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OFFICIAL REPORT
(HANSARD)

Tuesday, February 15, 2005

THE HONOURABLE DANIEL HAYS
SPEAKER

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THE SENATE

Tuesday, February 15, 2005

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

[*Translation*]

ROYAL ASSENT

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

February 10, 2005

Mr. Speaker,

I have the honour to inform you that the Honourable Marie Deschamps, Puisne Judge of the Supreme Court of Canada, in her capacity as Deputy of the Governor General, signified Royal Assent by written declaration to the bill listed in the Schedule to this letter on the 10th day of February, 2005, at 5:40 p.m.

Yours sincerely,

Barbara Uteck
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bill Assented to Tuesday, February 10, 2005,

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 (*Bill C-14, Chapter 1, 2005*)

[*English*]

SENATORS' STATEMENTS

FLAG DAY

Hon. Jack Austin (Leader of the Government): Honourable senators, today is Flag Day.

Hon. Senators: Hear, hear!

Senator Austin: Forty years ago, today's national flag of Canada was first raised on the Peace Tower. For the past 40 years, that flag has served as a major national symbol of this country.

Honourable senators, there are only a very small number of people in this chamber today who were present on February 15, 1965. I can name some: Senator Fairbairn, Senator Forrestall, Senator Gustafson, Senator Grafstein. I was here as well to watch that very important occasion. At that time I was Executive Assistant to the Honourable Arthur Laing, Minister of Northern Affairs and National Resources, later to become Senator Arthur Laing. It was a moving event. It was not easy to bring about a national consensus with respect to this flag. The process was arduous. Many choices were offered. Frankly, for a time, I favoured a different flag, but that is no longer of any national significance.

I am very happy, honourable senators, that, after that difficult period, Canadians have been united under that flag. There is no debate in this country with respect to that national symbol and the Maple Leaf flies proudly in Canada and around the world.

Hon. Marjory LeBreton: Honourable senators, today we mark the anniversary of a milestone in our history. On this day 40 years ago, Canada officially raised a new national flag. A red and white Maple Leaf replaced the Red Ensign on February 15, 1965, a day I remember vividly because I was in the throng of people at the foot of the Peace Tower when the new flag was raised.

Although this is the flag's fortieth anniversary, the path toward its creation actually began in 1925 when a Privy Council committee first looked into changing the design. Today's *National Post* has an excellent essay entitled: "A flag turns 40: In 1963, Lester Pearson promised Canada would have an official flag within two years. He delivered." Indeed it was Conservative Prime Minister R.B. Bennett who first raised the issue of a distinct Canadian flag in the 1930s, but it was only after World War II that Parliament began to actively pursue this issue to seek a new flag. At that time, a joint committee of the Senate and House of Commons received well over 3,000 submissions — and remember, this was just after WW II — with the interesting result that only 14 per cent wanted the flag to feature the Union Jack while 60 per cent suggested some version using the maple leaf.

• (1410)

It was not until Canada was nearing its centennial year that the search for a design yielded results and a new symbol of our national identity was chosen. History credits two men with the honour of having created Canada's flag: Mr. John Matheson, who headed the all-party parliamentary committee comprised of, among others, seven Liberal and five Progressive Conservative MPs charged with recommending a suitable flag; and Dr. George Stanley, who provided the flag's design by submitting a sketch of a red maple leaf against a white background bordered in red on both sides.

It is important to stress the all-party nature of the exercise, because we have been subjected to a hearty dose of revisionist history here, at times. Many Conservatives, including me, felt it was time to have our own distinct flag, although I must confess I preferred Mr. Pearson's choice of red maple leaves with a blue border. I am glad to see that the government leader agrees.

In the end, I believe that Mr. Matheson and his all-party committee gave Canadians an emblem of which we can all be proud. This new flag was quickly embraced and is now a recognized Canadian symbol reflecting our history and collective values.

BLACK HISTORY MONTH

Hon. Terry M. Mercer: Honourable senators, this February is the tenth anniversary of Black History Month, a celebration of the history, pride and achievement of Black Canadians. This event was first officially recognized in 1995 as a result of a motion by the Honourable Jean Augustine, the first Black Canadian woman elected to the other place.

The history of Black Canadians is not, however, without struggle. Slavery once existed, but, in true Canadian fashion, the Abolition Act of 1793 in Upper Canada made Canada the first jurisdiction in the British Empire to move toward the abolition of slavery. By 1833, slavery would be abolished throughout the entire British Empire.

Honourable senators, as the senator representing Northend Halifax, I would be remiss if I did not highlight my native Nova Scotia, which has a proud history of Black Canadians. Between 1783 and 1785, more than 3,000 Black Loyalists came to Nova Scotia as a result of the American Revolution. Their descendants inhabit many Nova Scotian communities to this day. Another group, the Maroons, arrived in Halifax around 1796, where they worked at projects such as the fortifications of Citadel Hill. Their descendants still inhabit much of Preston in Dartmouth and Tracadie in Guysborough County.

We have had many firsts for Black Canadians who hail from Nova Scotia. Recently, in Halifax, the first Victoria Cross won by a Black person was put on display. William Hall, born in King's County, Nova Scotia, won the Commonwealth's top award for bravery for his service in the Crimean War. The son of freed slaves, he was a true hero, a true Nova Scotian and a true Canadian.

Other famous Nova Scotians include George Dixon, the first boxer to hold world championships in three different weight classes and who is credited as the inventor of shadow boxing. Rose Fortune was a Black Loyalist credited as the first known policewoman in Canada. One of her descendants, Dr. Daurene Lewis, served as Mayor of Annapolis Royal in the 1980s. She was the first Black female mayor in North America and she is also a member of the Order of Canada. In the 1990s, Wayne Adams was the first Black MLA elected to the Nova Scotia Legislature and the first Black cabinet minister.

The accomplishments of these Nova Scotians and all Black Canadians have helped to build and to strengthen what Canada is today. From politicians to community leaders, artists to war heroes, Black Canadians have contributed to the fabric of Canadian society. We all benefit when we share in one another's history and culture. This is what makes us who we are as Canadians.

THE HONOURABLE CAIRINE WILSON

SEVENTY-FIFTH ANNIVERSARY OF APPOINTMENT TO SENATE

Hon. A. Raynell Andreychuk: Honourable senators, 75 years ago today Cairine Wilson became the first woman appointed to the Senate of Canada. On this special anniversary, I know all honourable senators join with me in paying tribute to Senator Wilson and her contemporaries, Emily Murphy, Henrietta Muir Edwards, Louise McKinney, Irene Parlby and Nellie McClung. These women were, of course, the Famous 5, who fought so hard to ensure that the privilege of serving our country in this place could be extended equally to both genders.

Cairine Wilson was an accomplished woman long before she became eligible to sit in the Senate, working on behalf of many charitable groups. She was not only our first female senator but also the first woman to chair a Senate standing committee. In 1949, she became Canada's first woman delegate to the United Nations General Assembly. Of course, the appointment of Senator Wilson arose from the famous Persons Case of 1929, in which the judicial committee of England's Privy Council found that women could be considered "qualified persons" under section 24 of the Constitution Act.

I am certain that most women living in Canada today find it difficult to imagine a time when they would not be recognized as a person in the eyes of the law. Yet, this was a battle that had to be waged; and, luckily for us, the ramifications of the victory have stretched far and wide.

Unfortunately, after Senator Wilson was called to the Senate, other women were not called to the Senate for some time. A second woman, Iva Campbell Fallis, was appointed by Prime Minister R.B. Bennett in 1935; however, a third woman did not arrive here until almost 20 years later, in 1953.

Today, we have only to look around this chamber to know that times have changed. Thirty-three women now serve as senators, a number that represents 37 per cent of the seats. The progress witnessed here may be found throughout our society. Indeed, women now hold public office in all levels of government, all across the country, although the struggle is far from over, including in this chamber.

It must have taken great strength of character for those first women senators to enter this unknown territory, aware that many men, and even some women, did not agree with their presence here. Because of their courage and determination, every woman who has followed in their footsteps to the Senate of Canada has had an easier path.

Through the hard work and dedication of the women who serve here today, we continue to honour the memory of Cairine Wilson.

