and trust step by step. To attempt to illustrate the value of the Canadian system by demonstrations that are simply press-catching is not constructive.

Finally, I want to say that Mr. Kenney called members of the press and asked them to go with him to the home of Zhao Ziyang. He did not make that call as Jason Kenney but deliberately set up a media event to take advantage of whatever came with that in terms of Canadian political reaction. He was not, therefore, present for discussions about human rights and Canadian values.

Immediately after his demonstration, Mr. Kenney left China. He did not stay with the Prime Minister's mission, which certainly does raise, in my mind, questions about the practice that has developed of opposition members travelling with the government in support of the government-to-government relationship with foreign countries.

CHINA—PRIME MINISTER'S VISIT— COMMENTS ON HUMAN RIGHTS

Hon. Donald H. Oliver: My question was about human rights. The Prime Minister also remarked during his visit that China had made considerable progress in improving its human rights record. This claim mystified the many Canadians who believed that China's record over the years has remained very poor. The Prime Minister's remark must have also surprised the Chinese-Canadian journalists who were denied visas to cover his trip and the Canadian journalists who were harassed by Chinese authorities during the visit. Where is the persistent and consistent defence of human rights in the Prime Minister's statement that China has made considerable progress in recent years?

• (1420)

Hon. Jack Austin (Leader of the Government): Honourable senators, Jason Kenney's behaviour had nothing to do with human rights. It had everything to do with political opportunism.

With respect to the rest of the honourable senator's question, I replied extensively to questions this week on the way in which Canada is seeking to develop and cooperate with China in the evolution of its legal and individual rights system. Enormous progress is being made in the economic and social freedom of the Chinese people.

I will say in summary that the Chinese people are studying other systems. They are busy, in their academies, think-tanks, universities and government agencies, assessing the political institutions of the future. Political and judicial development in China is not arrested. It is moving forward.

That Westerners believe they have the answers for China and are impatient for China to achieve their own answers is, perhaps, a bit of an overreach. For example, in the State of the Union address given by President Bush last night, he made it clear that America is not trying to establish its model of governance and democracy in foreign countries, but is simply trying to permit the progress of freedom in those societies.

Senator St. Germain: At least you are supporting George W. Thank goodness. That is the first positive thing I have heard from you Liberals.

DELAYED ANSWER TO ORAL QUESTION

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to table a delayed answer in response to a question raised on December 7, 2004, by Senator Gustafson, regarding Kyoto targets.

ENVIRONMENT

KYOTO ACCORD COMMITMENTS

(Response to question raised by Hon. Leonard J. Gustafson on December 7, 2004)

The Government of Canada has always understood that reaching Kyoto would be a challenge. Indeed, we have taken on a tough target:

- Canada has to reduce emissions by 6 percent (below 1990 levels) while its population and economy has been consistently growing;
- Canada has many export-oriented energy-intensive industries (e.g. oil and gas, forestry, mining, manufacturing), which use energy to extract and process raw material to produce goods for use in other countries;
- Canada has a cold climate and long distances between population centres.

Still, the Government of Canada has always said that it will do its very best to attain its Kyoto objectives. Over the past few years, it has put in place a wide range of measures to reduce emissions and committed $3.7 billion to support their implementation. With the Kyoto time frame in mind, we are encouraging:

- energy efficiency at home, in the factories and on the road — energy efficiency offers many opportunities for both emissions reductions and cost savings;
- "emerging" renewable energy sources such as wind power and ethanol — Canada is already a leader in renewable energy with hydropower;
- carbon sequestration from agricultural and forestry practices, and through underground storage.

The Government is also actively supporting the development of new technologies that will provide a longer term solution to emissions reductions. Priority areas include cleaner fossil fuels, hydrogen, energy efficiency, distributed power and biofuels.

Others in Canada are also taking action. Recent announcements in Ontario and Quebec, Canada's two largest provinces, are a testimony of actions by other levels of government. Industry and ordinary Canadians are also committed to action.

New measures, proposed in the Climate Change Plan for Canada in 2002, are now being implemented across the country. However, there is a need for further action to put Canada firmly on the path of continuous emissions reductions. In the October 2004 Speech from the Throne, the Government reiterated its commitment to act on climate change in a way that will produce long-term and enduring results while maintaining a strong and growing economy. Moving forward requires the development of a long term national vision, implemented through a collaborative approach, and fuelled by domestic actions to achieve emissions reductions in both the Kyoto time frame and the longer term.

The Government is committed to building on its efforts to date and it will continue to work with provinces, industry and other stakeholders in moving forward on climate change. Budget 2004 has already announced the Government's intention to further its support to environmental technologies, like clean energy technologies, by investing $1 billion from the sale of our Petro-Canada shares. Under the guidance of the Council of Energy Ministers, federal, provincial and territorial working groups have been set up to develop strategies on energy efficiency and demand-side management, and on energy technologies. And, a new Cabinet Committee on sustainability and the environment has been created. The Committee is currently taking stock of the progress that has been made, and will be discussing options on how best we can move forward.

ORDERS OF THE DAY

NATIONAL SECURITY AND DEFENCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government), pursuant to notice of February 2, 2005, moved:

That the Standing Senate Committee on National Security and Defence have power to sit at 3:15 p.m. on Tuesday, February 8, 2005, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

An Hon. Senator: Explain, please.

Senator Rompkey: Honourable senators, the committee is hearing testimony on the establishment of the security organization headed by the Honourable Anne McLellan, and they want to hear from her. The meeting time has been mutually agreed upon. The minister is available at that time, which is why the change is necessary.

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

Hon. Senators: Question!

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

Motion agreed to.

[*Translation*]

ROYAL CANADIAN MOUNTED POLICE ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Pierre Claude Nolin moved second reading of Bill S-23, to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations).

He said: Honourable senators, it is a pleasure and an honour for me to speak at second reading of Bill S-23, which seeks to thoroughly modernize the Royal Canadian Mounted Police Act as regards labour relations.

First, I want to point out that the bill is a replica of former bills S-24 and S-12, which I introduced on October 23, 2003 and February 12, 2004 respectively.

As you are aware, honourable senators, both bills unfortunately died on the Order Paper without having been examined by the Standing Senate Committee on National Finance. However, since October 2003, I have received many encouraging messages from members of the RCMP, from associations representing officers of various Canadian police forces, from other citizens and from my fellow senators. I will mention only one colleague, Senator Phalen, who spoke during debate on second reading of one of the previous bills.

For example, the Canadian Professional Police Association announced yesterday that it supports Bill S-23 and it invited members of the Senate and of the other place to approve this important legislation during the coming months. In that respect, the President of the CPPA, which represents 54,000 municipal, provincial and federal police officers, Mr. Tony Cannavino, said:

> We are at loss to understand why RCMP members have been denied the most fundamental and basic employee rights for so long. Every other police officer in Canada is afforded these rights and protections, this is long overdue for the RCMP.

Having said that, on a less encouraging note, a number of cases of sexual harassment toward female members of the RCMP have also been brought to my attention over the past few years.

These expressions of support and these shocking facts, which I will describe a little further on, have convinced me that, in the name of public protection and transparency, it is essential to bring about this reform within the next few months.

Honourable senators, that is why, the day before yesterday, I reintroduced Bill S-23.

The RCMP was established in 1873. For over 130 years, its traditions, the professionalism of its members and its excellent international reputation have been a great source of national pride for all Canadians, and a vibrant symbol of Canada.

Everywhere in our country, whether they are assigned to police duties under contract to provincial authorities or enforcing federal laws that apply across the land, members of the RCMP are providing police service of the highest order to the people of Canada, often at great personal sacrifice.

In the past few years, some members of the RCMP have strongly and firmly criticized — with good reason — their labour relations system. For example, they have complained, quite rightly, about the high cost to Canadian taxpayers as well as a lack of transparency, independence, fairness and impartiality.

Through the research and consultation work that I did before tabling the previous version of Bill S-23, I discovered, as I will show later on, that this regrettable situation is the root cause of abuse by the employer, of the deterioration of the members' morale, and of lowered professional and personal self-esteem among the staff. The current method of labour relations is also responsible for the frustration and cynicism RCMP members feel with respect to the present procedure for determining their working conditions and the outdated and highly controversial mechanisms for settling grievances and dealing with disciplinary matters.

Honourable senators, the members of the RCMP deserve that we should look into these serious problems that might, by the way, work against the primary objective of our national police force, which is to protect Canadians.

• (1430)

Indeed, I strongly believe that the safety of our fellow citizens depends not only on the implementation of better accountability procedures within the RCMP, but also on the quality of labour relations within that organization. The main purpose of Bill S-23 is quite simply to improve labour relations so that the RCMP can carry out its mandate effectively.

Honourable senators, I am proud to say that this bill constitutes the first major reform of employer-employee relations in the RCMP since Bill C-65 was passed in 1986. The purpose of that bill was to implement a series of recommendations set out in the 1976 report of the important Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedures within the Royal Canadian Mounted Police, better known as the Marin report.

I do not intend to repeat word for word my speech of February 2004. I would rather focus on certain elements of the bill in order to explain why it is necessary for the Senate to adopt it.

According to the official figures, setting aside the senior ranks, the provisions of this bill will apply to approximately 15,000 members of the RCMP. Federal public servants who work primarily within administrative units of the RCMP would be excluded from the application of Bill S-23 because their working conditions and their internal grievance or disciplinary procedures are already governed by the Public Service Staff Relations Act.

Because of the historic nature of the reform I am proposing today, the bill includes a preamble, which sets out the principles on which implementation and interpretation of the provisions of this bill are founded. Thus, it first recognizes that the right to certification and the right to collective bargaining are basic principles on which the workplace is organized in the private and public sectors in Canada.

Next, it points out that the members of the RCMP, unlike members of most civilian police forces in Canada, do not have these rights, and that this situation is a source of injustice and continuing frustration, and may even threaten the safety and security of Canadians.

Third, it states that the establishment of good staff relations within the Royal Canadian Mounted Police will enhance protection of the public, since the peace officers will spend more of their time carrying out their duties to the public, as they will be aware that the representatives of an accredited police association will be defending their interests with respect to working conditions and internal grievance and disciplinary procedures.

Finally, the preamble states that, in order to enjoy the trust and respect of the public, the RCMP must be accountable to Canadians, not only through the Royal Canadian Mounted Police Public Complaints Commission, but also through an internal discipline and grievance procedure that is consistent with the general principles of the law — commonly known as due process — notably fairness, impartiality, independence and expeditiousness. That having been said, Bill S-23 recognizes, for the first time in history, the right of members of the RCMP to speak out democratically and freely on the possibility of unionizing.

During my two previous speeches, I fully explained the reasons that led the federal government, first in 1873 and more specifically in 1918 — when an order was adopted to deny members of the RCMP the right to organize, to bargain collectively — to reject the unionization of police forces. Without wishing to go over this very interesting history, I would simply say that in order to justify this policy, the federal government stressed, as its modern counterpart still does today, the need to protect the public by maintaining a stable national police force, the specific tasks of the members of the RCMP, the need to subject them to a paramilitary

type code of discipline, and the existence of possible conflicting loyalties — that is the possibility that some members of the RCMP would show more loyalty to their police association than to those in command should there be a labour dispute.

