CANADA

Debates of the Senate

1st SESSION • 38th PARLIAMENT • VOLUME 142 • NUMBER 56

OFFICIAL REPORT
(HANSARD)

Thursday, May 5, 2005

THE HONOURABLE DANIEL HAYS
SPEAKER

CONTENTS

Debates and Publications: Chambers Building, Room 943, Tel. 996-0193

Published by the Senate
Available from PWGSC – Publishing and Depository Services, Ottawa, Ontario K1A 0S5.
Also available on the Internet: http://www.parl.gc.ca

THE SENATE

Thursday, May 5, 2005

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

Prayers.

SENATORS' STATEMENTS

VICTORY IN EUROPE DAY

SIXTIETH ANNIVERSARY

Hon. Jack Austin (Leader of the Government): Honourable senators, statements today will focus on the sixtieth anniversary of Victory in Europe Day, VE Day as it is popularly known.

Honourable senators, we are all undoubtedly aware that this year, 2005, is the Year of the Veteran in Canada. The Senate of Canada has a long record of support for and special interest in our veterans. We are reminded every day of the true costs of war as we work under the shadow of the paintings that hang on the walls of this chamber, each one depicting an aspect of life and death in wartime.

Senators have been defenders of veterans' interests even through long periods when they were almost forgotten by the public at large. Many Canadians need to be reminded that, while we are a peaceable kingdom, when called to war Canadians have taken second place to none.

I, together with many other Canadians, hold much gratitude and appreciation for the work of our Senate colleagues, past and present, on behalf of our veterans.

This Sunday, May 8, celebrations across Canada and in the Kingdom of the Netherlands will mark the sixtieth anniversary of Victory in Europe Day. Many of us remember that day in 1945 when it seemed to everyone that the world had changed. We anticipated a future of freedom and prosperity for ourselves and particularly for all Europeans, who suffered on a scale we have never experienced in our country.

We know now that the fight for freedom and prosperity in the world is an unending one. Canada has always been at the forefront of the battle for fundamental human rights, and we expect that future generations of Canadians will remain leaders in this global struggle.

This week we look at what previous generations of Canadian men and women have contributed to our lives today and how they shaped some remarkable times in world history. There are places across this vast country where one cannot travel a few miles without noticing yet another war monument to the local men who died in battle.

The war monuments in our big cities are regal and impressive, but it is in the smaller rural communities where the size of their sacrifice is made clear. The loss of five or 10 men and women can change the history of a small community. Canada's landscape has been forever affected by the losses we have suffered in military campaigns. Their sacrifice will remain with us as we celebrate the legacy they have left all of Europe and the world.

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, this Sunday, May 8, the sixtieth anniversary of VE Day, as mentioned by Senator Austin, is the day that victory in Europe was declared, a day that is forever engraved in the minds and hearts of those who survived.

Remembrance Day is the day when we mourn the loss of some 45,000 Canadian lives during the course of World War II. Victory in Europe Day, however, is the day when we celebrate. We celebrate the end of the war in Europe, the day when the unconditional surrender of Germany, signed at Reims on May 7, was ratified in Berlin.

As I approach the Parliament Buildings in Ottawa at this time of the year, the tulips are a vivid reminder that our losses are still understood and appreciated. Canada as a nation sacrificed a great deal. All those involved sacrificed a great deal, but the tulips are also a reminder of the good things that have come out of the devastation. Our nation also gained a steadfast friend in the Netherlands, a nation which honours to this day those who came to their aid and brought freedom from our shores to theirs. Canadians who travel to Europe to this day find that they are most warmly welcomed in Holland.

It is thus particularly appropriate that on this important sixtieth anniversary it is in Holland that veterans and their descendants have gathered. They are there to remember the perilous times preceding VE Day and to celebrate the end of that terrible tragedy of war in Europe.

• (1340)

Even today, 60 years later, the memories of that bittersweet time bring tears to the eyes of those who were present. Poignant stories still abound, with many being recounted at these gatherings. The passage of time diminishes the numbers of those who are able to give a firsthand account, and it is thus all the more important that we take heed of their recollections. I do not think there are any who would want their children, grandchildren or great grandchildren to experience firsthand what they experienced.