UNIVERSITY OF ALBERTA

CONGRATULATIONS TO PANDAS FOR SECOND CONSECUTIVE UNDEFEATED SEASON

Hon. Tommy Banks: I was pleased to hear Senator Andreychuk praise those five Albertan women — the Famous 5.

I wish to call the attention of senators to other Albertan women. In sport, everyone knows that the winningest percentage of all time in organized sport is held by the Edmonton Commercial Graduates Basketball Club, known simply as the Edmonton Grads, which posted a remarkable record.

We also have the University of Alberta Pandas, which is the women's hockey team. Recently, they accomplished something no team has ever done before in Canadian inter-university sport, male or female, by finishing their second consecutive undefeated season, which is remarkable. The Pandas won 99 games, a number that is particularly resonant in Alberta.

NOVA SCOTIA

OFFSHORE OIL AND GAS AGREEMENT

Hon. Donald H. Oliver: Honourable senators, earlier this month, Senators Cochrane and Rompkey spoke of the historic offshore oil and gas agreement reached on January 28 between the federal government and Newfoundland and Labrador.

Today, I wish to speak to the agreement reached for my province, Nova Scotia, that was officially signed yesterday by the Prime Minister. The new offshore oil and gas agreement will guarantee Nova Scotia $830 million. The deal could be worth $1.1 billion over the next eight years, depending on the value of the oil and gas pumped from Nova Scotia's offshore drilling rigs. Honourable senators, the money guaranteed by the federal government amounts to at least 100 per cent of my province's offshore oil and gas revenues.

I was delighted to learn on Tuesday that Premier Hamm has pledged to use the $830 million that will be injected soon into our province's economy to pay down Nova Scotia's $12.5-billion debt. According to Halifax's *The Chronicle-Herald*, this would immediately free up at least $50 million in interest charges annually. The premier has announced that he plans to spend that money on education and health care.

• (1420)

Honourable senators, it was in 1987 that our former Prime Minister, the Right Honourable Brian Mulroney, signed the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act. The purpose of this accord was for Nova Scotia to receive the revenues from its offshore resources until its economy was at least at the national average.

As former Prime Minister Mulroney has stated on innumerable occasions, the accord "established Nova Scotia as the principal beneficiary of the oil and gas resources off its coastline."

Honourable senators, the ongoing negotiations that concluded Friday evening are about fairness. They are about reinforcing the "principal beneficiary" provision contained in the 1987 accord. They are also about investing in Nova Scotia's and, indeed, all of Canada's future economic prosperity.

On November 18, I rose in the Senate and quoted Mr. Harper, who said:

> In the election the Prime Minister made a promise to Atlantic Canada. And that promise was absolutely clear. It was crystal clear. The issue now is: Do it.

Honourable senators, the Prime Minister did do it. He did what was fair for Nova Scotia and Newfoundland and Labrador. Now he should be acknowledged for doing so.

WOMEN'S JUNIOR CURLING CHAMPIONSHIP

NEW BRUNSWICK— CONGRATULATIONS TO KELLY TEAM

Hon. Joseph A. Day: I am pleased to advise honourable senators of the great success of Ms. Andrea Kelly and her rink of curlers from New Brunswick in having captured the Canadian Women's Junior Curling Championship in Fredericton, New Brunswick over the past weekend.

The New Brunswick foursome, curling out of the Capital Winter Club in Fredericton, is comprised of lead Lianne Sobey from Miramichi, currently a student at St. Thomas University; second Jodie deSolla of Saint John, also attending St. Thomas; third Kristen MacDiarmid of Miramichi, a commerce student at Dalhousie University; and skip Andrea Kelly from Perth-Andover, who is currently studying business administration at the University of New Brunswick in Fredericton.

The team from New Brunswick achieved this success by compiling a 9-3 record during the round robin play and then defeating Marie-Christine Cantin from Quebec 7-5 in the semi-final on Friday, before facing Alberta's Desirée Robertson in the final on Sunday afternoon.

The Lady Beaverbrook Rink was filled to capacity to witness the exciting final between the New Brunswick rink and the Alberta team, which had gone undefeated during the round robin play.

The Alberta team took a quick 3-0 lead before New Brunswick was able to score four in the fourth to tie the game. The score was tied going into the ninth, but New Brunswick was able to steal two points and steal another in the tenth to clinch the victory.

Honourable senators, this marks the third time that a New Brunswick rink has won the junior women's title. Ms. Kelly, Ms. MacDiarmid, Ms. deSolla and Ms. Sobey will now have the honour of representing Canada at the World Junior Women's Curling Championship in Torino, Italy, from March 3 to 13. At this event, they hope to follow in the footsteps of Jim Sullivan's 1988 team and Melissa McClure's 1998 foursome, who became world champions from New Brunswick. I know that I speak for all honourable senators when I wish them the very best of luck at the world championships.

ROUTINE PROCEEDINGS

AUDITOR GENERAL

STATUS REPORT TO HOUSE OF COMMONS TABLED

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour of tabling, in both official languages, a document entitled "The status report of the Auditor General of Canada to the House of Commons," dated February 2005.

EUROPEAN CONFERENCE OF PRESIDENTS OF PARLIAMENTS WORKING VISIT TO BELGIUM OFFICIAL VISIT TO GERMANY OFFICIAL VISIT TO SCOTLAND

DELEGATIONS LED BY SPEAKER—REPORTS TABLED

Hon. Daniel Hays: Honourable senators, I rise to request leave to table four documents. They are reports of visits led by the Speaker of the Senate, first to the European Conference of Presidents of Parliaments in Strasbourg, France, May 17 to 19, 2004; working visits to Belgium, which took place September 19 to 21, 2004; an official visit to Germany, hosted by the President of the Bundesrat, which took place September 21 to 26, 2004; and finally, a visit to Edinburgh, Scotland, to represent Canada at the opening of the Scottish Parliament, Holyrood House.

The Hon. the Speaker *pro tempore***:** Is leave granted?

Hon. Senators: Agreed.

INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (AIRCRAFT EQUIPMENT) BILL

REPORT OF COMMITTEE

Hon. Joan Fraser, Chair of the Standing Senate Committee on Transport and Communications, presented the following report:

Tuesday, February 15, 2005

The Standing Senate Committee on Transport and Communications has the honour to present its

FOURTH REPORT

Your Committee, to which was referred Bill 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, has, in obedience to the Order of Reference of Thursday, December 9, 2004, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

JOAN FRASER
Chair

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

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

PATENT ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-29, to amend the Patent Act.

Bill read first time.

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

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

FOREIGN AFFAIRS

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

Hon. Peter A. Stollery: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

> That the Standing Senate Committee on Foreign Affairs have the power to sit at 5 p.m. today, Tuesday, February 15, 2005, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Honourable senators, just to explain, the committee has a witness coming from Addis Ababa, and this is the only time that we can get him. That is the reason for the request. Otherwise, I would not have troubled senators with this motion.

Hon. Terry Stratton (Deputy Leader of the Opposition): It is my understanding that the committee also met yesterday outside its normal sitting times. Will this be a regular pattern? I would hope not, because given the numbers on our side, it is very difficult to staff the Foreign Affairs Committee or any other committee that meets outside of normal sitting times.

• (1430)

Senator Stollery: Honourable senators, Senator Stratton is correct. We did meet yesterday at three o'clock because it was the only time that General Roméo Dallaire could meet with the committee. I agree with Senator Stratton that we try not to meet on Mondays. That is certainly not the policy of the committee.

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

Some Hon. Senator: Agreed.

Hon. Marcel Prud'homme: No. I do not want the committee to sit when the house is sitting.

The Hon. the Speaker: Leave is not granted.

BOY SCOUTS OF CANADA

PRIVATE MEMBERS BILL TO AMEND ACT OF INCORPORATION—PRESENTATION OF PETITION

Hon. Consiglio Di Nino: Honourable senators, I have the pleasure to present a petition from the Boy Scouts of Canada, a body incorporated by chapter 130 of the Statutes of Canada 1914, praying for the passage of an act to amend its act of incorporation in order to consolidate the statutes governing it, to change its name to "Scouts Canada" and to make such other technical and incidental changes to the act as may be appropriate.