In 1967, federal government employees won the right to certification and collective bargaining with the enactment by Parliament of the Public Service Staff Relations Act. Pursuant to the Order-in-Council adopted in 1918, the legislation excluded members of the RCMP from the application of the new labour relations system. In 1974, in order to counter the efforts of certain members of the RCMP to obtain the same rights as other federal public servants, the federal government abrogated that Order-in-Council and that same year established the Divisional Staff Relations Representative Program. The organizational structure of this program would appear at first to be similar to that of an association accredited under the Public Service Staff Relations Act but, for a number of reasons I mentioned in my two earlier speeches, it has become ineffective over the years.

Honourable senators, as I stated earlier, members of the RCMP are denied the right to certification and collective bargaining currently enjoyed by the majority of peace officers working for other police forces in Canada and elsewhere in the world. However, the RCMP has evolved a great deal since its formation. From an essentially paramilitary force at its origin, our federal police service has become a national police force that provides basically the same services as other Canadian police forces. The greater part of its activities are devoted to police services that it performs under contracts called "Contract Policing Services" in eight provinces — all except Quebec and Ontario — more than 200 municipalities, 65 Aboriginal communities and at three airports.

Currently, more than 60 per cent of RCMP members are assigned to maintaining order in those locations. They provide essentially the same services as municipal and provincial civil police forces that are entitled to certification and collective bargaining. In an effort to correct this situation, some members of the RCMP decided to challenge this prohibition against employee associations before the courts.

• (1440)

Thus, in 1985, more than ten years after the creation of the Divisional Staff Relations Representative program, the members of Division "C" of the RCMP — the RCMP detachment in Quebec — at the initiative of Staff Sergeant Gaétan Delisle formed the Association des membres de la Police montée du Québec.

In 1987, Mr. Delisle began a long legal battle to have the exclusion under the Public Service Staff Relations Act for members of the RCMP struck down. Mindful of the importance of the profession in which he served, of the need to protect the public and the practices prevailing in other Canadian police forces, Mr. Delisle never called for the right to strike.

I have always been surprised that, despite the considerable difficulties they have faced since the early 1970s, the members of the RCMP have always used peaceful and legitimate means to promote their cause. In comparison, in the U.K., members of both the English and Welsh constabularies obtained the right to certification and collective bargaining in 1919, over 84 years ago, after an illegal strike and other pressure tactics involving civil disobedience.

In September 1999, in a majority decision, the justices of the Supreme Court of Canada in *Delisle v. Canada (Deputy Attorney General)* categorically dismissed the argument that the right of association guaranteed in the Charter expressly guarantees RCMP members the right to form an certified association under the Public Service Staff Relations Act and thus to have access to collective bargaining.

Given that Quebec members of the RCMP had been able to freely form an independent employee association, the majority of the court found that their right of association had not been interfered with, and that it was the exclusive prerogative of the Parliament of Canada to recognize the right claimed by Mr. Delisle, through legislative amendments.

Rather amazingly, in December 2001, two years later, a majority of justices of the Supreme Court of Canada, in *Dunmore v. Ontario (Attorney General)*, contradicted their own majority opinion in *Delisle*. This decision surprised a number of labour relations experts. In that case they found that recognizing freedom of association for the Ontario farm workers called expressly for the creation of a union.

Honourable senators, the majority opinion of the Supreme Court in *Delisle* that modifying the labour relations regime for members of the RCMP was the prerogative of Parliament led to the introduction of Bill S-23. Nonetheless, other factors, in addition to those that I mentioned at the beginning of my speech, also prompted me to move ahead on this issue.

While the legal proceedings in *Delisle* were underway, two other associations of members of the RCMP were created in Canada — the Mounted Police Association of Ontario in 1990 and the British Columbia Mounted Police Professional Association in 1992 — illustrating the flaws in the Staff Relations Representative Program and the desire to change the staff relations regime within the RCMP.

Furthermore, on September 22, 1989, former RCMP Commissioner Norman Inkster made a surprising statement in connection with the *Delisle* case before the Quebec Superior Court. According to him, the federal Parliament was ultimately responsible for the staff relations framework applying to the RCMP. If the law were amended as Mr. Delisle wanted it to be, this would not affect the administration of the RCMP inordinately.

This position was reiterated in the fall of 2003 by the caucus of RCMP Staff Relations Representatives, as reported by *Pony Express* magazine in its November 2003 edition. This is the national, official, internal magazine of the force. It reported that during a meeting held in Ottawa the caucus of RCMP Staff Relations Representatives said it did not object to RCMP members voting on the question of unionization if the bill were to pass.

In 1995, the important task force report on revision of the Canada Labour Code, Part I — better known as the Sims report — entitled "Seeking a Balance" recommended unionization for the RCMP under some other legislation than the Canada Labour Code. The task force felt that adoption of such a policy would not have any negative impact on operational control of the RCMP or protection of the public interest.

Taking all these factors into consideration, Bill S-23 provides for the right to certification and collective bargaining by creating, within the RCMP Act, a system that is distinct from the one set out in the Public Service Staff Relations Act. In order to foster the implementation of harmonious staff relations within the RCMP and to ensure the credibility, transparency, independence and smooth operation of this initiative, it will be administered by the Public Service Staff Relations Board referred to hereinafter in my speech, as "the board."

The bill sets out a complete and transparent procedure to enable, as I mentioned earlier, RCMP members to speak democratically and freely on the creation of a police association. In this regard, the bill does not require that such an association be created within this police force. By passing this legislation, Parliament will only be approving the framework required for this right to be exercised as was the case in 1967, when Parliament passed the Public Service Staff Relations Board Act.

If, and only if, the majority of RCMP members vote in favour, the association would act as the bargaining agent certified by the board to negotiate improvements to the working conditions of the members of the RCMP. The association will also be responsible for defending employees during the resolution of grievances or the imposition of disciplinary measures.

Given the particular way the work is organized within the RCMP, the duties performed by its employees, as well as practices observed in other jurisdictions in Canada, the United Kingdom and Australia, this association will consist solely of members of the RCMP and will also not be allowed to affiliate with the larger unions representing the majority of federal public servants.

This bill also contains measures to protect members from intimidation or any other unfair practice by the employer aimed at preventing the members of the RCMP from associating. That is nothing new, since every labour relations code in the world contains this type of protection.

Once the certification process has been duly completed, Bill S-23 sets out a procedure similar to the one that currently exists within the federal public service for the negotiation in good faith of the first RCMP collective agreement and its renewal.

The bill also includes recourse to conciliation or binding arbitration should negotiations reach an impasse. The board will oversee the application of these two distinct types of dispute resolution. The board could appoint a conciliator to bring both parties closer together or, under certain criteria, an independent arbitrator to resolve legal disputes. Decisions taken under the arbitration process will be binding and not open to appeal.

Honourable senators, the collective bargaining procedure proposed in Bill S-23 seeks not only to promote the positive resolution of labour disputes within the RCMP but also to ensure better public protection.

With the implementation of a binding arbitration process, in keeping with the practice in most other civilian police forces in Canada, the United Kingdom, Australia and New Zealand, the members of the RCMP would be denied the right to strike in the event of an impasse in negotiations with the employer. I am repeating this because, unfortunately, some of my honourable colleagues have come to me, following my last two speeches, asking whether they would be granted the right to strike, and the answer is no. I repeat, Bill S-23 does not grant RCMP members the right to strike. This ban also applies to any work slowdown or other concerted activity on the part of employees aimed at restricting their performance.

• (1450)

The bill is very clear on this and imposes criminal measures for illegal walkouts. Any employee who participates in or incites such a walkout is liable on summary conviction to a maximum sentence of imprisonment of six months or a fine of $1,000. For union officers, the maximum fine is set at $2,000. Every trade union that declares or authorizes an illegal strike is liable to a fine not exceeding $10,000 each day that the strike continues. Should members of the RCMP commit acts of vandalism or mischief or disturb the peace during collective bargaining, they will be subject to criminal charges or discipline under the Royal Canadian Mounted Police Act.

Honourable senators, I cited earlier a series of arguments that have been used to support the federal government's continuing refusal to propose a reform similar to the one proposed in Bill S-23. Still, I consider that this refusal and the government's arguments behind it were not justified in 2003, when I introduced my original bill, and remain so today. They put the security of the Canadian public at risk.

In my view, the professionalism and restraint shown by certain members of the RCMP in this contentious issue, the aforementioned comments by former Commissioner Inkster and the recent comments by the caucus of Staff Relations

Representatives, the recommendations of the Sims Commission, the evolution of the RCMP and the no-strike clause in this bill show beyond a doubt that the creation of a certified police association would not have a harmful effect on public protection, the administration of the RCMP or discipline.

What is more, the federal government is trailing not only the provinces and municipalities, but also other Commonwealth countries. In addition to England and Wales, which I have already referred to, Australia recognized its police forces' right to certification and collective bargaining in 1942. New Zealand did so in 1935.

Regarding the presumed conflict in loyalties and the chaos that would result from the creation of a police association within the RCMP, this argument is unfounded, since the practice in other jurisdictions proved that this never really materialized. Truth to tell, as a responsible parliamentarian who is concerned with public safety, I am more concerned by the fact that police officers must currently fight for their basic rights to be recognized during a disciplinary hearing or a grievance, too often to the detriment of public protection.

That said, let us move on to the second part of the bill, which deals with grievance and discipline procedures under the RCMP Act.

Honourable senators, the debate on the unionization of RCMP officers has often been linked to ineffectiveness, a lack of impartiality, speed, transparency and independence with regard to the highly complex processes of grievances and discipline. According to a series of reports released by the RCMP External Review Committee in recent years, the time taken to settle grievances or to impose disciplinary sanctions all too often exceeds the statutory time limit and can take several years.

The committee also reports that, besides the significant costs to the RCMP, and therefore to Canadian taxpayers, this situation is a source of considerable tension for members, their families and colleagues, particularly in the case of disciplinary action resulting in suspension without pay or even dismissal. I want to stress that this may also affect the confidence of Canadians in an effective and professional national police force.

Currently, an RCMP member may file a grievance concerning the working conditions enforced by his employer. The legislation states that the RCMP Commissioner is the final level of appeal for decisions made by a lower level with respect to a grievance. Before making a decision, the commissioner must refer certain categories of grievances to the RCMP's External Review Committee. Even though the members are appointed by the Governor-in-Council, they can only review the cases referred by the commissioner. Moreover, the review committee only has the authority to recommend to the Commissioner, and thus has no means of making its advice binding.

In order to correct this situation, the bill eliminates the review committee and replaces it with an independent, external adjudication process, similar to the one that exists for the federal public service. In this system, a grievance that has gone through the entire internal grievance process may be referred to a board of adjudication where the employer and the police association are represented and costs are shared on an equal basis by both parties. The operation of this new process will be overseen by the Public Service Staff Relations Board, and the decisions made as part of this process will be binding.