The luckiest of the survivors were able to pick up their lives where they had left off. Some went home to children they had never met. Some returned with new brides and new families. Many were not so fortunate.

On this day, let us remember both the good and the bad. Let us remember not just what actually happened, but what could have happened had we been less vigilant. Let us remember and take joy in the tulips.

The Hon. the Speaker: Honourable senators, before going to Senator Day, I advise that I have received from Senator Losier-Cool, Chief Government Whip in the Senate, a letter pursuant to rule 22(7) requesting that the time for Senators' Statements be extended today for a further 15 minutes.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

[*Translation*]

Hon. Joseph A. Day: Honourable senators, it is an honour for me to pay tribute to the men and women who sacrificed their lives in the name of freedom. We regained some of that freedom 60 years ago on this very day, May 5, 1945, when German forces in the Netherlands surrendered en masse to the Canadian Forces.

[*English*]

Another major event occurred early in the morning of Monday, May 7, 1945, when German military representatives signed an unconditional surrender. Allied military operations came to an end almost immediately after the surrender was signed, and VE Day was celebrated throughout Canada and the Allied nations on May 8, 1945, 60 years ago.

In recognition of the efforts that led to the pronouncements of peace on May 8 and later on August 15, 1945, at the end of hostilities involving Japan, our Minister of Veterans Affairs, the Honourable Albina Guarnieri, declared that 2005 would be "The Year of the Veteran."

Throughout the year, a number of events will take place to honour our veterans, but the events happening this week are very special. They are special because we are taking the time to remind ourselves just how precious peace is, how costly peace can be to attain once it has been lost, and therefore how important it is to do our part to help maintain that peace.

The Netherlands was overrun by the Nazis in just five days in May of 1940. What took five days to perform as an act of aggression by Nazi Germany took five years to reclaim through Allied effort. This Allied effort to liberate the Netherlands cost the lives of more than 7,600 Canadians, and the people of the Netherlands have been overwhelmingly grateful to Canadians for our effort since that time.

Senator Meighen, Chair of the Subcommittee on Veterans Affairs, as well as other honourable senators have been in Holland this week helping many Canadian veterans commemorate the liberation of the Netherlands.

This very day marks the sixtieth anniversary of the success of that liberation effort. Our Prime Minister and other federal party leaders will be joining the over 300,000 Dutch and Canadians in ceremonies of remembrance this weekend, highlighted by a parade through Apeldoorn on May 8.

On an earlier occasion, honourable senators, I had the honour and the moving experience of visiting with Canadian soldiers at the Canadian War Cemetery at Groesbeek, in Holland, where over 3,000 Canadian soldiers lie buried under the inscription, "We live in the hearts of friends for whom we died."

The citizens of the Netherlands have not forgotten the sacrifice made by Canadians and we should not either. At home, as part of the effort to remember their fallen comrades, over 4,000 veterans are expected to attend the opening of the new Canadian War Museum as the first guests of honour. It is dedicated to the education, preservation and remembrance of Canada's rich military history. I am confident that the museum will increase awareness and understanding of the role that Canada has played and continues to play in helping to preserve world peace. I encourage all honourable senators to visit this new wonderful facility and to take the time to honour all our veterans.

[*Translation*]

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, as we get ready to commemorate VE Day and the sacrifice made by Canadians and all our allies, allow me to quote the headlines that made the news on that historic day.

[*English*]

Honourable senators, VE Day is upon us and the incredible sacrifice of Canadians and our Allies is recalled. I would like to give you a flavour of that day through the newspapers.

Imagine waking up on Monday, May 7, 1945, and reading the *Toronto Evening Telegram* over breakfast and coffee. The headline on that day read:

> It's All Over! Nazis Give Up.

Directly below, while giving a well-deserved salute to British Commonwealth troops, was our King, George VI, with a caption below that read:

> Send him victorious,
> Happy and glorious,
> Long to reign over us,
> God save the King!

That was a King who went ashore shortly after D-Day to visit Canadian and Commonwealth troops at great personal risk, a King whose home was bombed by the Nazis, a King who, with his Queen, refused to leave London during the Blitz.

Other headlines in columns left to right included:

> Word Flashed at 9:36 a.m. That All Nazis Surrendered at Eisenhower Headquarters: Germans Earlier Today "We Have Succumbed" — Norway Yielded, U-Boats Quit, Then All Others Gave up Unconditionally to End History's Greatest War.