QUESTION PERIOD

FINANCE

FUNDING OF FOUNDATIONS—ACCOUNTABILITY

Hon. David Tkachuk: Honourable senators, for almost eight years the Auditor General has raised serious concerns about the accountability of foundations, first red-flagging this issue in 1997. In her latest report, we are told that despite some improvements to address accountability issues, overall progress has been "unsatisfactory."

Could the Leader of the Government in the Senate advise as to exactly what policy objectives, other than the accounting outcome, are achieved through most of these foundations that could not be achieved through an arrangement similar to that of the existing arm's-length granting councils such as the Social Sciences and Humanities Research Council?

Some Hon. Senators: Good question.

Hon. Jack Austin (Leader of the Government): I hear honourable senators across the way saying "good question" and I agree with those words.

The funding and accountability of foundations is one of the most important policies of this era. These foundations, as honourable senators know, are not-for-profit organizations. They are designed to direct funds to targeted objectives.

I will take, for example, the Foundation for Innovation, which has received over $3 billion from the Government of Canada targeted to create research capability in our university institutions. Only a short time ago in Canadian political events, we were arguing about a brain drain and the governments of Prime Minister Mulroney and Prime Minister Chrétien were under attack for not taking measures to enhance the attractiveness of research in the Canadian university setting. This foundation was brought into being and funded by the Chrétien government. In the seven or eight years it has been active, the Canadian Foundation for Innovation has created a total change in the capacity of universities across Canada to conduct research. In fact, I am told that Canada is now one of the most attractive countries for researchers and leading academics from around the world in which to work. We have created literally 1,000 or more research centres at universities in this country.

Honourable senators, this is an example of a program that is difficult for the public service to administer. For example, the granting of funds cannot be done by a peer group in the public service. The foundations create boards of directors of peer groups that make professional, non-political judgments on the best merit for the funds employed.

Senator Tkachuk: Honourable senators, I am not arguing the policy objectives that have been established by the government with regard to public policy areas such as research and innovation; I am arguing about the vehicle that the government is using, one which removes the accountability from the Consolidated Revenue Fund. No one knows where the money is being spent. The money does not belong to the government; it belongs to the taxpayers who have entrusted it to the government.

As evidenced by the Gomery commission, when people are given too much power to handle certain matters with no one watching them, problems can happen.

The foundations are not audited by the Auditor General, although the Auditor General says they should be. The government says that subjecting the foundations to the scrutiny of the Auditor General would water down their independence. That is the same argument used for giving out the research grants themselves. Could the Leader of the Government in the Senate explain to senators exactly how such scrutiny would make these foundations less independent?

Senator Austin: Honourable senators, the Auditor General has made comments on the accountability of the foundations, which, as the Honourable Senator Tkachuk has said, led to her recommendation that the Auditor General's office audit them. I want to make it clear that all of these foundations are audited by major private auditing firms. Were the Auditor General to be given the assignment to audit these foundations, they would probably be audited by the same firms reporting to the Auditor General rather than to the boards of directors of these foundations.

However, it is the case that in Budget 2003 the government recognized the Auditor General's then concerns about accountability and transparency and undertook in that budget to take a number of steps. The plans and annual reports of foundations are now reflected in departmental reports on plans and priorities and departmental performance reports. Of course, representatives of these foundations may be called before committees of Parliament, which has occurred.

The Government of Canada is considering the Auditor General's recommendations that have just been tabled and will work with the Auditor General to further improve the overall accountability and transparency of foundations.

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, I want to ensure that I have this perfectly clear. Is the minister of the view that performance audits on the funds in these foundations are a good thing or a bad thing? If they are a good thing, is it the government's policy to see that the audits are done?

Senator Austin: Honourable senators, my view is that performance audits, which are sometimes called "value audits," are a good thing. The foundations commission them from appropriate providers and they are available. The question raised by the Auditor General is whether the Auditor General's office should be responsible for commissioning those performance audits.

Senator Kinsella: Honourable senators, the Auditor General also states:

> Parliament does not have adequate information and assurance on the use of more than $9 billion in public funds already transferred to foundations.

• (1440)

It seems to me that the Auditor General is saying that parliamentarians do not have the data upon which to evaluate whether the public funds that were voted for these foundations are being properly utilized.

Senator Austin: Honourable senators, I should like to consider the text of the Auditor General's report with respect to foundations more closely. These performance audits have been completed and are available to the departments for assessment. They are also available to the Auditor General in her assessment of the work of various departments.

Treasury Board is now requesting that departments approach foundations with a view to incorporating those Budget 2003 requirements in the funding agreements for those foundations.

I would add that, of course, the government controls the mandate and the operations of these foundations through funding agreements. Money is held by these foundations for their specific purposes.

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, in next week's budget the government may well, again, use foundations to burn the annual surplus. We are all awaiting, indeed, anticipating with bated breath that that will occur. Can the Leader of the Government in the Senate assure us that the terms respecting any funds advanced to foundations will fully reflect all of the Auditor General's recommendations for accountability and reporting to Parliament?

I would add that if it is the intention of the government to create more foundations, this would be an ideal opportunity to take, $15 billion or $20 billion of the EI surplus and put it in a foundation at arm's length from the government, thereby assuring Canadians that the money is "safe," by the honourable senator's definition.

Senator Austin: Honourable senators, I will give due consideration to Senator Stratton's recommendation with respect to an EI foundation, but I doubt whether there can be any more surety to its beneficiaries than the balance sheet of the Government of Canada.

Senator Stratton: The funds are in general revenue.

Senator Austin: I would refer to the Standing Committee on Public Accounts of the other chamber, which issued a report on February 8, 2005, on the public accounts, in which it recommended that legislation be amended to allow the Auditor General to conduct value-for-money audits at foundations with assets in excess of $100 million. It may well be that our National Finance Committee would consider a study of the same topic.

AUDITOR GENERAL

POSSIBILITY OF AUDITING CROWN CORPORATIONS

Hon. David Tkachuk: Honourable senators, this is my final question on this topic today. As I understand it, the Auditor General, strangely enough, is not eligible to be appointed an auditor of a foundation, just as the holder of the office is not eligible to be auditor of a Crown corporation. Currently, Bill C-277, a private member's bill, is before the other place and will be voted on at second reading. Passage of that bill would deem the Auditor General to be eligible to audit or to be the joint auditor of all Crown corporations, that is, any entity that receives more than $100 million per year from the federal government and to which the government is able to appoint board members.

Can the Leader of the Government in the Senate advise the Senate whether government members are free to support this bill in the other place and in this place?

Hon. Jack Austin (Leader of the Government): Honourable senators, did I understand Senator Tkachuk to refer to a private member's bill in the other place?

Senator Tkachuk: Is the leader asking me a question?

Senator Austin: I ask only so that I may answer Senator Tkachuk's question.

Senator Tkachuk: Yes, I was.

Senator Austin: At this point, I have no advice to give this chamber on the conduct of private member's business in the other chamber.

FINANCE

FUNDING OF FOUNDATIONS—ACCOUNTABILITY

Hon. Donald H. Oliver: Honourable senators, I have a supplementary on the questions related to foundations.

For the last few weeks, the National Finance Committee in the Senate has been studying foundations as well as issues of accountability and transparency. In his responses to questions on foundations, the Leader of the Government in the Senate has not directly addressed the issue of scrutiny by parliamentarians and by parliamentary committees of the $9.1 billion advanced to foundations in the last 15 years. Could he directly address what new methods will be employed to ensure that Parliament will have access to the books of these foundations?

Hon. Jack Austin (Leader of the Government): Honourable senators, the government is now considering the Auditor General's report and the various recommendations made therein.

I cannot, at this stage, give a comprehensive answer to Senator Oliver because the time for the study process of the Auditor General's recommendations has not yet elapsed.

I would put on the record, however, that the Government of Canada took a number of actions to strengthen the audit and evaluation regime in response to the Office of the Auditor General in her earlier review of the subject. Honourable senators know that this is a reprise of what actions the government has taken since the previous report. To date, many actions have been taken. The submission of annual audited financial statements and the conduct of independent evaluations was always a part of the process of foundations.

New requirements permit the government to conduct compliance audits and evaluations and, as noted in Budget 2003, these can be undertaken internally, externally, or at the discretion of ministers through Order-in-Council by the Auditor General. A number of compliance audits have been conducted, but always by the foundations and to the satisfaction of the government.