With respect to serious disciplinary action for offences under the Code of Conduct, the Royal Canadian Mounted Police Act provides that, following the presentation of a complaint by the employer, a board of adjudication composed of three RCMP officers shall be established. This board shall determine the appropriate penalty to prevent any repeat offence. The member may appeal the board's decision to the commissioner. As in the case of a grievance, the review committee may make recommendations to the commissioner before the latter makes a decision.

In a case of discharge or demotion, the decision is made by a discharge and demotion board, also consisting of three RCMP officers. As in the case of serious disciplinary action, the member may appeal to the commissioner.

Honourable senators, these quasi-judicial decisions that often bring into play the fundamental rights of RCMP members can have highly negative effects on the quality of life and work of RCMP members who must face this complex process, noted for its lack of independence, alone and with few resources.

Honourable senators, I would like to cite three cases to illustrate that this situation cannot go on.

In *Laberge v. The Appropriate Officer of the Royal Canadian Mounted Police*, in 2000, and *Lefebvre v. The Appropriate Officer of the Royal Canadian Mounted Police*, again in 2000, two internal boards of adjudication rejected outright the procedures prescribed for two members of the RCMP. They had been suspended and then dismissed following disciplinary procedures that lasted nearly five years.

Five years later, the two boards of adjudication ruled that the charges did not stand and that the employees had to be reinstated. Can you see the effect on morale among the members? Individually, alone, the two members had to go through a process entirely dependent on the commissioner and be told at the end of the day that things were done wrong and they had to start over.

Honourable senators, that is unacceptable. We have to put an end to such practices.

I want to cite two other cases involving harassment or sexual misconduct within the RCMP. Once again, unfortunately, the victims are women.

On August 29, 2003, a feature article in the *Journal de Montréal* stated that the disciplinary action provided for in the Royal Canadian Mounted Police Act might not be enough to resolve sexual harassment problems within the RCMP.

• (1500)

The situation is such that in a letter obtained by the newspaper, RCMP Commissioner Giuliano Zaccardelli said:

> Cases of harassment, including sexual misconduct, have been brought to my attention, but reports I have received on how some of these situations were handled are even more disturbing.

I quote the RCMP Commissioner, who is the ultimate authority in this whole system. That said, the first case I would like to present to you is that of Ms. Terry Lebrasseur. In June 2003, this RCMP officer, who was part of the team protecting the Prime Minister and his wife, filed a complaint against the RCMP with the Federal Court for failure to comply with disciplinary procedures prescribed by law. Ms. Lebrasseur joined the RCMP in 1993. She says her performance reviews from 1998 to 2001 were always excellent.

In May 2001, an inspector advised her to leave the Prime Minister's protective team or she would receive a reprimand. And what was the reason? She had simply annoyed a colleague while doing her job. Ms. Lebrasseur refused, and was later removed from the team. Despite her request for a review of the disciplinary measure ordered by the inspector, the RCMP refused to take the matter to an adjudication board as provided in the act.

In her suit, Ms. Lebrasseur alleged that her demotion was due to the fact that, between 1998 and 2000, she had tried to inform her employer about the sexual harassment she had been subjected to by an RCMP superintendent. She stated that the police force authorities knew about the situation but did nothing to correct it. Ms. Lebrasseur, therefore, is suing her employer for damages because of the economic, psychological and medical problems she claims were caused by the disciplinary measures to which she was subjected.

The *Lebrasseur* case is not unique. In September 2003, four RCMP officers in Calgary took legal action against their employer before the Alberta Court of Queen's Bench. I recently learned that there was an out-of-court settlement in that case.

That said, even if the details of this settlement cannot be disclosed, I will nevertheless offer honourable senators a summary of the facts in order to demonstrate the ineffectiveness of the present labour relations system within the RCMP.

In what is called the *Doe* case, four female officers were sexually harassed by the same sergeant and, after many delays, disciplinary measures were taken against him. The plaintiffs alleged that a number of RCMP officers wanted to cover up the matter by using disciplinary retaliations against them in order to preserve the image of the national police force. Other officers apparently tried to interfere in the disciplinary procedures by failing to comply with legislation on the handling of disciplinary inquiries or cases taken to an adjudication board.

Finally, the staff relations representatives — and this is the most shameful — apparently refused to get involved. These are a sort of union representative, and the position has existed since 1974 because the RCMP did not have the same rights as other federal public servants. They refused to support certain female complainants during the various stages of the disciplinary procedures, thereby forcing them to incur the expense of hiring lawyers. As in *Lebrasseur,* they are suing the RCMP for damages.

Honourable senators, these cases, particularly those relating to harassment or sexual misconduct, prove the ineffectiveness of the act because members have to resort to the courts to have their fundamental rights respected.

Bill S-23 will put an end to that. Without in any way interfering with disciplinary measures or discharge procedures, and while protecting public safety, Bill S-23 does away with the adjudication board and the discharge and demotion board, as well as the process of appealing to the Commissioner of the RCMP. From now on, the sanctions will be determined by the employer and will follow an internal review process. However, for reasons of efficiency, impartiality and independence, this decision could be subject to the new external and independent grievance adjudication process.

Finally, in the interests of transparency for the members of the RCMP and the general public, Bill S-23 provides that the Public Service Staff Relations Board would be required to present an annual report to Parliament on the administration of the various provisions of this bill, as it currently does with respect to administration of the Public Service Staff Relations Act.

In conclusion, honourable senators, some, including Commissioner Zaccardelli, whom I met in November, might say that the modest reforms recently undertaken by the RCMP to improve the Divisional Staff Relations Representative Program — and you saw how well this system works in Alberta — the process for settling grievances and dealing with disciplinary action, would be sufficient to improve labour relations and the quality of life of members.

However, many of those I consulted over the past few months and who testified during consideration of Bill S-23 at the Standing Senate Committee on National Finance stated that these changes would do little to restore the confidence of the majority of RCMP members in the current staff relations regime.

In other words, honourable senators, these amendments and others perhaps currently being considered by the federal government, as laudable as they may be, will not resolve the fundamental problems undermining RCMP morale.

In conclusion, honourable senators, Parliament must act quickly in this case. Our work has always been non-partisan and expeditious when it comes to improving the statutory instruments the RCMP needs in order to effectively fight crime in our communities, organized crime and terrorism. In that sense, I strongly believe that the same spirit must guide our work during all stages of consideration of Bill S-23.

This legislative initiative will foster harmonious staff relations built on trust, dialogue and mutual respect. As they say, a happy employee is a productive employee. This is just as important as increasing the RCMP budget or amending the Criminal Code to enable this police force to effectively fulfill its mandate.

Ultimately, Bill S-23 will benefit not only the RCMP but also, and above all, Canadians, who deserve a first-class federal police force.

On motion of Senator Rompkey, debate adjourned.

• (1510)

SPAM CONTROL BILL

SECOND READING—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Oliver, seconded by the Honourable Senator Cochrane, for the second reading of Bill S-15, An Act to prevent unsolicited messages on the Internet.—(*Honourable Senator Oliver*)

Hon. Donald H. Oliver: Honourable senators, it is my pleasure to speak today to continue my remarks at second reading of Bill S-15, to prevent unsolicited messages on the Internet.

Honourable senators, in order to resolve the serious problem of junk email, Canada requires government policy of substance. It is clear to everyone, I am sure, that we must have a versatile weapon in order to win the war against spam in Canada. The measures we take in education, training, the use of technology and law enforcement must work together.

In other words, spam can and will be substantially reduced, with the cooperation of industry, technology and the public sector. Until now, the Government of Canada has remained silent, but, through the collaboration of all stakeholders, that is, the public sector and the technology industry, combined with a number of self-regulation mechanisms, and the active support and cooperation of ISPs, international organizations, consumer education groups and law enforcement groups, I am sure a viable solution can be found.

Honourable senators, this is the third time I have drawn your attention to the scourge of spam. Therefore, I will not repeat the basic definitions of unsolicited bulk email nor comment on the various types and many forms of spam. Instead, I will use my speaking time to discuss legislative trends currently seen in various parts of the world, including examples of success, and indicate the path I think Canada should follow.

[*English*]

Bill Gates perhaps summed it up best when he said:

> Spam is much more than an annoyance. It costs businesses millions of dollars a year, and can encroach on families and children, exposing them to pornographic or fraudulent content.

Spam is threatening the very heart of email as a reliable medium of communication. It is also a serious threat to the great promise of the Internet for individuals, businesses, governments and society at large. It is time for government to step up to the plate and take action.

Canada is lagging behind our competitors in this area. They include the United States, the European Union, Australia and others. Most of these countries have already passed anti-spam-specific legislation. For instance, Australia passed a new law which came into force in April of 2004 and it has already had a significant effect. We were told at a December task force conference that it is literally driving spammers out of that country and moving Australia off the top-10 list of spam-originating countries.

In the United States, 36 states have some form of anti-spam legislation. In addition, there is the federal anti-spam statute called the CAN-SPAM Act, which passed both Houses of Congress in November of 2003, and President Bush signed the bill into law in December of 2003.

In the same way that we in Canada have a division of powers, being federal and provincial, in the United States they have federal laws and U.S. state laws. U.S. state laws encompass a wide range of requirements and rights including labelling requirements, prohibitions on spoofing, requirements for opt-out mechanisms, civil rights of action, ISP blocking of email messages and the criminalization of spam. The "Summary" portion of my bill provides that:

> Any person may give a notice, to the Minister or the body to which the Minister delegates the responsibility, that they wish to be on a "no-spam list", and persons sending spam must first check to see if the address is on the "no-spam list". The list will not be a public document and the Minister will only provide information as to whether an address is or is not on the list.
>
> The enactment makes it an offence to send spam to a person whose address is on the "no-spam list". However, the recipient must file a complaint with the Minister before any proceedings may be instituted.

U.S. federal legislation allows email recipients to request not to receive further commercial emails from the sender. In addition, the legislation prohibits what is called harvesting email addresses, that is, obtaining email addresses from Internet chat rooms. It prohibits the use of materially deceptive headers. It requires that unsolicited commercial email be clearly and conspicuously labelled as such and requires that a valid physical postal address be included in the email. The legislation allocates fines of US$250 for each fraudulent or deceptive email to a maximum of $6 million. In addition, those who use incorrect return email addresses or misleading subject lines can face terms of imprisonment for up to five years. Finally, the legislation allows civil actions by states or ISPs, with statutory damages of up to US $1 million.

As I mentioned in my last second reading speech in this chamber on Bill C-23 on September 23, 2003, the European Union has issued directive number 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector. This new directive, which had an implementation date of October 31, 2003, provides safeguards against intrusion by unsolicited email communications for direct marketing purposes. Customers must be clearly informed of the use of their personal information for further advertising and provided the opportunity to refuse such use. False sender identity information is prohibited, and that is what we need in Canada.