There is a description of how the end of the war in Europe came, entitled "How News Of Surrender Came In." There were, after all, no television networks to broadcast around the globe.

Another headline talks of "Open Italian Ports For Allied Shipping: Enemy Craft Surrender in Adriatic — Many Naval Prisoners Taken."

Canada's First Canadian Army General Officer Commanding, General Harry Crerar, in another article tells his story, "Canada's Future Yours...As Home-Coming Looms," after six years of war.

Right next to this hopeful report is more war news that "Hitler decided to take Own Life," as was said in a Japanese broadcast, and a rumour that Goebbels had been found.

Directly on the far right hand of the page is a headline that reads, "Gala Fete Sweeps Toronto as Joyous News is Broken But There is Sorrow, Too: One of the First Reactions is Sobering Thought of 35,000 Canadians who Have Given Their Lives — Office Workers Jam Downtown Streets and Motor Horns Add to Din."

Sadly, honourable senators, not all news was so celebratory, with Halifax experiencing the start of the VE Day riots on May 8.

Last, but not least, in a foreshadowing of what was to come with the descent of an iron curtain over Europe, is a small article at the bottom of the page that read, "Official News Is Held Back: Report Stalin Not Ready" to tell his nation.

The Hon. the Speaker: Senator Stratton, I am sorry, but your three minutes have expired.

[*Translation*]

Hon. Roméo Antonius Dallaire: Honourable senators, today we are celebrating, 60 years later, the liberation of a country that was under the oppression of dictatorship and Nazism. Some 60 years ago, my father, Warrant Officer Roméo Dallaire, and my father-in-law, Lieutenant-Colonel Guy Roberge, fought in Holland and were able to celebrate the liberation and victory on May 5.

• (1350)

One year later, in 1946, I was born in the village of Denekamp, Holland, to a Dutch mother from Eindhoven. That is where my parents met in the winter of 1944-45, when the Canadian army had asked the Dutch to take in soldiers and shelter them from the harsh winter weather.

[*English*]

In December 1946, with many Dutch war brides and their children, we arrived at Pier 21 in Halifax off a Red Cross ship, and were immediately transported on to a Red Cross train that made its way across this country, stopping in towns and hamlets, letting off these young families to take root here in this magnificent country of ours. In my case, my father was waiting for us in Lévis in the middle of a blistering snowstorm and, although the train was late, he was feeling absolutely no pain.

Today, my daughter serves as a leading seaman in the Naval Reserve. She participated in the Parade of Veterans in Apeldoorn today, proudly representing her two grandfathers who fought in that great war, the Second World War, and participated in the actions that led to the liberation of Holland and, ultimately, to victory. We received a call from her last night — it was 5:30 a.m. there — telling us that they were still preparing their uniforms and anticipating hearing exciting great war stories at the parties that will be held tonight.

The Dutch side of my family has been most supportive of my father, myself and my children, who have continued to serve in the Canadian Forces, in both the army and the navy. My eldest son, a captain, will be participating in the parading of the guard this summer in Ottawa and I, of course, will be an observer. My youngest son is an army recruit in Saint-Jean-sur-Richelieu.

In 1974, I commanded the Canadian contingent that went to the annual Nijmegen marches, a series of four days of marching 40 kilometres a day, commemorating a great historic battle of that region in the 17th and 18th centuries. Armies from all over the world parade there and stop at a Canadian cemetery called Groesbeek.

Honourable senators, 2,651 Canadians are buried in Groesbeek; some were as young as 16 years old. They died as they fought in the last days of the war, fighting their way across the Rhine into Germany. Soldiers throughout time go and pay their respects to their fallen comrades. Military personnel are well aware of the unlimited liability they face in committing themselves to their nations, as their nations commit them to missions around the world.

The Hon. the Speaker: Senator Dallaire, I regret to inform you that your three minutes have expired.

Hon. Gerald J. Comeau: Honourable senators, May 8, 1945 is Victory in Europe Day, or VE Day as we call it, the day the Nazi government of Admiral Karl Donitz fell in Europe.