Still, an issue that deserves consideration and debate is whether the role of the Auditor General would take away from these foundations a level of independence which their peer-group structure has created for them. That peer-group structure, independent of political process, was seen originally as an essential element of the process. Parliament has specifically reviewed and approved accountability in government arrangements for some foundations, for example, foundations for innovation, scholarships and sustainable development technology, which account for 70 per cent of the funding provided to independent foundations.

The issue is the balance between the desirable independence of these foundations from political influence and public accountability. If Parliament were an instrument of accountability, free of partisan politics, the issue could be dealt with more easily. Do we want to open a door via the Auditor General's recommendation for parliamentary accountability, which would perhaps lead to undermining the merit principle that was established for these foundations?

• (1450)

I say to honourable senators, this is the issue, and it should be examined by our National Finance Committee, which is chaired by Senator Oliver. The issue has been raised directly by the Auditor General's report and will be commented on by the government in due course.

PARLIAMENT

ACCOUNTABILITY OF FOUNDATIONS TO OFFICERS

Hon. Gerald J. Comeau: I was listening carefully to the Leader of the Government in the Senate regarding the government's consideration of the Auditor General's report. I would ask the government leader to consider, with regard to the Auditor General's report, whether it might not be appropriate as well for those foundations to be subject to other officers of Parliament, such as the Commissioner of Official Languages, the Privacy Commissioner of Canada and the Information Commissioner of Canada, given that we must sustain a certain balance between accountability to Parliament and allowing them their independence. In my mind, it would be worth considering having these foundations subject to some of Parliament's other officers.

Hon. Jack Austin (Leader of the Government): Honourable senators, that is a suggestion that deserves very serious attention when the overall question of accountability is raised. Many of these foundations were established to be independent of Parliament and of the rules affecting government agencies and departments. They were set up not as government agencies but as agencies independent of government. In being created to be independent, it also meant that certain rules with respect to bilingualism and other government policies with respect to affirmative action may not apply to some of them. The point is well taken.

FINANCE

CANADA PENSION PLAN— INFLUENCE ON INVESTMENT MARKET

Hon. W. David Angus: Honourable senators, the quantum of Canada's pension plan investment portfolio is growing dramatically and is projected to hit $322 billion in total within 15 years. As I understand the rules, honourable senators, 70 per cent of these assets must be invested in Canada.

Last week, honourable senators, Mr. Don Drummond, the Chief Economist of the TD Bank and previously a very senior official at Finance Canada, raised as a serious concern the possibility that the CPP could end up being the majority shareholder of at least several major Canadian public companies. According to Friday's *The Chronicle-Herald*, a Halifax newspaper, Mr. Drummond said, "...we can't have that — 12 people on a board" — I assume he meant the CPP board — "appointed by politicians, controlling the market."

My question is for the Leader of the Government in the Senate. Has the government considered or is it looking seriously at the long-term implications of the possibility of having the CPP board controlling a major segment of the Canadian public corporate market?

Hon. Jack Austin (Leader of the Government): Honourable senators, I can only reply to the question by saying that I will look into the matter. I was not aware of the statement made by Mr. Drummond. However, there is a document on my desk that I have not had time to look at and I did notice that it referred to the issue the honourable senator is raising.

CANADA PENSION PLAN— LIMIT ON FOREIGN INVESTMENTS

Hon. W. David Angus: Honourable senators, I am sure the Leader of the Government will recall this issue, as he was a member of the Standing Senate Committee on Banking, Trade and Commerce at the time it was discussed in 1998. There are two points I should like to underline.

In the context of the CPP portfolio, Mr. Drummond was concerned about the lack of investment opportunities here in Canada and that a shortage will hurt the potential returns of the fund and, in like manner, the RRSP funds in the portfolios of Canadian people building up their private pensions. In its report, the Banking Committee recommended that the 20 per cent limit be raised to 30 per cent, which, indeed, was subsequently done. At the same time, the committee recommended that the Minister of Finance remove the limit for the Canada Pension Plan investment fund and, more generally, for all investments later on.

Has this government been considering the matter at all and does it intend either to raise the limit above 30 per cent or to remove it entirely?

Hon. Jack Austin (Leader of the Government): Honourable senators, Senator Angus asks very interesting questions, to which I have no answers. The intentions of the government and its policies, I suppose, will be announced in due course. I know we are all looking forward to the budget on February 23, but I have no idea whether any of the honourable senator's questions will be answered in that budget.

Notwithstanding that, following the budget, I think these questions should be pursued by me with the Minister of Finance, and I undertake to do so.

CANADA-UNITED STATES RELATIONS

SOFTWOOD LUMBER AGREEMENT— RETURN OF COUNTERVAILING DUTIES PAID

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate. It relates to the softwood lumber dispute and the Byrd amendment.

For the last several months, the lumber industry has urged the Canadian government to challenge the Byrd amendment, which allows for the distribution of Canadian duties to American complainant companies. In the opinion of the lumber industry, this challenge should go to the United States Court of International Trade.

Could the Leader of the Government in the Senate please tell us his government's intentions with respect to the Byrd amendment, and the softwood lumber dispute in general, where funds will be distributed to these complainant companies?

Hon. Jack Austin (Leader of the Government): Honourable senators, the honourable senator knows as well as I the intricacies of the softwood lumber issue. Honourable senators are aware that the Government of Canada, with the support of the industry, is pursuing what is known as a two-track policy. On the first track, we are pursuing our legal rights under NAFTA and under the World Trade Organization agreements. The second track is a negotiating track with the United States. Canada has been highly successful on track one, and both World Trade Organization panels and NAFTA panels have found that there is no injury occasioned by the Canadian lumber industry to the U.S. lumber industry.

The negotiating track has produced little, if any, useful result, but a meeting has been requested by the new Secretary of Commerce in the United States, which is planned to be held in the next few days. Honourable Jim Peterson, the Minister for International Trade, has responded positively on behalf of the Government of Canada and the industry to that request by the United States to meet.

With respect to the specific question of the Byrd amendment, it is the position of the Government of Canada that it is illegal, as has been found by the World Trade Organization, and that all the funds, some US $4.2 billion, which have been paid by Canadian lumber exporters as duties in order to enter the United States, are due and owing to Canada at this time.

Honourable Senator St. Germain is also fully aware of the lawsuits commenced by the United States lumber industry to set aside NAFTA as unconstitutional, in that U.S. citizens cannot be tried in a court other than a United States court unless there is a constitutional amendment. In other words, they are saying that the Congress and the administration, when NAFTA was entered into, did not have the constitutional right to undertake obligations against American citizens.

• (1500)

That is a most interesting step to be taken by the U.S. lumber industry, and the Canadian government is inquiring of the United States whether it supports that action.

EFFORTS TO IMPROVE RELATIONSHIP

Hon. Gerry St. Germain: Honourable senators, my concern, and I think the concern of many Canadians, is that while the relationship between our two countries has possibly improved slightly, it is not at the point, in any way, shape or form, where some of these disputes will be resolved at the administrative level.

The pine beetle infestation that is hitting British Columbia will exacerbate the situation, because millions of cubic metres of wood that has to be cut down will be coming on the market. Satellite photos show an area the size of New Brunswick that will have to be cut down, either immediately or in the near future, to capitalize on the unfortunate situation that struck British Columbia. The entire economic dynamic of the interior of British Columbia, right up into Alaska, will be changed.

My concern, and the concern of Canadians right across the board, is that the Minister of Foreign Affairs' involvement in the Middle East, for example, is not conducive to improving our relationship with the Americans. The government leader has a bewildered look. There is nothing bewildering about this. This is the view of many in Canada.

What are we doing definitively to improve our relationship with the Americans? I know Minister Peterson personally, and I think he is quite a capable minister. That being said, his attempts will be eroded by actions taken by other ministers that are not conducive to improving our relationship with our largest trading partner, our closest neighbour and our greatest ally.

Hon. Jack Austin (Leader of the Government): Honourable senators, I hope the honourable senator agrees with me that the actions we are facing in the softwood lumber industry by the United States are unwarranted under both NAFTA and the World Trade Organization. There is no legal basis under those agreements or international law for the steps the United States has taken.