A new word has come out and has really taken off. It is called "phishing," the act of sending an email to someone falsely claiming to be an established, legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft. The email directs the user to visit a website where they are asked to update personal information such as a password and a credit card, social security number, bank account number that the legitimate organization already has. The website, however, is bogus and is set up only to steal the user's information.

This idea of phishing has become widespread. As an example, 2003 saw the proliferation of a phishing scam in which users received emails, supposedly from eBay, claiming that the user's account was about to be suspended unless he clicked on the provided link and updated the credit card information that the genuine eBay already had. Because it is relatively easy to make a website look like a legitimate organization's site by mimicking the HTML code, the scam counted on people being tricked into thinking they were actually being contacted by eBay and were subsequently going to the eBay site to update their account information. By spamming large groups of people, the phisher counted on the email being read by a percentage of people who actually had listed credit card numbers with eBay legitimately. That is another form of abuse of spam on the Internet.

• (1520)

As I said earlier, Australia recently enacted legislation that places a number of severe restrictions on the distribution of commercial electronic messages. Such messages may only be sent to those who have explicitly agreed to receive it; they must include any easy unsubscribe option, and they must be sent from a legitimate email address. In addition, the legislation prohibits software that is designed to generate email address lists for the purposes of sending spam. The legislation also calls for the creation of a spam-monitoring and enforcement agency.

Finally, the Korean Ministry of Information and Communication estimates that Koreans receive nearly 1 billion spam messages daily. The Korean government has passed laws that require senders to provide contact information, to allow recipients to opt out of receipt of marketing messages, and to provide recipients with information on the source of their email address. The Korean government has also established wireless spam guidelines that require all advertisers using text messages to clearly mark the message as an advertisement and attach their contact numbers so as to identify the sender. Failure to do so could result in a fine of 5 million won, or $5,660 in Canadian dollars.

Do we need legislation in Canada?

Since I introduced my first anti-spam bill in the Senate nearly two years ago, I am more convinced than ever that Canada needs legislation. I met several times with Madam Robillard, the former Minister of Industry, and she was instrumental in establishing a task force on spam consisting of industry leaders and chaired by Mr. Michael Binder. That task force has made great strides in trying to persuade the industry in Canada, generally, that some form of legislation is urgently required in Canada.

However, I should inform honourable senators that one of the reasons the task force has not already come up with a draft form of legislation is that a number of stakeholders feel that we do not need any legislation, that what is needed is education and for industry to do a better job at public awareness so that Canadians stop looking at and buying from spammers. However, spammers can make money even with a response rate of only 0.0001 per cent, because sending spam is almost costless. Hence, even if virtually everyone is deleting spam, it will probably always find a market somewhere.

What type of message are we actually sending to Canadians or members of the public, generally, if we urge them to take action against spam but do not outlaw this practice? Legislation clearly prohibiting spam is necessary in order to send a clear message to spammers that using email this way is an abuse that will not be acceptable in this country.

However, in addition to legislation, we need it accompanied by strong enforcement measures. The agency or organizations that are responsible for enforcement must have the necessary government resources to be able to enforce the legislation.

I will now speak about a private right of action. In the same way that legislation is only one part of the fight against spam, public enforcement of anti-spam laws is just one part of an effective legislative regime. Recognizing the resource limitations of enforcement agencies, the law should explicitly permit private rights of action against spammers. If private parties are permitted, indeed encouraged, to go after spammers themselves, then such private actions can add to the deterrent effect of government enforcement action. This is the case of the public and private sectors working together and trying to combat the scourge of spam.

All one has to do is look at the recent spate of lawsuits against spammers in the U.S. that are being brought by the large ISPs under the CAN-SPAM Act's private right of action provisions. If private parties have the incentive and the ability to take such measures, they can fill in gaps left by resource-strapped law enforcement agencies.

I used to be a trial lawyer and frequently brought suits to recover general damages as a remedy. General damages are determined by judges or juries. That brings a lot of uncertainty into the arena. For spam, I strongly believe we need to have a fixed statutory damage enshrined in the statute. In Washington State, for instance, it is $500 per spam, or $100 per spam under the CAN-SPAM Act.

I am deeply indebted to Phillipa Lawson, the Executive Director of the Canadian Internet Policy and Public Interest Clinic at the Faculty of Law at the University of Ottawa, for a fascinating paper she prepared, entitled "A Statutory Private Right of Action against Spammers in Canada." Ms. Lawson's study has identified only two lawsuits under Canadian law against spammers; one in TM infringement and trespass, and the other a breach of contract against an ISP and a customer. It appears that our existing Canadian rights of action are insufficiently tailored to spam, too costly to use or unrewarding in terms of potential compensation, and that it is not worthwhile for those suffering from spam to use any existing remedies without having new legislation. We, therefore, clearly need a specific anti-spam law in Canada.

Since I started my anti-spam work in the Senate, I have received dozens of emails from Canadians from all walks of life encouraging my effort. One of the main reasons is that email users are fed up with spam but do not know where to complain or how to complain. There is no one agency in Canada that has responsibility for this area. For instance, the CRTC, the Competition Bureau and the Privacy Commissioner have all received complaints about spam; however, other than one recent highly publicized case, there is no binding finding from the Privacy Commissioner, the CRTC, the Competition Bureau, or anyone else that we can rely on. Both the Competition Bureau and the CRTC say that they do not have the powers or the resources to regulate this activity.

In conclusion, therefore, the public clearly needs a place to send complaints to get action in respect to spam and the public also needs to be empowered by a law to go after spammers themselves. That is why there is a need for a private right of action.

What should be in our legislation?

Our legislation in Canada should permit the Competition Bureau and other investigative agencies such as the Privacy Commissioner to share information on spam investigations with their counterparts in other countries. We need this as a way of fostering much needed international cooperation. We also need to prevent a duplication of sometimes contradictory efforts from across Canada by designing a single agency to be responsible for spam complaints and enforcement and to give this agency the necessary resources to do the job properly. We must be sure to include penalties that are sufficiently high to deter spammers.

We were told at the December 2004 task force conference here in Ottawa that, in Australia, the Australia Communications Authority, the ACA, may initiate civil actions against spammers and go after fines of up to $1 million per day.

Our legislation should allow agencies to order restitution to those who suffer damages as a result of spam upon the application for such restitution. Next, our legislation must allow governments and private parties to go after businesses that use spam, as well as spammers themselves by way of a right of private action.

In the December 12, 2004, edition of *The Hill Times,* an op-ed piece — which was written by Mike Eisen, the Microsoft Canada Vice-president of Law and Corporate Affairs — entitled "Parliament needs to pass anti-spam legislation" argued that the absence of comprehensive anti-spam legislation in Canada remains a key impediment to eradicating spam in this country.

In a broader paper, entitled "Integration Innovation," Microsoft concluded the following — and I quote:

> The components of this anti-spam strategy are like pieces of a puzzle. The pieces, however, can only be brought together with the help of effective legislation. Without strong criminal and civil remedies for activities like the harvesting of email lists or distributing fraudulent emails, enforcement opportunities are very limited. Currently, the anti-fraud provisions in the Criminal Code provide a weapon against certain types of spam. The Personal Information Protection and Electronic Documents Act provides individuals with new rights in the event that their personal information is used for spam purposes without their consent. While these statutes undoubtedly form part of the solution, Canada's anti-spam legal framework is incomplete. Further, were Canada to adopt legislation with efficient enforcement procedures, it could be included as part of coordinated global legal actions of the kind launched by Microsoft in the U.S. and U.K.

• (1530)

The article ended by stating:

> Microsoft wishes to work with the governments of Canada to put in place effective legislation that will thwart the efforts of those who abuse email and preserve the viability of the medium. At the same time, Microsoft will continue to invest in researching filtering technologies, coordinate industry anti-spam efforts and educate users about spam.

Honourable senators, there is growing support from both within and outside of government in both private and public sector to have some form of legislation combatting spam in Canada.

There is no pride in authorship, and I am anxious to see Bill S-15 move quickly to committee so witnesses such as Mr. Mike Eisen of Microsoft, officials from the Canadian Internet Policy and Public Interest Clinic from the University of Ottawa, officials from the Department of Industry, and others can appear before the committee to give viva voce evidence about the importance of having a private right of action. Hopefully, Bill S-15 would be amended, improved and enhanced so that when it comes back to this chamber for third reading it will be legislation that will clearly benefit all Canadians and be acceptable to all stakeholders.

Thank you for providing me this opportunity to speak again about the problem of spam in Canada.

Hon. Senators: Hear, hear!

Hon. Madeleine Plamondon: Have there been any class actions against spammers in North America?

Senator Oliver: Yes, in the United States there have been class actions against spammers, but now that they have the CAN-SPAM Act, a number of spammers are joining together and bringing an action under that act. In addition, some states have had class action suits brought, but the CAN-SPAM Act is a federal statute.

Hon. Bill Rompkey (Deputy Leader of the Government): I should like to adjourn the debate, but I could not help overhearing Senator Oliver talk about canned spam. I always thought spam came in cans. All of the spam I ever ate came from a can.

On motion of Senator Rompkey, debate adjourned.

STUDY ON STATE OF HEALTH CARE SYSTEM

FIRST INTERIM REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE— DEBATE CONTINUED

On the Order:

> Resuming debate on the consideration of the third report (first interim) of the Standing Senate Committee on Social Affairs, Science and Technology entitled: *Mental Health, Mental Illness and Addiction: Overview of Policies and Programs in Canada*, tabled in the Senate on November 23, 2004.—(*Honourable Senator Keon*)

Hon. Wilbert J. Keon: Honourable senators, I rise today to speak to the mental health reports from the Standing Senate Committee on Social Affairs, Science and Technology. Yesterday, Senator Kirby outlined the magnitude of the problem imposed by mental health and addiction in Canada, which affects some 4.5 million Canadians with direct health costs of $6.3 billion and $14.4 billion in economic impact. To compound the problem, only one third of the patients with mental illness and addiction are receiving any kind of professional help.

To date, the committee has provided three reports, namely, *Mental Health, Mental Illness and Addiction: Overview of Policies and Programs in Canada*; *Mental Health Policies and Programs in Selected Countries*; and *Mental Health, Mental Illness and Addiction: Issues and Options for Canada*, which will provide the structural framework for the next steps.

Our review of policies and programs in Canada has uncovered some most disturbing facts. We found that we are the only G8 country without a mental health strategy. There is no coordinated mental health program of prevention, treatment or rehabilitation, no direct links between research and service provided, with no feedback loops and with inappropriate assessment strategies.

The task confronting the committee when it comes to strategies and recommendations for the future is truly a daunting one. Between now and the end of June, the committee will hear from patients, experts and citizens across the country, and we hope to have our final report completed by the end of the year.

The second report summarizes mental health policies in Australia, New Zealand, England and the United States. I must inform you that Canada is way behind these four countries. Yes, even the health system in the United States, that we Canadians criticize so freely, has much to teach us. Indeed, we are the only G8 country without a mental health strategy. We summarize this international study by noting five major trends.

The first is a focus on recovery as the driver for mental health thinking. Recovery means recovery of the patient to a point where he or she can function in society again.