Sixty years ago, one of the most brutal episodes in modern history, the era of Nazi Germany, finally came to an end. Canada's army, Royal Canadian Navy and Royal Canadian Air Force played a vital role in ending Hitler's tyranny in Europe and his threat to the civilized world.

The Royal Canadian Navy, the third largest navy in the world, swept the seas of the U-boat menace. The Royal Canadian Navy was an awesome force of escort aircraft carriers, cruisers, destroyers, frigates, corvettes and smaller craft, over 900 ships strong, some 375 being warships that battled the Nazi grip on the Atlantic Ocean along with Britain and the United States.

So great was Canada's contribution to the Battle of the Atlantic, a battle that had to be won prior to achieving victory in Europe, that a distinguished Canadian, Admiral L.W. Murray, was made Allied Commander-in-Chief of all naval forces in the Canadian northwest Atlantic, the only Canadian to hold such a high strategic wartime command.

The First Canadian Army, the largest field force ever sent abroad by Canada, had in six years of the Second World War swept through Sicily, the Italian "boot," Normandy and northwest Europe, ending most notably with the clearing and liberation of the Netherlands. The First Canadian Army, some three infantry divisions, two armoured divisions and two independent armoured brigades strong, had wrestled the Nazi troops from their defence lines and thrown them back into Germany, saving the Dutch people from starvation and freeing their nation.

The Royal Canadian Air Force, the fourth largest air force in the world at the end of the Second World War, gave our sea and land forces the strategic freedom of movement that allowed the war in Europe to be won.

Sadly for many families in Canada, there was a great cost of sacrifice for victory in Europe. The Battle of the Atlantic cost Canada 24 ships and 2,024 men. The battle for Sicily cost Canada 562 men killed in action and 2,258 wounded. Some 92,757 Canadian soldiers served in Italy after the German collapse in Sicily; one in four became a casualty. To be there was to be brave: 5,399 killed in action; 365 killed in theatre due to other causes; 1,004 captured; and 19,486 wounded. Normandy and the northwest Europe campaign cost Canada another 44,339 casualties, of which some 11,336 officers and men were killed. Lastly, Canada's famous No. 6 Bomber Group flew 41,000 missions over Europe, dropped 126,000 tonnes of bombs, lost 814 aircraft and saw 3,500 air crew killed in action.

Today, we honour the bravery of our military forces, as well as those of our allies, and celebrate the final victory in Europe.

Hon. Tommy Banks: Honourable senators, the words that appear on the monuments to which honourable senators have referred are almost always "lest we forget;" but we do forget. In fact, the first thing that is forgotten by a nation such as ours that cherishes peace, does not have imperial ambitions and regards itself as not belligerent, is that when it comes down to it, and sometimes it comes down to it, one thing and one thing only stands between us and the loss of our most precious possession — our right to self-determination.

When we are not tested, we tend to think that that right is the natural state of things, that it is ours by some divine right and that we own it; but we do not own it. It is lent to us on the most tenuous conditions. It is mortgaged to us, and it is a mortgage on which there will never be a final payment. There is only the most recent payment.

These payments are not made in nice, neat increments. The size and nature of them is not determined in advance. The events that we recognize this week were part of the events that brought to an end one segment at least of the largest such payment, the most burdensome such payment, the most difficult and costly such payment that we have ever made.

In that conflict, hundreds of thousands of Canadians placed themselves in mortal danger, and knew that they were doing so, in order to face up to the greatest force that the world had ever seen, which was bent — because it was directed by distilled evil — on destroying large parts of what we have come to call western civilization. They did not do so naively, because the Great War had preceded that one by scarcely 20 years. They knew what they were getting themselves into. They knew what they had to stand against, and they did it.

It is to those hundreds of thousands of Canadians, particularly to those who died, but also to those who were prepared to die, that we owe the fact that we stand here today speaking the languages that we speak, saying the things that we say, making the decisions that we make and having the freedom all across this country to do so. It is to those hundreds of thousands of Canadians, all those who went before, all those who are serving now, and all those who will come later, that we owe our greatest gratitude and our ever insufficient thanks.

• (1400)

Hon. Senators: Hear, hear!