What we are looking at, in my view, is congressional support for highly protectionist steps that cannot be justified. When I say "cannot be justified," those are the findings of the World Trade Organization and the NAFTA panels — NAFTA panels, I might add, in which Americans made up a majority. The result of the protectionist steps taken by the United States in this matter is some tension in the Canada-U.S. relationship.

Overall, the relationship is as good as any bilateral relationship in the world. Prime Minister Martin has undertaken positive steps to put the relationship on a friendly and familiar basis, but that has to be consistent with Canadian values. Canadian values do not associate themselves with the steps taken by the United States in Iraq, insofar as military participation by Canada in that action is concerned. Canada's position has no doubt created some negativity in the United States. However, overall, we have a relationship that works brilliantly and is in the best interests of both countries, and that is recognized by both countries.

There has been a proposal, as Senator St. Germain knows, for a heads-of-government meeting in March — the Prime Minister, the President of the United States and the President of Mexico — to talk about a number of issues that relate to the economic relationship. I personally strongly endorse trilateral dialogue as well as bilateral dialogue.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to table two delayed answers to questions: the first raised in the Senate on December 2, 2004, by Senator Kinsella regarding a memorial to victims of the World Trade Center and the government's contribution; and the second raised in the Senate on February 1, 2005, by Senator Carstairs regarding airport security and hiring policy for personnel.

CANADA-UNITED STATES RELATIONS

MEMORIAL TO VICTIMS OF WORLD TRADE CENTER— DONATION BY GOVERNMENT

(Response to question raised by Hon. Noël A. Kinsella on December 2, 2004)

Following the terrorist attack on the World Trade Center on September 11, 2001, Canada demonstrated its solidarity with the victims, including 24 Canadians. We continue to do so through actions in Canada rather than contributing to the memorial in New York.

Immediately following the tragic attacks in the U.S., Canada closed its airspace and coordinated the diversion of approximately 500 aircraft destined for the United States and Canada. From coast to coast, Canadians publicly mourned the death toll from the terrorist attacks. On the National Day of Mourning, September 14, 2001, Canadians demonstrated their solidarity and support for Canada's closest friend, the United States.

Over 100,000 Canadians attended an official memorial ceremony on Ottawa's Parliament Hill. More recently, Prime Minister Martin travelled to Pier 21 on December 1, 2004 with President Bush to pay tribute to the courage and generosity of those in Canada who opened their homes and their hearts to care and comfort thousands of stranded passengers.

Prime Minister Martin affirmed that the events of September 11 redefined many realities and that Canada and the United States would continue to work together in the war on terrorism.

TRANSPORT

AIRPORT SECURITY— HIRING POLICY FOR PERSONNEL

(Response to question raised by Hon. Sharon Carstairs on February 1, 2005)

Canada has a world-class system of background checks for individuals seeking employment within restricted areas at Canada's airports. Since 1986, applicants wishing to obtain a Transportation Security Clearance from Transport Canada have been subject to a rigorous program of background checks to determine whether they pose a threat to transportation security.

We verify the suitability of each applicant with the RCMP and CSIS before issuing a Transportation Security Clearance. A security clearance is required for all individuals prior to the issue of a restricted area pass.

Pursuant to the department's Transportation Security Clearance Program Policy, information provided by an applicant must be adequate, reliable and verifiable covering a period of five years prior to the application being considered. This has been the case since we began issuing Transportation Security Clearances to airport workers.

The responsibility for providing the department with the information required in support of an application for a security clearance rests with the individual applicant. Nevertheless, an applicant who fails to initially provide the required information to the department is not necessarily denied a clearance. In such cases, applicants are advised and can provide additional information. Should applicants subsequently provide the additional information required, they may be granted a clearance.

[*English*]

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, before going to Orders of the Day, I will introduce the visiting pages from the House of Commons. On my left is Lara Kinkartz, of Edmonton, Alberta. Ms. Kinkartz is pursuing her studies at the University of Ottawa's faculty of Social Sciences. Her major is political science.

[*Translation*]

I would also like to introduce Jean-Philippe Perron, from the city of La Prairie, Quebec. He is enrolled in political studies in the Faculty of Social Sciences at the University of Ottawa.

I welcome you to the Senate.

[*English*]

POINT OF ORDER

Hon. John Lynch-Staunton: Honourable senators, I could not be here last Thursday, so this is the first opportunity I have had to raise a point of order touching on how a certain bill was disposed of last Thursday. I am talking about Bill C-14, better known as the Tlicho bill. It was my understanding on Wednesday that the bill was to be reported the following day, Thursday, and that third reading would start today, Tuesday.

Much to my surprise, I read in Hansard over the weekend that the bill was actually reported during Routine Proceedings and then, following a quick discussion involving two or three senators, it was decided to give leave not only to report the bill but to pass it at third reading without any debate.

I have always objected to bills being given accelerated treatment, unless it can be proven that there is an emergency. It was not my understanding that Bill C-14, although wished for by the government, was a priority bill; rather, it was my understanding that Bill C-14 would follow the regular sequence of events. However, for reasons that can be guessed at from reading Hansard, it was decided to proceed expeditiously, to use a polite word, that very day.

I object in particular because this was all done during Routine Proceedings. Usually, if the sponsor of a bill can convince the house that a bill should be disposed of immediately, or the same day, the courtesy extended to the house is "later this day." In that way, any senator who is not aware of a bill being debated on a day other than the one usually scheduled has an opportunity to be alerted and can be in the house when the bill is finally called under Orders of the Day, where legislation properly belongs.

Legislation does not belong in Routine Proceedings. Routine Proceedings are exactly that — they are routine proceedings. Routine Proceedings allow no debate, except in exceptional circumstances, and contain routine business that allows honourable senators, even if they arrive a few minutes after the appointed time, to not be surprised by any events taking place during that period of our proceedings.

In this case, however, something highly irregular, if not a disorder, took place — that is, that a piece of government legislation was given final approval during Routine Proceedings, at a time when debate is not allowed, unless it was thought that, if someone wants to debate the bill, we will do so. That is against the rules.

• (1510)

I will quote what Routine Proceedings are. I have taken one quote from our *Companion to the Rules of the Senate of Canada* discussing rule 23:

> Routine Proceedings may be defined as the business of a basic nature for which a daily period is set aside in the Senate...

To confirm that, our latest authority, Marleau and Monpetit, states at page 365:

> The daily routine of business, commonly referred to as "Routine Proceedings", is a time in the daily schedule when business of a basic nature is considered, providing Members with an opportunity to bring a variety of matters to the attention of the House, generally without debate.

Finally, let me quote from Beauchesne's 6th edition, citation 371(1):

> It is a fundamental rule that, with the exception of certain matters dealt with under Routine Proceedings, no question can be considered by the House unless it has been previously appointed either by a notice or a regular Order of the House.

This procedure was completely neglected last Thursday.

If His Honour entertains this point of order in a written opinion, I would ask him not only to support it but that he give instruction or at least remind this house that there are basic procedures which cannot be violated. One is to dispose of matters which should be on the Order Paper at a time other than when the order is called.

I have made my point but I can go on if any honourable senators have any questions concerning this important matter on how we conduct our business.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I wish to add to the debate and discuss certain conversations that I had with Senator Stratton. We meet every morning to discuss house business and we did discuss that item, among others. We were both surprised at what happened in the afternoon because it was certainly unexpected from our point of view. I understand there were conversations between other senators in the chamber which led to the course of action that we saw take place.

Senator Lynch-Staunton has referred to the rules very knowledgeably and very carefully, but I understand also that the Senate is ultimately the master of its own fate. I understand there was consent to deal with the item at that time, the reason being the presence in the gallery of the Tlicho representatives themselves who wanted to see this happen.

I was as surprised by the course of action as were other senators, but in the final analysis, the Senate is the master of its fate. If consent is given, my understanding is that items can proceed.

The Hon. the Speaker: Are there other honourable senators who wish to participate in the discussion on this point of order?

Senator Lynch-Staunton: Honourable senators, I quite agree that the Senate can give leave to go beyond the standard rules, but there are certain rules we cannot and must not violate, particularly the one regarding the disposal of legislation. It is one thing to want to accelerate the procedure, but to dispose of a bill under a rubric where it does not belong is something else. That is my argument. We cannot move legislation around to suit people in the gallery who want to leave earlier than when the order should be raised. That is the point, not the content of bill, not the fact that people wanted it passed the same day, but how it was passed. To my mind, the procedure was completely irregular, if not in disorder, and should not be repeated.