The second is individualized plans for treatment and care including encouragement of family and consumer participation in the plan.

The third is delivery of integrated services in the community, while insisting on the importance of ongoing monitoring to limit delivery by isolated silos.

The fourth is the importance of deploying national resources for mental health promotion, in particular campaigning against stigma and discrimination.

The fifth is the need to eliminate disparities in the extent of services available to people, whatever the reasons. Examples of that would be language, culture, availability of service in geographical areas, et cetera.

The unifying factor behind these elements is organization of services to best meet the needs of the patient or client. There are five essential components of this organization.

The first is identification of action targets that engage the entire mental health community. The second is the establishment of measurable criteria for progress. The third is comprehensive human resource planning. The fourth is adequate research funding. The fifth is effective translation or application of the knowledge that results from the research.

I should like to say a few words on the contents of the third volume, which summarizes what we see as the issues and options for Canada.

The major issue, of course — the delivery of mental health care — stands out above all others. We start with the view that the status quo is not an option and there must be major change. The present system seems to be designed more for the convenience of the providers than for the patients. Should it indeed be called a system at all? It is fragmented and uncoordinated. It is a collection of silos that do not interconnect.

In Canada, we are searching for a mental health and addiction treatment system that will be patient centred, focused on recovery, tailored with services to meet the needs of individual patients or clients in a culturally sensitive manner, provide early diagnosis and treatment to individuals soon after the onset of mental illness or addiction, provide new knowledge, and measure outcomes and necessary adjustments on progress. Such a system must be seamless with high quality services and supports that are well coordinated and well integrated.

We identified the very great variability of how mental illness presents, as well as its effects on various stages of life. We talked about children and adolescents, Aboriginal peoples, seniors and individuals with complex needs for special attention. Mental health services and supports for children and adolescents have been called the "orphans' orphan." Children and adolescents are orphans within the mental health system, which itself is an orphan in the overall health care system. Therefore, it is essential that we design systems to deal with this. The good news is that Alberta, British Columbia and Prince Edward Island have already addressed this issue and have implemented programs, and I hope that the other provinces and territories can follow suit.

• (1540)

Aboriginal peoples, with their very high rates of mental illness and suicide, bring cultural issues into sharp focus. The disease may be the same, but how it is expressed and how it might best be treated depends heavily on cultural values and perceptions.

Seniors with mental illness are truly vulnerable. This should be a matter of concern to all of us here in the Senate since we are rapidly coming into that category.

Stigma and discrimination are central to the present Canadian way of management of mental health. The relative lack of attention given to the mentally ill in our system is truly discrimination. It has been said that when an organ such as a heart, kidney or liver malfunctions the community reacts with sympathy, and indeed I have seen this over and over. However, when the brain malfunctions people react with suspicion, wariness and fear. The committee needs advice on how to develop a national anti-stigma and discrimination strategy and hopefully this will unfold.

In both this study and in our previous study on the federal role in the health of Canadians, we draw attention to the need for national information databases and, of course, we cannot make progress until this is established. We also need a national information system. One has to ask if such a system would raise special concerns for the mentally ill, and of course it would. Talk of a national information database on electronic health records immediately raises the spectre of invasion of privacy. Particularly for mental health this is a two-edged sword. Concerns are raised that databases will allow release of personal health information and thus adversely affect Canadians. We believe that fear of possible invasion of privacy is preventing effective management of our health care systems, and it is also preventing us from learning much more about how to improve them. Therefore, we have to choose our options carefully, but we have to also find a way to make progress.

Funding for research is a continuing question for Canadians. Is there enough money committed for mental health? At this point I do not think so. The establishment of the Institute of Neurosciences, Mental Health and Addiction has been a giant step forward, but even though this institute receives the second-highest level of funding of the 13 institutes, we are not adequately funding mental health research at this point.

What might be the role of the federal government in all these issues? As in all health matters, we identify a direct and an indirect role. The direct role arises from the federal government as a major employer, responsible for the mental health of its employees, and also as the health care provider for specific population groups for which it is responsible. This includes First Nations people on reserves, Inuit populations, inmates of federal penitentiaries, members of our Armed Forces and veterans, the RCMP, and certain landed immigrants and refugee claimants. We did not find any significant evidence of targeted strategies to improve conditions for any of these categories for which the federal government is responsible. By fully addressing its responsibility here, the federal government could emerge as a great leader internationally.

The indirect role of the federal government arises from its responsibility to oversee the health of Canadians in general. The Canada Health Act, unfortunately, expressly excludes services provided by psychiatric institutions, and that has to be corrected. How can the federal government address this ambivalent approach to the place of mental health in its broad national policies for health? This has to be solved. We cannot leave mental health services as an orphan any longer.

In short, we lack a national action plan for mental health care, which is clearly discrimination against the very large number of Canadians who are deeply affected by mental illness.

I would now like to try to place mental health care into the broader context of Canada's overall health care system, for which I see mental health care as a special case. We must develop an adequate primary care system that is integrated with community service. Indeed, primary care is a huge universal problem in Canada now. Just move to another city and try to find yourself a family doctor. Some of you coming into this city have asked me for assistance in finding family doctors. People call me virtually every day asking me if I can get them into the health care system here in Ottawa, Canada's capital. They cannot get a family doctor, which is terrible. We need a major reorganization of primary care, and it must accommodate mental health.

Honourable senators, I believe we now need to reconsider the boundaries between what different groups of health professionals are allowed to do. Though this will certainly require considerable public education, primary care physicians are now heavily burdened doing things that could be done just as well or perhaps better by health care professionals with fewer overall qualifications. The same applies to nurses and other health professionals. However, the present rigid definitions about who, for example, can write prescriptions for a number of drugs may need to be reconsidered. For mental health this will certainly mean much greater integration of the many aspects that are essential to the proper social integration of the patient.

What do I foresee evolving over the next few years or decades? I see a patient-centred approach, which would be central. We are talking about a patient-centred approach with competitive market forces for efficient delivery of high-quality services funded by the single public payer who will ensure universal access. This is tremendously important. I know there is much disagreement over this recommendation, but I believe, like Great Britain, we must separate the payer and the provider. The single payer with universal coverage is sacred, but let the provider be whoever does it best and let them compete.

We must move to a much greater level of evaluation of outcomes of the health systems, comparisons of outcomes between different regions, clinics, hospitals or even individual practices and physicians, which is badly needed. How can we judge the system if we do not have comparisons?

I look forward to a time, hopefully in the not-too-distant future, when the patient and his or her family can find proper health care, including mental health care, wherever in Canada he or she might be. Access will be gained to a primary care network consisting of multidisciplinary clinics that will be linked to community services and integrated with them. The patient and family should be guided through coordinated and integrated systems of care, including health promotion strategies, and not have to find their own way. The whole coordinated and integrated system, or probably a set of systems, should be subject to continuing evaluations to achieve the optimal outcomes within the available funds.

Hopefully, honourable senators, we can collectively develop a national mental health strategy — which I hope our last document will be — that will put us in step with the other G8 countries and give patients the services they deserve.

On motion of Senator Callbeck, debate adjourned.

• (1550)

FLAWS IN DELIVERY OF GUARANTEED INCOME SUPPLEMENT PROGRAM

INQUIRY

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Downe calling the attention of the Senate to the basic flaws in the delivery of the Guaranteed Income Supplement program for low-income seniors.—(*Honourable Senator Ferretti Barth*)

Hon. Catherine S. Callbeck: Honourable senators, this inquiry stands in the name of Senator Ferretti Barth, but it is at her request that I am speaking to it today.

I am pleased to rise to participate in an inquiry raised by my colleague from Prince Edward Island, the Honourable Senator Percy Downe, calling the attention of the Senate to the basic flaws in the delivery of the Guaranteed Income Supplement program for low-income seniors.

As colleagues are aware, Social Development Canada administers two income-support programs that provide benefits to seniors — the Canada Pension Plan and Old Age Security. The Old Age Security program is the most widely accessible source of income for older Canadians. The federal government spends more than $26 billion each year to provide income support to 3.9 million seniors.

As part of the Old Age Security program, the Guaranteed Income Supplement provides additional money to low-income seniors living in Canada who have little or no other income. Across Canada, the Guaranteed Income Supplement assists about 1.4 million Canadians, at a cost of $5.8 billion. As the Guaranteed Income Supplement, or GIS, is based on a senior's annual income, a senior must apply for it every year.

Most seniors automatically renew their GIS simply by filing their income tax return by April 30 each year. However, as Senator Downe pointed out in his remarks, if a senior does not file an income tax return or does not otherwise apply, he or she is not receiving additional income for which they may be eligible — additional income that may make all the difference to a senior struggling to make ends meet.

In his remarks, Senator Downe referred to the 2001 report on the GIS tabled by the House of Commons Standing Committee on Human Resources, Skills Development, Social Development and the Status of Persons with Disabilities. In that report, the committee found that there are approximately 220,000 eligible seniors who receive the OAS but not the GIS, and that another 50,000 are eligible but receive neither benefit. Furthermore, the committee went on to say that it believed the estimates were based on the number of seniors who filed income tax returns and so did not capture those seniors who would be eligible but who did not file income tax returns. In the committee's view, the under-subscription to the program was based on two major factors — a lack of awareness about the program and an unnecessarily complex application process.

As Senator Downe indicated, the federal government has taken some action since this 2001 report to address the problem of under-subscription. In February and March of 2002, just over 105,000 seniors received notification of their potential eligibility for an income supplement from Human Resources Development Canada based on income tax information collected from the Canada Customs and Revenue Agency. The individuals contacted were sent a simplified one-page form, and they were able to apply for the GIS by confirming the declaration of income and family status and signing and returning the form.

Furthermore, in February 2002, the Canada Customs and Revenue Agency also sent letters on behalf of Human Resources Development Canada to approximately 65,000 seniors who declared low-income levels on their income tax returns but who were receiving neither the OAS nor the GIS. In 2001 and 2002, the department reported that these measures had led to the successful application for the GIS by approximately 75,000 additional Canadian seniors.

Furthermore, the federal government undertook a public education campaign designed to inform seniors about the benefits available to them, and the department launched a review of its application process with an eye to streamlining the system. The Canada Revenue Agency is also undertaking measures to make filing a tax return more user-friendly for seniors.

In January 2003, approximately 125,000 seniors were issued a letter inviting them to file their 2002 tax return using the simplified service that was created especially for seniors. Using a telephone, clients need only identify themselves, to ensure that confidentiality provisions are met, answer a few "yes" or "no" questions, and their tax return is completed.

As well, in an effort to ensure that those who are currently receiving the GIS continue to, in January 2003 the Canada Customs and Revenue Agency informed, by mail, nearly 80,000 seniors who had not filed a tax return but were receiving the GIS of the benefits of filing a tax return as a method of automatically renewing their GIS.

As a result of all these efforts, in March 2004, Social Development Canada reported 91,928 more seniors receiving the GIS than in March 2001. However, honourable senators, despite these measures, there are still thousands of eligible seniors who are not receiving the benefits to which they are entitled and who are most in need.