The Hon. the Speaker: Normally I would hear all honourable senators and give the honourable senator who raised the point of order a final comment.

Senator Robichaud wishes to speak and I will see him, but I will give Senator Lynch-Staunton the final word.

[*Translation*]

Hon. Fernand Robichaud: Honourable senators, I think we should consider the point of order that has just been raised. Adopting a bill hastily may not be the thing to do. However, consent was sought by a senator from the official opposition who had participated in the deliberations in committee. No one in this chamber argued that we should take more time for consideration. The senators present gave leave to proceed to third reading of this bill, which had been awaited for some time by those present in the gallery, who were closely following the debate.

I do not think we committed a serious mistake. We should proceed more slowly in the future. That said, I would not want to see last Thursday's procedure invalidated.

[*English*]

The Hon. the Speaker: Are there other honourable senators who wish to make comments?

Senator Lynch-Staunton: Honourable senators, I insist that while leave can be given to go beyond our rules, certain types of leave cannot be requested. Beauchesne talks about a fundamental rule, and I will repeat it. It states:

> It is a fundamental rule that, with the exception of certain matters dealt with under Routine Proceedings, no question can be considered by the House unless it has been previously appointed either by a notice or a regular Order of the House.

To do otherwise would lead to excessive abuse of the rules. The government could, in the absence of opposition senators, convince its members that a controversial bill on the Order Paper scheduled to be called in perhaps an hour could be called immediately with leave and passed without debate. That is what I fear if we allow this procedure to take place. I am pleading that we be denied the possibility of engaging in those excesses again.

The Hon. the Speaker: I thank honourable senators for interventions on Senator Lynch-Staunton's point of order. He has raised a point important to him and perhaps other honourable senators in that they may have been prevented from participating in debate. I will come back to the house with a written response because of the nature of this matter and will do so at the earliest opportunity.

• (1520)

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Catherine S. Callbeck moved the second reading of Bill C-10, to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts.

She said: Honourable senators, it is a pleasure and an honour to rise to speak on Bill C-10, to amend the Criminal Code (mental disorder) and to make consequential amendments to other acts. Bill C-10 will reform and modernize, but not drastically change, the provisions of the criminal law that govern persons found unfit to stand trial and not criminally responsible on account of mental disorder. These provisions are working well overall and will be further improved by the reforms for which your support is sought.

The old law, that is, the law before 1992, used the term "not guilty by reason of insanity." This term is still used by some in everyday speech, but it is obsolete. The current and modern criminal law refers to persons found not criminally responsible on account of mental disorder and to persons found unfit to stand trial.

Before elaborating on some of the main features of this bill, I would note that crafting criminal law to deal with persons who are mentally ill remains a challenge. Many persons fall through the cracks in our society and, due to a mental illness, may behave in a manner that puts them into conflict with the law. The mentally ill are often stigmatized unnecessarily, assumed to be dangerous and to pose a risk to public safety. This is a stereotype that we should strive to avoid.

Many persons with mental disorders live side by side with us and never come into conflict with the law. Some mentally disordered persons will commit minor or nuisance offences, while others may commit violent offences. Our criminal law must, therefore, provide a range of options for those persons who, due to a mental disorder, come into conflict with the law. The law must also ensure the protection of the public from persons who may be dangerous.

The Supreme Court of Canada has scrutinized Part XX.1 of the Criminal Code — the part that applies to mentally disordered persons — in several recent cases. The Supreme Court noted that the part's twin goals, treatment for the accused and public safety, must be equally respected. The amendments to Bill C-10 aim to address these twin goals.

In 1992, significant reforms were made to modernize the law that governed persons found not guilty by reason of insanity. These 1992 reforms reflected the need to balance the rights of the mentally ill and the protection of the public.

The reforms in Bill C-10 share the same objectives as the 1992 reforms, to provide a modern, fair and effective law that respects both the rights of the mentally ill who come into conflict with the law and the public's right to safety.

Before describing the key features of Bill C-10, some background information may be useful.

It is important that all honourable senators appreciate who is affected by Part XX.1 of the Criminal Code and these amendments. They affect persons accused of crime who are found to be unfit to stand trial and persons who are tried but found not criminally responsible on account of mental disorder. These terms are clearly defined in the Criminal Code, and have been interpreted accordingly in the case law.

The Criminal Code defines "unfit to stand trial" as unable, on account of mental disorder, to conduct a defence or to instruct counsel to do so at any stage of the proceedings before a verdict is rendered. This means that the accused is unable to understand the nature, object or possible consequences of the proceedings, or to communicate with counsel. In other words, at the time of the trial, the accused does not understand what is going on because of a diagnosed mental disorder.

In these circumstances, the trial cannot proceed. Until the accused is found fit and can be tried, the accused will be dealt with by the review board. The review board will determine if the accused can be discharged and under what conditions. The review board will monitor and review the accused's disposition annually or more frequently, if necessary.

In addition, the court must hold an inquiry two years after the verdict of unfitness and every two years thereafter, until the accused is acquitted or tried, to decide whether the Crown has enough evidence to put the accused on trial.

The court may also order treatment for the accused for up to 60 days based on medical evidence that the proposed treatment will make the accused fit to stand trial without risk of harm to the accused, and that without the treatment the accused will likely remain unfit to stand trial. There can be no absolute discharge.

For a verdict of not criminally responsible, which is an exemption from criminal responsibility by reason of mental disorder, it must be shown that the accused was suffering from a mental disorder at the time the offence was committed that rendered him or her incapable of either appreciating the nature and quality of the act or omission, or of knowing that it was wrong. A mental disorder is a "disease of the mind." The trial judge must determine, based on psychiatric evidence, what constitutes a "disease of the mind" or "mental disorder."

When a verdict of not criminally responsible is rendered, the accused will not be sentenced. Rather, the review board, a special tribunal, will impose a disposition in accordance with criteria set out in the Criminal Code. This includes consideration of the mental condition of the accused and public safety concerns. The review board may impose a custodial disposition in a hospital, a conditional disposition, or where the accused does not pose a significant threat, an absolute discharge. The review board will review the disposition annually or more frequently until such time as the accused may be absolutely discharged. Part XX.1 also provides for the applicable procedure and safeguards for the accused, including rights to counsel and rights of appeal.

The significant reforms enacted in 1992 were the subject of a statutorily-required parliamentary review that ultimately took place in 2002. Over 30 stakeholders, including members of the bar, academics, psychiatrists, mental health professionals, service providers and review board administrators, made submissions. The report of the committee from the other place that conducted the review reflects this broad input and careful scrutiny of the current law.

The committee report noted that, overall, the Criminal Code regime was working very well, but could be improved. The committee's conclusions are also consistent with the results of consultations undertaken by the Department of Justice over the last decade with key stakeholders, including provincial attorneys general.

The government tabled a response in November 2002 describing a proposed approach for legislative reforms and non-legislative initiatives.

Bill C-10 reflects the advice and guidance provided by those who have front line experience with the mental disorder provisions in the Criminal Code, and they have shared their expertise with the Department of Justice and the committee.

Honourable senators, Bill C-10 contains 65 clauses. It is a rather large and complex bill and, as such, I will only aim to provide an overview of the bill and some highlights.

The length of the bill is due in part to the fact that the same regime applies to military personnel found unfit or not criminally responsible for offences under the National Defence Act. Clauses 46 to 61 amend the National Defence Act in the same manner as the Criminal Code is amended by Bill C-10.

Some of the length and complexity is also due to the fact that Part XX.1 is a complete code of law and procedure for the mentally disordered accused. An amendment to one provision has an impact on several others, so Bill C-10 includes many consequential amendments.

The main themes of Bill C-10 are: To expand the powers of the review board to enhance its ability to make dispositions; to repeal unproclaimed provisions; to address the situation of the

long term or permanently unfit accused; to address the concerns of victims; to give police more options when they arrest an accused for breach of a disposition order, which in turn gives the accused more options; and to clarify or make housekeeping-type amendments.

With respect to the amendments to expand the powers of the review boards, it is worth recalling that review boards make critical decisions about an accused found not criminally responsible or found unfit to stand trial. The board decides on the disposition and the terms and conditions of the disposition. review boards derive all of their authority from the Criminal Code and must, therefore, ensure they have the tools they need to make these important decisions.