Honourable senator, seniors in Canada are better off than they were a few decades ago. A recent Statistics Canada report notes that from 1980 to 2000, across all 27 of Canada's metropolitan census areas, the low-income rate for seniors fell from 34.1 per cent to 20.2 per cent, using low-income cut-offs. This improvement is substantially due to changes in programs such as the old age pension, the GIS and the Canada and Quebec Pension Plans. However, the average income of seniors still remains substantially below that of the population as a whole. Senior women have lower incomes than senior men, and unattached seniors have lower incomes than couples.

Seniors are one of the most valuable resources of Canada. They contribute to society in a number of ways, including providing care to young family members and volunteering. Approximately one fifth of all seniors participate in volunteer activities, and seniors donate more volunteer time annually than the rest of the population. Studies have shown that the market value of volunteer assistance by seniors over the age of 55 is worth $10 billion. If these volunteers did not contribute such assistance, our communities' standard of living would decrease dramatically. As lawmakers, it is our role to ensure that our seniors receive the income support they need to remain healthy and active contributors to their communities.

[Senator Callbeck]

I wish to congratulate Senator Downe for calling the attention of the Senate to this matter and to join with him in calling on the Minister of Social Development to redouble efforts to ensure that seniors in Prince Edward Island and across Canada are receiving the full benefits to which they are entitled.

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

[*Translation*]

ASSASSINATION OF LORD MOYNE AND HIS CONTRIBUTIONS TO BRITISH WEST INDIES

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cools calling the attention of the Senate to:

(*a*) November 6, 2004, the sixtieth anniversary of the assassination of Walter Edward Guinness, Lord Moyne, British Minister Resident in the Middle East, whose responsibilities included Palestine, and to his accomplished and outstanding life, ended at age 64 by Jewish terrorist action in Cairo, Egypt; and

(*b*) to Lord Moyne's assassins Eliahu Bet-Tsouri, age 22, and Eliahu Hakim, age 17, of the Jewish extremist Stern Gang LEHI, the Lohamei Herut Israel, translated, the Fighters for the Freedom of Israel, who on November 6, 1944 shot him point blank, inflicting mortal wounds which caused his death hours later as King Farouk's personal physicians tried to save his life; and

(*c*) to the 1945 trial, conviction and death sentences of Eliahu Bet-Tsouri and Eliahu Hakim, and their execution by hanging at Cairo's Bab-al-Khalk prison on March 23, 1945; and

(*d*) to the 1975 exchange of prisoners between Israel and Egypt, being the exchange of 20 Egyptians for the remains of the young assassins Bet-Tsouri and Hakim, and to their state funeral with full military honours and their reburial on Jerusalem's Mount Herzl, the Israeli cemetery reserved for heroes and eminent persons, which state funeral featured Israel's Prime Minister Rabin and Knesset Member Yitzhak Shamir, who gave the eulogy; and

(*e*) to Yitzhak Shamir, born Yitzhak Yezernitsky in Russian Poland in 1915, and in 1935 emigrated to Palestine, later becoming Israel's Foreign Minister, 1980-1986, and Prime Minister 1983-1984 and 1986-1992, who as the operations chief for the Stern Gang LEHI, had ordered and planned Lord Moyne's assassination; and

(*f*) to Britain's diplomatic objections to the high recognition accorded by Israel to Lord Moyne's assassins, which objection, conveyed by British Ambassador to Israel, Sir Bernard Ledwidge, stated that Britain "very much regretted that an act of terrorism should be honoured in this way," and Israel's rejection of Britain's representations, and Israel's characterization of the terrorist assassins as "heroic freedom fighters"; and

(*g*) to my recollections, as a child in Barbados, of Lord Moyne's great contribution to the British West Indies, particularly as Chair of the West India Royal Commission, 1938-39, known as the Moyne Commission and its celebrated 1945 Moyne Report, which pointed the way towards universal suffrage, representative and responsible government in the British West Indies, and also to the deep esteem accorded to Lord Moyne in the British Caribbean. —(*Honourable Senator Prud'homme, P.C.*)

Hon. Pierre Claude Nolin: Honourable senators, we must pay tribute to Senator Cools, who is inviting us to examine a series of historical facts that, unfortunately, are known only to the peoples affected by this series of tragic events. We must congratulate her for drawing our attention to this matter.

First, Lord Moyne, it must be recognized, is someone — and we must accept Senator Cools' word — who influenced the history of Barbados.

• (1600)

Today, Barbadians can claim to have had their own quiet revolution — and you will understand that, as a Quebecer, I am using this expression with some experience — thanks to the reports of Walter Edward Guinness, the real name of Lord Moyne.

That said, in her speech, Senator Cools shows once again that the peaceful coexistence of Jews and Palestinians in a different location and, to no lesser an extent, other Arab peoples in the region, is being compromised by terrorist groups on both sides, each more radical than the other.

Lord Moyne was assassinated in November 1944 by a group of young Jewish extremists. I do not want to get into the debate — I leave it to others — over the identity of their leader. He was not there at the time of the assassination, but he was behind the operation. Other better informed senators will provide the details of this plot.

That said, at the time, the action was condemned by the British government and also — it should be noted — by moderate Zionist leaders. Last November was the sixtieth anniversary of the attack.

I will conclude my remarks here. I would like to remind you that — and you will agree with me — while the cause may be good, important and intended to protect rights and expose unacceptable situations, violence must never prevail, whatever cause it is claimed to serve. All of us, especially as an institution, must learn more about the roots of this conflict, clarify what drives extremist groups to take such action and, finally, come to the conclusion that, however good the reasons, such action must be punished.

I understand that Senator Prud'homme will be moving the adjournment of the debate. It is very important that the debate on this inquiry be allowed to continue and that any senator who wishes to speak be given as much time as he or she needs.

On motion of Senator Nolin, for Senator Prud'homme, debate adjourned.

COMMISSION OF INQUIRY ON THE SPONSORSHIP PROGRAM

MOTION—DEBATE ADJOURNED

Hon. Pierre Claude Nolin, pursuant to notice given February 1, 2005, moved:

That the Senate of Canada hereby calls upon the government to maintain the Commission of Inquiry into the Sponsorship Program and Advertising Activities for as long as necessary to establish the facts and discern the truth, and the Senate of Canada further urges the government to defend the Commission rigorously and reject attempts to impugn the integrity of the Commissioner, Mr. Justice John Howard Gomery.

He said: Honourable senators, every day we read in the papers about the proceedings of a very important commission of inquiry, which may seem negative at times. I will remind you of certain statements made by those taking part or having a direct interest. This commission of inquiry is important for all Canadians, and I am not the only one to say so. That is why I decided on this motion.

The Honourable the Speaker *pro tempore* has just given you the content of my motion, so I will not repeat it. No doubt you have all got the meaning of it, if not the letter.

This commission of inquiry is important for Canadians. Like all of us, Canadians want to know what really happened and how taxpayers' money was spent. They want to know the truth, the whole truth and nothing but the truth, as the expression goes. The terms of reference of this commission are to clarify the circumstances surrounding one of the greatest political and government scandals in Canadian history. Every new hearing day — yesterday's for example — brings its share of contradictory testimonies, leaks, and revelations, sometimes surprising and sometimes downright disconcerting, about how certain public servants and certain members of Parliament might have contributed to this huge fiasco. It is therefore important for Canadians to know what comprises this tangled web.

This commission is, however, equally important for the present Prime Minister of Canada. What did Mr. Martin have to say after the Auditor General's report was tabled? I quote his words of February 12, 2004:

Canadians need to know that this government takes full responsibility for resolving this matter. We will not turn our backs on our responsibility to find out what happened and ensure it never happens again.

This commission is therefore extremely important for the Prime Minister and his government. He has just given us the reason why. When the commission was struck on February 20, 2004, he also said the following in reference to its mandate:

> The terms of the Commission of Inquiry's mandate are very wide, with no limits. They will really allow us to get to the bottom of this business.

• (1610)

What is the commission's mandate? It is to explain how the sponsorship program was created by the government, how advertising and communications agencies were selected, how the Sponsorship and Advertising Activities Program was managed by the public officials and ministers responsible, how any persons or organizations received and used funds or commissions granted under the sponsorship program, and any other matter directly related to the Sponsorship and Advertising Activities Program the Commissioner considers useful in carrying out his mandate.

At the conclusion of its work the commission is to make recommendations. Why recommendations? Recall that the Prime Minister told Canadians: "We must get to the bottom of this so it may never happen again." So, we need recommendations. The commission must set out its recommendations and prepare a report on the responsibility of ministers and public officials according to the recommendations of the Auditor General.

Does the commission have a difficult mandate? Extremely. Mr. Justice Gomery himself has admitted his naïveté — and that is my word, not his. It is a difficult mandate, especially when one considers the explosive political climate surrounding this scandal and the privileged positions of the many alleged players in it.

First, you will doubtlessly agree, I think, that Mr. Justice Gomery's reputation is beyond reproach. I believe that the Prime Minister and the government made an excellent choice in appointing him commissioner. The individuals who have tried to tarnish his reputation regret their actions, in my opinion.

A motion for recusal was presented by counsel for former Prime Minister Chrétien. Counsel based it on unfortunate statements — once again, this comes from me and no one else — by Mr. Justice Gomery, when he wondered how former Prime Minister Chrétien could have allowed his name to be imprinted on golf balls, and his statements to the media.

In fact, Justice Gomery told a journalist, as reported in *The National Post* on December 5, 2004:

> Let's face it, Mr. Guité is a charming scamp and he had his department mesmerized.

During the same interview, the judge also endorsed the Auditor General's admittedly devastating report on the sponsorship program, and called the management of this government program, and I am quoting the judge, "catastrophically bad."

If it were to do over, would Justice Gomery still give this kind of interview to the media? I do not know. I think he made a mistake he will never repeat.

That said, must we ensure that the commission survives its mistakes? I think so. That is why I decided to introduce this motion. Let us be clear; even though Mr. Justice Gomery is a judge of the Quebec Superior Court, this is not a regular court; it is a commission of inquiry. The latitude given commissioners is broader than that afforded judges in a regular court.

Justice Gomery said this week, when he gave his ruling on the motion for recusal by counsel for former Prime Minister Chrétien:

> I realize now, with the benefit of hindsight, that it was an error for me to agree to be interviewed by the media before Christmas. I also recognize that some of the statements made by me during those interviews were ill-advised and inappropriate. My inexperience in handling the media is obvious to everyone, and has served to detract attention from the real objective of the Inquiry, which is to get at the truth ...

He went on to say:

> ...I am firmly of the opinion that a reasonable, well-informed and fair-minded person understands the difference between committing an error and being biased.

After replying to each of the arguments raised in the motion for recusal by Mr. Chrétien's lawyers, Justice Gomery concluded that his comments did not demonstrate a reasonable apprehension of bias on his part. In other words, he was not biased and had drawn no conclusions about the management of the sponsorship program.

For those wondering why the person being asked to recuse himself makes the decision, this is how Canadian courts work. The first step in a motion for recusal is up to the person being criticized, and if his or her decision is not satisfactory, it need only be appealed. What can I say? That is how it works. It may seem odd. Some would have liked the Chief Justice of the Federal Court to rule on the issue. Perhaps then we would have discovered the qualities or political values the Chief Justice of the Federal Court would have been weighed. That is not why I am here today.

Justice Gomery made a decision finding that his words did not show a reasonable apprehension of bias. In other words, he was not biased and has not drawn any conclusion whatsoever on the sponsorship program.

A second person was targeted in the motion for recusal. Justice Gomery also came to the defence of the lead counsel to the commission of inquiry, whose integrity had been attacked by Mr. Chrétien's lawyers. What did Mr. Justice Gomery say?

> Me. Roy should be judged solely on the basis of his work for the Inquiry, which has been professional, impartial and objective. He has my full confidence.

I have brought two examples of case law, but I do not think I will have enough time to read them. Those who are interested, however, can call me. I would be pleased to give them references.

One of the examples concerns the Létourneau commission of inquiry on Somalia. A soldier appeared before the Federal Court complaining that Mr. Justice Létourneau had a biased attitude toward him, and the Federal Court initially ruled in favour of Mr. Beno. Then the Federal Court of Appeal reversed its decision and said that Justice Létourneau acted as commissioner and although some statements were open to interpretation, the fact remained that Justice Létourneau had enough latitude to rule on and talk about decisions.

When it comes to the opinion of an appeal court, there too, our system says the appeal court outranks the others.

That is the first precedent. The second, somewhat less well known, is *Newfoundland Telephone Co. v. Board of Commissioners of Public Utilities,* 1992. There too, the Supreme Court of Canada rejected a motion by the *Newfoundland Telephone Co.* against a commissioner of the board, alleging that he had made statements before and during the investigation, proving his obvious bias with respect to consumers.

• (1620)

I will not read to you from the decision, but the Supreme Court clearly stated that the motion was unfounded because the level of objection available to the parties was much lower than before the tribunal.

And why, honourable senators, do I wish to make this motion?

[*English*]

Senator Mercer: This is Law 101 here.

[*Translation*]

Senator Nolin: In 1994, the Minister of Defence, David Collenette, established a commission of inquiry to shed all possible light on the conduct of Canadian Armed Forces personnel stationed in Somalia as part of a peacekeeping mission, and particularly on the torture and murder of a young Somalian by soldiers from the now abolished Canadian Airborne Regiment. This commission was established in the public interest. The public wanted to know everything and wanted to get to the bottom of things so that it could never happen again. And what happened? The commission was gagged! In the Senate, we tried to revive it, but without success.

Thus, my motion is very appropriate. If you firmly believe in the best interests of Canadians, you will pass it.

Hon. Eymard G. Corbin: Honourable senators, I have some questions to ask of Senator Nolin. Will he agree to reply?

Senator Nolin: I am prepared to answer questions, because I have finished my remarks.

Senator Corbin: It appears that Senator Nolin has covered a lot of ground but has not asked the fundamental question. I see that Senator Prud'homme is moving toward Senator Nolin. I do not know why, but he is in migratory mode here in this chamber. Is Senator Nolin not afraid that he forgot something?

One party felt aggrieved. That is why Justice Gomery was asked to step down. Senator Nolin, the Prime Minister, the Governor General, the person who polishes the brass in here every day and myself are all entitled to the same fundamental rights. An aggrieved party is entitled to use all the resources at the disposal of the average Canadian to defend himself or herself.

In this case, whether Mr. Gomery recused himself or not, whether he apologized or not, it seems that the Prime Minister's reputation was tarnished by inappropriate comments made by an individual who has taken an oath of office and who should never make such comments while proceedings are underway.

I had the opportunity to speak to law students at the University of Ottawa — whom I will not name, but they serve us here every day — and they said: "I dropped my textbook on procedure when I read the commissioner's comments reported in the newspapers and when I watched Prime Minister Chrétien's counsel on television."

The basic issue of the case at stake here is the right of Jean Chrétien to defend himself, like everyone else under the sun. Senator Nolin did not mention that!

Chuck Guité has the same rights as you and me, as the Governor General or the person who polishes the brass here in the Senate, whom I have a lot of respect, by the way. I do not mean to put anyone down. I believe that if justice is to be served in this case, then justice must pursue its course. It does not matter how much it would cost to reopen the inquiry or how long it would take to appoint a new commissioner to hear the case over again. A person feels that his rights have not been respected. Does Senator Nolin recognize those rights or not?

Senator Nolin: Yes, of course. I have no problem with anyone's right to ask a judge to recuse himself if he feels that his basic rights have not been respected. What I take issue with is the government not making an effort to defend the very commission it created. Mr. Chrétien has every right to defend his reputation and if he thinks Justice Gomery's decision is not good, then he has the entire legal process at his disposal. The Federal Court is there for that.

With this motion, I want this house to look at the government's action. I am basing my argument on what happened in Somalia. It is better to exert pressure than to wait until it is too late. I have no problem with Mr. Chrétien's rights. If Mr. Guité believes his rights have not been respected, then he should file an objection. There is a legal process in place to handle such matters. My motion does not target Mr. Chrétien or Mr. Guité. It is intended to provide the commission with protection by the government that created it.

Senator Corbin: My second question is this: Senator Nolin cited the case of Justice Létourneau. I am not familiar with the *Newfoundland Telephone Co*. If we compare it with what happened in the Gomery episode, a distinction has to be made. The Gomery commission is under scrutiny by nearly everyone. I support the basis of the inquiry and am not out to kill it. I am speaking of something much more basic: an individual's reputation. Whether that individual be Gomery, Chrétien, Roy or whoever, I consider that, in this context, the harm the judge's words could do to a reputation — Guité's or Chrétien's — is far greater than what Justice Létourneau might have done by speaking out at the officers' mess on an Armed Forces base. All Canadians hear what goes on in the Gomery commission and everything that is said in connection with it. I do not think that the case of Justice Létourneau or *Newfoundland Telephone Co*. had the same impact.

There is a huge difference between these statements, given in today's overheated context. It gives the impression in public opinion that it is all right to make fun, to mock people's right to justice. Justice Gomery's apology was a totally honest action.

• (1630)

Personally, I think that if I had been in his shoes, if I had done what he did and said what he said, I would have recused myself, because I would have felt unworthy of continuing the investigation. That is what I think.

Senator Nolin: Senator Corbin is so correct in raising the importance of rights that he compels me to quote the text of the Supreme Court of Canada decision in *Newfoundland Telephone Co*. I explained earlier that it was a commission, not a tribunal.

The court ruled that, based on the facts laid before it, there was reasonable apprehension of bias and that it was better for the commissioner to avoid making public statements. The court added the following, however:

> Certainly it would be open to a commissioner during the investigative process to make public statements pertaining to the investigation... During the investigative stage, a wide licence must be given to board members to make public comment. As long as those statements do not indicate a mind so closed that any submissions would be futile, they should not be subject to attack on the basis of bias.

The Supreme Court could have refused to hear the case, but it agreed to hear it specifically to try to determine the difference, the latitude a board member has before a judge. The judicial process is open to those who feel they sustained injury as a result of the board member's statements.

That being said, my motion is aimed at ensuring, through a decision of this chamber, that the government will stand up and live with the statements it made last year.

Yes, it is important. It was important then, and it is important now. Yes, we have to get to the bottom of it so that it does not happen again. That is the purpose of my motion. We have the courts' interpretation of the role of a board member. That being said, the Right Honourable Jean Chrétien, Mr. Guité and anyone who felt injured by the judge's statements, have all the leeway they need to do what has to be done before the Federal Court.

Hon. Pierrette Ringuette: Honourable senators, I do not have a legislative or legal background, but I think that there is a fundamental difference when a decision about members of a board is being reported. What we are talking about then is a reference to several people reviewing a file. In the motion you are currently discussing, we are talking about a person to whom a file has been referred, not a group of people.

I do not think that the same decisions apply in a similar case. That is all I wanted to say.

Senator Nolin: Honourable senators, allow me to give you my opinion on Senator Ringuette's argument. There is one factor that has to be considered. Certainly the Newfoundland board comprises a number of people. In the case before the Supreme Court, only one board member had made comments.

I have no problem with anyone trying to restrict the leeway of a board member a little more. The Supreme Court tried to do that, and now the Federal Court could decide to make an exception and accept that argument; that is a strong possibility. However, my motion has to do with a commission of inquiry that was created by an order of the Government Canada, and it is that commission of inquiry that I want to protect. That is all I want to do.

[*English*]

Hon. Anne C. Cools: Honourable senators, I belong to that group of people who have serious problems with the use of royal commissions to investigate matters that are so highly politically charged. I was not enthusiastic to see this royal commission. To this day, I do not understand why a royal commission was appointed to perform a task that is really Parliament's business. I hope in the process of the debate here that we may be able to garner some insight. If my honourable friend were to read the terms of reference within the Order-in-Council appointing the commissioner, Judge Gomery, he would see a wide and exhaustive set of powers. He would wonder who was making this appointment and why. He would wonder what was going on. It worries me deeply.

In addition, the second part of the terms of reference orders the commissioner to consider the government's corrective initiatives. Remember, Prime Minister Martin had included a list of the initiatives the government had taken.

Honourable senators, I have a lot of trouble with, first, creating a royal commission on the issues; and, second, turning around and empowering the commissioner to consider what I thought were Mr. Martin's political responses.

Having said that, this entire thing is a terrible spectacle and has troubled me greatly. I know that I am putting my question in a roundabout way, but there is no doubt that the whole situation has hurt and damaged Mr. Chrétien. I cannot see that this can be accidental. I have problems with a royal commission or any body pretending that it can make judgments on the political conduct of a former Prime Minister and, in the process of doing so, exposing

a former prime minister to enormous personal and perhaps criminal insinuation. I have made it my business over the years to ensure that I understand the proper constitutional relationships that should prevail in all these circumstances. When it comes to the conduct of that judge, only Parliament has the proper capability and authority to pass judgment on that conduct. Again, when it comes to the political conduct — and, if necessary, more than political conduct — of ministers and prime ministers, only Parliament is the proper forum to make these kinds of judgments.

The Judges Act respects this because it provides the exemption to allow judges to serve on royal commissions. There is a body of literature on the evil or the mischief that can be created when judges are invited to serve as royal commissioners in these very politically charged circumstances. It is bothersome. I guess I will develop some of this later.

Honourable senators, the Constitution gives Parliament superintendence over the conduct of judges as it does over the conduct of the Prime Minister. I am planning to speak on this matter. I do not like what is going on. At the same time, I also share the concern that at the end of this terrible spectacle we may be no closer to the truth. I am one of those parliamentarians who has a deep concern that Parliament has been totally diminished by the fact that the investigation and examination of these important matters were removed from the cognizance of Parliament and given to this royal commission.