• (1530)

Bill C-10 will make the following essential reforms: Review boards will now have the authority to order an assessment of the mental condition of the accused. Review boards will be able to convene a hearing on their own motion as well as adjourn a hearing for up to 30 days — where, for example, they need to gather more information. Review boards will have the authority to issue a summons or warrant to compel an accused to appear before them. This is particularly important when the accused is on a conditional disposition living in the community and fails to attend to their disposition review hearing. Review boards also will have the authority to extend the annual review up to two years in particular circumstances.

To address the situation of the long-term or permanently unfit to stand trial accused, new provisions will be enacted to permit the courts to determine whether a judicial stay of proceedings should be ordered for an unfit accused who is not likely to ever become fit to stand trial and who does not pose a significant threat to the safety of the public, where a stay is in the interest of the proper administration of justice. The first precondition is that the accused remains unfit and is not likely to ever become fit to stand trial. The court must base its determination of unfitness on clear information. An assessment must be ordered in all cases.

Bill C-10 includes a carefully crafted approach to ensure that a court may grant a judicial stay of proceedings for an unfit accused who is not likely ever to become fit and who is not dangerous, but public safety and other relevant factors must be considered. The need for these amendments was recommended in 2002 and now has been made necessary by the Supreme Court's decision in *Demers*.

This decision confirms the need for amendments to ensure that proceedings can be brought to an end for the permanently unfit, non-dangerous accused. The Supreme Court of Canada struck down key provisions of Part XX.1 as they apply to the permanently unfit. The declaration of invalidity has been suspended until June 2005 to give Parliament an opportunity to amend the Criminal Code. The approach set out in Bill C-10 will ensure a constitutional regime for the permanently unfit accused who is not dangerous.

Bill C-10 also aims to provide a role for victims at review board hearings that is similar but not the same as their role at sentencing hearings. For example, victims will be permitted, in most cases, to read their victim impact statements aloud at disposition hearings where they so choose. Notice will be provided to victims of the hearing as well as relevant Criminal Code provisions in accordance with rules to be developed by the court or review board. Review boards will also be required to provide specific notice to victims, on request, of upcoming hearings that may result in the conditional release of an accused from hospital or in the absolute discharge of the accused. Courts and review boards will also be required to ask whether a victim has been advised of the opportunity to prepare a victim impact statement before the first disposition hearing. At all times, it is the victim's decision whether to submit a victim impact statement. Whether or not the victim reads the statement aloud, the review board is required to consider the statement.

Review boards will also be given the same powers as the court to order a publication ban on the identity of a victim or witness. For sexual offence victims, the ban will be imposed by the board. For other victims and witnesses, the board may receive applications for an order to prohibit publication of the identity of a victim or witness and may make the order where it is necessary for the proper administration of justice. These provisions will mirror those in the Criminal Code that permit the court to order a publication ban and the application process and factors to be considered will be same.

Honourable senators, the amendments included in Bill C-10 will enhance the role of victims of crime where the accused has been found not criminally responsible. To the greatest extent possible, Bill C-10 includes provisions for victims that parallel Criminal Code provisions that apply where the accused is convicted and sentenced. However, the new provisions for victims fully respect the differences between the law that governs persons who are criminally responsible and convicted and sentenced and those who are not criminally responsible. While the provisions are similar, they are not identical.

Bill C-10 will also result in simpler processes to permit the safe and efficient transfer from one province or territory to another of a person found not criminally responsible on account of mental disorder or unfitness.

Bill C-10 also addresses concerns raised about ensuring that orders made by review boards and courts are respected and can be enforced effectively. More options will be available for the police to enforce disposition orders and assessment orders that take into account the need for the accused's treatment to continue.

For example, where the police arrest an accused who is in breach of a disposition order, such as where the accused is not reporting to their physician or hospital or attending treatment or training, or the accused travels outside any geographical limitations, they may issue a summons or an appearance notice to the accused. The police may simply return the accused to his place of residence, which may be a hospital, and the accused will appear in court when required. This option will permit the accused to continue with any treatment or routine and avoid an unnecessary jail lockup.

The police will not release the accused or return the accused to his or her residence if detention is necessary — for example, to determine identity or prevent the commission of an offence, or where the terms and conditions of the accused's disposition need to be confirmed.

To ensure that the law is clear and up to date, the provisions of the 1991 law that were never proclaimed — namely, capping and the related dangerous mentally disordered accused provisions and the hospital orders provisions — will be repealed.

Finally, Bill C-10 includes several clarifying and procedural amendments that will be made to address redundant or confusing provisions and to ensure the effective application of the goals of the law. For example, amendments will delete confusing wording that suggests that a disposition can expire. The Criminal Code clearly provides that a disposition remains in effect until a subsequent disposition is made.

The provisions of Part XX.1 of the Criminal Code have remained unchanged since 1992, but the case law has evolved and new issues have emerged. Bill C-10 addresses the evolution of the law and emerging issues.

I have touched on the key parts of this lengthy and seemingly complex bill. The Senate committee review will permit more in-depth examination and will demystify some of the complexity. Honourable senators, Bill C-10 is the next step in modernizing the law that governs mentally disordered accused persons. Canada continues to be a leader in providing a fair and effective approach that permits both rehabilitation and treatment and protects public safety. The amendments in Bill C-10 demonstrate once again our leadership in legislating for the 21st century.

I encourage all honourable senators to support the bill.

On motion of Senator Andreychuk, debate adjourned.

• (1540)

FIRST NATIONS FISCAL AND STATISTICAL MANAGEMENT BILL

SECOND READING—DEBATE ADJOURNED

Hon. Ross Fitzpatrick moved second reading of Bill C-20, 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.

He said: Honourable senators, I rise to address the Senate at second reading of Bill C-20, the First Nations fiscal and statistical management bill. I am very pleased to be bringing such an important and long-awaited bill before the Senate. The proposed legislation was initiated by First Nations and its development has been led by First Nations.

Bill C-20 builds on 15 years of experience acquired by those First Nations who have developed real property taxation laws pursuant to section 83 of the Indian Act. Today, more than 100 First Nations have made such laws and 30 more are preparing to do so.

This initiative will strengthen the First Nation real property tax regime so it may better serve as a vehicle for economic growth. It will provide the transparency and certainty sought by potential investors. It will streamline tax administration and improve the return on tax dollars.

Honourable senators, I believe that we all agree that we want to improve the quality of life in First Nations communities. A number of steps have been taken over the past few years to begin removing barriers to First Nations' economic progress, self-reliance, and self-government, but much more is needed. The Indian Act does not provide First Nations with sufficient opportunities to help their economies grow. First Nations communities lack the legal and institutional frameworks that other governments in Canada take for granted. Such frameworks underpin the building of economic relationships. They help communities to work with the financial and commercial sectors and to build the infrastructure that supports business development and improves the quality of life. Such infrastructure includes improved roads, water distribution systems, and sewage systems to support residential subdivisions, commercial development and industrial parks. This legislation would provide First Nations with the tools necessary for attracting investment, developing needed infrastructure and improving employment opportunities, all of which will lead to a better quality of life on the reserve.

Honourable senators, rather than wait for government, certain First Nation leaders looked toward the future and took it upon themselves to develop and propose solutions to strengthen their economies. They did so for their economies and their communities to pave the way for other First Nations that might wish to participate.

The First Nation proponents of this bill have invested significant time and energy to advance their vision of a new future for their communities. They have consulted with the financial and commercial sectors to better understand what steps must be taken and, as a result, several years ago they came to the federal government seeking the necessary legislative changes.

Bill C-20 is a lengthy and technically complex bill, and I cannot hope to address all of its provisions in the time I have today. However, I would like to review the key elements.

First Nations will have the opportunity to implement property tax systems under the provisions of Bill C-20 or, if they are already taxing under the Indian Act, the opportunity to move these existing property tax regimes under the bill. However, First Nations may decide to continue or commence taxing under the Indian Act. It is their choice. This bill, however, provides for a more transparent property tax system than that which exists in the Indian Act, with specific provisions dealing with property assessment and the development of rate-setting and expenditure laws, all of which provide clarity and consistency while reconciling the interests of First Nations governments with those of their taxpayers.