I am doing a fair amount of research on this matter. Has the honourable senator, in his research, formulated any opinions on the wisdom, the prudence and the effectiveness of the use of royal commissions in these kinds of circumstances?

• (1640)

Senator Nolin: The short answer is no.

Senator Cools: A royal commission is a royal instrument. I am not sure if there is a process for a commissioner to recuse himself. Perhaps it exists, but my understanding is that a royal commission is a command from Her Majesty to perform a certain task. Granted, the commissioner may be able to say, "I cannot do it; my health is failing," or whatever. However, I am not sure that a commissioner can properly recuse himself by a motion. I am not sure as to whether that course of action was open to Mr. Justice Gomery.

I have a very strong opinion of what the judge had to say. I wish he had never said those intemperate words. However, I am not convinced that that motion was a proper process that the judge — and remember, he is not acting as a judge in this context. We should not be saying "judge." We should be saying "commissioner." The government has created a sense in the public mind that the commission of inquiry is somehow a trial, but it is not. The Gomery commission of inquiry is not like an ordinary case proceeding in the courts, whereby a plaintiff or a defendant or someone else challenges the judge and the judge has to recuse himself, so the next judge just steps up. Royal commissions do not work that way. This is a royal commission, and it would have to start over, right at the beginning, including a new commission. Parliament, in its wisdom, when it passed the Inquiries Act, never intended royal commissions to be used by governments in this way.

I will expound on some of this, but these issues are difficult and complex, and we have to do the work to sort them out.

Senator Nolin: It is a fundamental right to question the impartiality of a commissioner or a court. I would be interested to hear the honourable senator's argument as to whether such a right does or does not exist in front of a royal commission. However, I have not researched that.

Senator Cools: In all fairness, all this may have been developing for a while. Prime Minister Martin has continued to call it a judicial inquiry, and I wish he would cease. It is not a judicial inquiry; it is a commission of inquiry. The difference is that a commission only has the powers to investigate; a commission has no powers to adjudicate. One expects impartiality, because anybody doing that kind of work should conduct him or herself in accordance with Her Majesty's commission. A judicial inquiry would have adjudicative powers, but this is not a judicial inquiry.

The powers that the commissioner has are confined to the investigative or inquisitorial powers. As the debate goes on, I hope this will be clarified. This is not the first time Parliament has been asked to look at the implications and the consequences of the use of these royal commissions. In previous times, members such as John Diefenbaker have had much to say about the use of them.

I hope we will be able to get some of these issues on the table and at the same time understand that what is taking place is creating enormous cynicism in this country. The politics of the whole thing is bordering nefarious.

Hon. Marcel Prud'homme: I do not wish to waste the time of the chamber, but I am prompted to do so at the invitation of my long-time colleague Senator Corbin.

I am not moving anywhere; I am satisfied where I am in the corner.

[*Translation*]

I would like to hear the opinion of Senator Nolin, who is a recognized jurist and the son of an equally prominent jurist. Are we not abusing — and abusing at great expense — these so-called royal commissions or judicial inquiries? The people where I live, most of whom are working class, many of them paid minimum wage, have come to look at this commission as a spectacle. They refer to it as the "lawyers' commission," because lawyers seem to be the only ones getting anything out of the commission.

People say the same thing to me about the Létourneau commission and the celebrated commission on public complaints about the RCMP, which cost $26 million. All that people see are the endless fees paid to the lawyers involved in these commissions.

My question is this: is there not growing abuse of political power? I am not taking aim at the current government or former governments with which I was familiar. Huge amounts of money are wasted, and the government loses sight of the objective and the legal aspect. The fact is that if there are thieves — I am going to talk like Jean Chrétien — there is a legal system for that. Let the courts do their job and the police make it hell. When I have to tell my fellow citizens that it is going to cost $60 million, $70 million — who knows how much, and that is not the end of it, because the legal process has not started — and it is just a starting point that can lead to a trial, it is tough. Charges will be laid, people will appeal and it will go on forever at enormous cost.

Are these various and sundry commissions being used to get out of political hot water?

Senator Nolin: Parliament passed the Inquiries Act, and the government has complete leeway in using the legislation. Did they do the right thing or not? There is an advantage to using a commission of inquiry rather than going straight to court. The first step in legal action is always a charge. I charge someone with something, and the process is set in motion. A commission of inquiry undertakes a review. It looks at all the facts. When I read to you earlier the terms of reference of the commission that seemed to apply to us, you heard the complete list of what the commission has to accomplish. It is a very long list. The process of a commission of inquiry is quite comprehensive.

The legislation is there, and the government uses it. There are procedures applicable to the exercise. As far as lawyers go, there is no way to avoid them. There will always be people who want to be represented by lawyers because their rights could be infringed. We recently discussed that issue with Senator Corbin and others. It is a constitutional right to have counsel present when our rights are being threatened.

• (1650)

[*English*]

Senator Cools: The Inquiries Act was passed about 70 years ago and it was a development over many other Inquiries Acts from pre-Confederation. However, the fact is that the intention of the Inquiries Act was to allow the Governor-in-Council to make appointments and to call royal commissions without having to go through the bother of coming to Parliament for money. That is what the Inquiries Act was about, to give the government access to the Consolidated Revenue Fund.

When the Inquiries Act was passed, Parliament never anticipated that these enormous sums of money would be spent. Has the honourable senator, in his research, begun to formulate concepts or ideas about the fact that it may be time for Parliament to review the Inquiries Act and to examine carefully what the government is doing under the Inquiries Act?

I have sat on committees where we raised the possibility of studying this whole phenomenon, including the National Finance Committee where I raised the issue that it is time for Parliament to look at these questions. Interestingly enough, the government has opposed any proposal each and every time. Does the honourable have any thoughts on that subject?

Senator Nolin: It is an interesting question, but I must answer, no. I have not reflected on the purpose of undertaking such a study.

On motion of Senator Losier-Cool, debate adjourned.

[*Translation*]

ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

Hon. Fernand Robichaud: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

> That when the Senate adjourns today, it do stand adjourned until Tuesday, February 8, 2005, at 2 p.m.

Hon. Joseph A. Day (The Hon. the Acting Speaker): Is leave granted, honourable senators?

Motion agreed to.

The Senate adjourned until Tuesday, February 8, 2005, at 2 p.m.

THE SENATE OF CANADA

PROGRESS OF LEGISLATION

(*indicates the status of a bill by showing the date on which each stage has been* ***completed***)

(1st Session, 38th Parliament)

Thursday, February 3, 2005

(**Where royal assent is signified by written declaration, the Act is deemed to be assented to on the day on which the two Houses of Parliament have been notified of the declaration.*)

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-10	A second Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	04/10/19	04/10/26	Legal and Constitutional Affairs	04/11/25	0 observations	04/12/02	04/12/15	25/04
S-17	An Act 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	04/10/28	04/11/17	Banking, Trade and Commerce	04/11/25	0	04/12/08		
S-18	An Act to amend the Statistics Act	04/11/02	05/02/02	Social Affairs, Science and Technology					

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-4	An Act to implement the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment	04/11/16	04/12/09	Transport and Communications					
C-5	An Act to provide financial assistance for post-secondary education savings	04/12/07	04/12/08	Banking, Trade and Commerce	04/12/09	0 observations	04/12/13	04/12/15	26/04
C-6	An Act to establish the Department of Public Safety and Emergency Preparedness and to amend or repeal certain Acts	04/11/18	04/12/07	National Security and Defence					
C-7	An Act to amend the Department of Canadian Heritage Act and the Parks Canada Agency Act and to make related amendments to other Acts	04/11/30	04/12/09	Energy, the Environment and Natural Resources					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-14	An Act to give effect to a land claims and self-government agreement among the Tlicho, the Government of the Northwest Territories and the Government of Canada, to make related amendments to the Mackenzie Valley Resource Management Act and to make consequential amendments to other Acts	04/12/07	04/12/13	Aboriginal Peoples					
C-15	An Act to amend the Migratory Birds Convention Act, 1994 and the Canadian Environment Protection Act, 1999	04/12/14	05/02/02	Energy, the Environment and Natural Resources					
C-18	An Act to amend the Telefilm Canada Act and another Act	04/12/13							
C-20	An Act to provide for real property taxation powers of first nations, to create a First Nations Tax Commission, First Nations Financial Management Board, First Nations Finance Authority and First Nations Statistical Institute and to make consequential amendments to other Acts	04/12/13							
C-34	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2005 *(Appropriation Act No. 2, 2004-2005)*	04/12/13	04/12/14	—	—	—	04/12/15	04/12/15	27/04
C-35	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2005 *(Appropriation Act No. 3, 2004-2005)*	04/12/13	04/12/14	—	—	—	04/12/15	04/12/15	28/04
C-36	An Act to change the boundaries of the Acadie—Bathurst and Miramichi electoral districts	04/12/13	05/02/01	Legal and Constitutional Affairs					

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-302	An act to change the name of the electoral district of Kitchener—Wilmot—Wellesley—Woolwich	04/12/02	04/12/07	Legal and Constitutional Affairs					
C-304	An act to change the name of the electoral district of Battle River	04/12/02	04/12/07	Legal and Constitutional Affairs					

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act to amend the Citizenship Act (Sen. Kinsella)	04/10/06	04/10/20	Social Affairs, Science and Technology	04/10/28	0	04/11/02		
S-3	An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier)	04/10/06	04/10/07	Official Languages	04/10/21	0	04/10/26		
S-4	An Act to amend the Marriage (Prohibited Degrees) Act and the Interpretation Act in order to affirm the meaning of marriage (Sen. Cools)	04/10/06							
S-5	An Act to repeal legislation that has not come into force within ten years of receiving royal assent (Sen. Banks)	04/10/07	04/10/26	Transport and Communications (withdrawn) 04/10/28 Legal and Constitutional Affairs					
S-6	An Act to amend the Canada Transportation Act (running rights for carriage of grain) (Sen. Banks)	04/10/07							
S-7	An Act to amend the Supreme Court Act (references by Governor in Council) (Sen. Cools)	04/10/07							
S-8	An Act to amend the Judges Act (Sen. Cools)	04/10/07							
S-9	An Act to amend the Copyright Act (Sen. Day)	04/10/07	04/10/20	Social Affairs, Science and Technology					
S-11	An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe)	04/10/19	04/10/26	Legal and Constitutional Affairs					
S-12	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	04/10/19							
S-13	An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver)	04/10/19	04/11/17	Legal and Constitutional Affairs					
S-14	An Act to protect heritage lighthouses (Sen. Forrestall)	04/10/20	04/11/02	Social Affairs, Science and Technology					
S-15	An Act to prevent unsolicited messages on the Internet (Sen. Oliver)	04/10/20							
S-16	An Act providing for the Crown's recognition of self-governing First Nations of Canada (Sen. St. Germain, P.C.)	04/10/27							
S-19	An Act to amend the Criminal Code (criminal interest rate) (Sen. Plamondon)	04/11/04	04/12/07	Banking, Trade and Commerce					
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S-22	An Act to amend the Canada Elections Act (mandatory voting) (Sen. Harb)	04/12/09							
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