Under Bill C-20, taxpayers will be able to play a larger role in policy development through the appointment of three taxpayers to the 10-member tax commission. They will also benefit from an improved system for hearing appeals and resolving disputes. Bill C-20 provides for the evolution of the existing Indian Taxation Advisory Board into the First Nations tax commission. The commission will build on the work of the board, which has helped First Nations enter the field of property taxation since 1989. I should note that those First Nations are now collectively raising more than $44 million annually in tax revenue.

This proposed legislation will create a First Nations finance authority. Through the work of this institution, First Nations, like other local governments in Canada, will have access to private capital raised through the bond markets. It is anticipated that this access will allow participating First Nation governments to raise $125 million of long-term private capital over the first five bond issues at rates of 30 per cent to 50 per cent lower than at present. This will enable the construction or improvement of roads, sewers, water and other types of infrastructure.

First Nations access to private capital through the bond market will enable them to more effectively participate in the economic mainstream and realize a better return on tax dollars. The First Nations finance authority is modelled on, and was developed with, the assistance of the Municipal Finance Authority of British Columbia, which has 30 years experience and a Triple-A credit rating.

The third institution, the First Nations financial management board, will offer a full range of services to support the financial management capacity of First Nations. These services are available not only to those First Nations whose names appear in the schedule to the bill but also to any First Nation that wishes to use them. Not only will the financial management board support the financial dimensions of the property taxation and borrowing regimes established by the bill, it will also be able to assist any First Nation in the development of financial administration laws to ensure that rigorous financial management systems and procedures are in place to inspire and maintain investor confidence.

Many First Nations, particularly from among the 100 or so that already have property taxation systems in place, may be quick to opt into the borrowing regime and other services provided through Bill C-20. However, honourable senators, other First Nations may take more time to take up these opportunities and still others may decline them outright. Participation in the taxing and borrowing regimes of the bill is completely optional.

The fourth institute established by Bill C-20 is the First Nations statistical institute. One of the main roles of the institute will be to provide the statistics necessary to support debentures and greater investment on reserve lands. Another key role is to address the current gap in reliable data targeted toward analysis of the social and economic well-being of First Nations and their populations. Good quality information is needed to support First Nation decision-making and the development of effective policies and programs for First Nations. To this end, the statistical institute will work with First Nations, federal departments, Statistics Canada and provincial statistical agencies to help First Nations meet their information needs while, at the same time, supporting the coordinated collection and analysis of the data required to support effective Canada-First Nations relationships.

As you can see, honourable senators, each of these institutions — the tax commission, the finance authority, the financial management board and the statistical institute — has a unique, independent and professional role.

• (1550)

Honourable senators, it was almost a year ago that I had the privilege to speak at second reading of Bill C-11, the Westbank First Nations Self-government Agreement. At that time, I was proud to support a bill to help a First Nation move closer to realizing its potential and fulfilling its dreams of economic self-sufficiency and stability. Today, I am equally privileged and proud to proclaim the merits of Bill C-20, which I view as another step along the path to achieving a model of economic independence for First Nations.

I would like to say how pleased I am — and I am sure my honourable colleague Senator St. Germain agrees — that the initiative for this bill came from our home province of British Columbia. In particular, I would like to recognize the contribution of Manny Jewels, a former chief of the Kamloops Indian Band, who is with us today in the gallery and who is an active life-long advocate of First Nations' economic self-sufficiency. Manny has dedicated over 30 years of his life to public service in support of Aboriginal causes. He follows in the footsteps of his father and father's father, who together devoted more than 50 years of their lives to advance Aboriginal issues.

Honourable senators, I want to conclude my remarks with this thought: Economic development is an important element in the road to self-sufficiency. This is a path that must be travelled by First Nations to improve their quality of life. Many First Nations have begun this journey but have encountered obstacles that we can help them to remove. First Nations cannot succeed with their hands tied. Together, we can change the future.

Honourable senators, this is an important piece of legislation for First Nations. It will put the practical tools needed to foster a business-friendly environment, investor confidence and economic growth in the hands of First Nations. It will permit them to follow their own path in their own time and in their own way. I urge all honourable senators to support this important bill.

Hon. Gerry St. Germain: I have a question, honourable senators.

I would like to compliment the honourable senator. We have taken it upon ourselves to work together on some of these initiatives, parking our partisanship, if you can believe that. We parked it, although it will be only on these files, I think.

My honourable friend said that the bill is optional. Is it fully optional to our Aboriginal peoples? I ask this question for a particular reason. We may have to find this answer in committee. I am not trying to stump the senator.

I was told that certain First Nations oppose this legislation. Have there been changes in the other place, amendments to the legislation, that have changed that dynamic? I understand there were First Nations from Ontario and Quebec that were opposed. All senators should be aware of that opposition. Perhaps my friend can clarify that matter.

Senator Fitzpatrick: This bill was introduced on three different occasions in the other place. The previous bills did not provide the opportunity for First Nations bands to opt in or out. This bill, which was amended from the previous bills, does provide that opportunity. I think there was some opposition to the previous bills because it was not optional, but I understand that this bill cures that problem.

On motion of Senator St. Germain, debate adjourned.

STUDY ON STATE OF HEALTH CARE SYSTEM

SECOND INTERIM REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the fourth report (second interim) of the Standing Senate Committee on Social Affairs, Science and Technology entitled: *Mental Health Policies and Programs in Selected Countries*, tabled in the Senate on November 23, 2004.—(*Honourable Senator Kirby*)

Hon. Marjory LeBreton: Honourable senators, I am pleased today to offer a few brief remarks on the recent reports of the Standing Senate Committee on Social Affairs, Science and Technology. As you have heard, three committee reports examined mental health, mental illness and addictions.

Sadly, these issues have all too often been relegated to the background of society, kept hidden by shame and stigma. This is something that must never happen again and must never again be tolerated.

Mental illness is just that, an illness. It should be treated like any other illness. When people are suffering from cancer or heart disease, they are treated with care and respect, and they and their families are not forced by the stigma of society to speak in hushed tones. "Do not tell anyone that my father or my mother or another family member is very sick with heart disease or cancer. I do not want anyone to know of this illness in our family." We would never hear words like that with an illness like cancer or heart disease, but we certainly do hear it when it comes to mental illness. We owe it to those who suffer from mental illness to do everything possible to correct this and to address the lack of support offered to people with mental health problems in terms of treatment and attitude.

Although actual numbers are difficult to verify because so many people still do not report mental illness, it is believed that one in five Canadians will be affected by mental illness in their lifetime. Canadians will be surprised to learn about the fractured state of the delivery of mental health care in our country. Those who have to seek treatment know the truth. Assistance is hard to ask for, initially, and it can be equally hard to find.

The first committee report looks into the current states of affairs and finds an uncoordinated system with a chronic shortage of psychiatrists, social workers and other care providers. It is also surprising to note that Canada, with all of its advances in science and health and our acknowledged good living conditions, does not have a national mental health strategy. In fact, we are the only G8 country without one. We have fallen far behind in this respect, and this must change.

There is much to be learned from other countries in how they deliver mental health services, how they raise public awareness and, most important, how this has directly impacted the stigma issue in a very positive manner in those countries.

• (1600)

I encourage all honourable senators to look at the committee's reports and in particular to read the testimony of people whose lives have been forever changed by mental illness, either through the suffering of a loved one or their own personal battle.

The work of the committee is onerous. Members of the committee are conducting the first of a series of cross-country hearings on this issue as we speak. It is the intention of the committee to lay out a national strategy for all governments to improve the mental health system for all Canadians. It is an undertaking, honourable senators, that is long overdue and, it is hoped, one that will be of benefit to the many people across our country, young and old, who struggle daily with mental illness and addiction. Indeed, as senators, we owe it to them.

One of the interesting facts that became apparent on our committee, and Senator Kirby has mentioned this many times, is that every single member of the committee has a family member who is suffering from some form of mental illness or has a mental health problem. We all knew of family members' other problems, such as heart attacks and cancer, but none of us knew about the mental illnesses of family members of fellow senators on the committee. If that is indicative of Canadian society, honourable senators know how serious the problem is.

On motion of Senator Rompkey, debate adjourned.

The Senate adjourned until Wednesday, February 16, 2005, at 1:30 p.m.

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