Hon. W. David Angus: Honourable senators, as we all know, May 8 is the sixtieth anniversary of the victory in Europe for Canada and our Allies. In many places around the world today, celebrations are taking place and people are remembering, just as Senator Banks has so articulately outlined. It is difficult for us to imagine just what it was like for all those men and women who were able to experience the emotion and celebration of the end of the war in Europe firsthand. These young Canadian men and women had left their homes and their families to fight for those basic and wonderful values that we as Canadians all cherish and believe in.

Our military personnel did not go to war to fight for power, influence or territory. Our soldiers travelled across the sea for a completely different reason. Canadians engaged in World War II to stop aggressive and misguided nations from undermining the fundamental pillars of our way of life: freedom justice and peace. These people came from all across Canada and from all walks of our life. There were teachers, farmers, musicians, businessmen and professionals, to mention just a few of the vocations that our valiant soldiers were drawn from. Regardless of their diverse backgrounds, these Canadians bonded together in adversity. They ventured overseas with one goal in common — the preservation of freedom, justice and peace.

On May 8, 1945, the war was over in Europe. After years of perseverance and sacrifice, the brave Allied Forces had finally overcome. The war was over and they were victorious. Now that the war was over, these men and women, who had so honourably served our nation, could come home, and they could celebrate with their loved ones and their fellow Canadians.

Sixty years later, in 2005, we still celebrate this signal accomplishment, and 60 years from now, let us all hope, we will still be doing the same thing and with equal, if not greater, enthusiasm. Today, there are those who suggest that freedom is something we take for granted. Since freedom is something that is part of our everyday life, there is perhaps a tendency to forget that

without the gallant heroism of our World War II soldiers the fundamental freedoms we experience and share today would not exist. We derive great pride from the fact that Canadians continue to uphold these same cherished freedoms in our continuing missions abroad.

Honourable senators, let us never forget those who have so bravely upheld our values on the battlefields of Europe, as well as those who continue the noble pursuit of freedom, justice and peace.

Hon. Terry M. Mercer: Honourable senators, as we celebrate Victory in Europe Day, we honour the men and women who have contributed so much to the freedom and safety of Canada. After six years of misery, suffering and courage that was World War II, VE Day marked the formal end of the war. We remember this occasion with heavy hearts, but also with pride.

This past Sunday, I was indeed privileged to attend a ceremony honouring the Battle of the Atlantic, which lasted the duration of the war. The support that all Canadians provided during the Battle of the Atlantic was given with courage and dedication, but at a great price. Approximately 2,000 members of the Royal Canadian Navy died during the battle, and 24 vessels were lost. Our merchant mariners also suffered great losses, as approximately 16,000 died at sea during the war. Seven hundred and fifty-two members of the Royal Canadian Air Force died in maritime operations as a result of enemy action. We must also remember that many other Canadians whose names are unknown were also lost.

Honourable senators, one of Canada's veterans was my father, who served as a chief petty officer in the Royal Canadian Navy. In fact, he and his shipmates captured an enemy U-boat off the coast of Nova Scotia when World War II was coming to an end. I will always remember my father's stories about the camaraderie and dedication that all of his comrades shared in the fight for freedom.

Honourable senators, VE Day is our opportunity to remember those who served to protect Canada from all threats. We remember their efforts with dignity and at the same time celebrate their memory. We will remember them.

[*Translation*]

Hon. Lucie Pépin: Honourable senators, I would like to join with my colleagues in paying tribute to the over 4,000 nursing sisters who served in the Second World War.

During the course of this war, these heroines aged between 24 and 26, served their country with steadfast courage. These brave women, commissioned officers, contributed in their own way to the liberation of Europe. Following training in Canada, many of them braved the German submarine fleet, which was plying the Atlantic, to find themselves in the battlefields of Dieppe, Sicily, the Italian peninsula, North Africa, Normandy, Belgium and the Netherlands. Working as well in the navy, the army and the air force, nursing sisters cared for wounded soldiers and comforted them.

The medical units to which they were assigned were often located in evacuation stations right near the front, where they risked being killed at any time. These nurses also participated in air-sea rescue missions and worked in hospital units as physiotherapists, occupational therapists, dieticians and visiting nurses. They were on board ship, on hospital trains and on flights carrying the wounded to their destinations throughout Canada.

They became true angels of mercy. Veterans never forgot these women in their distinctive uniforms and white caps, whom they called "sister" or "nurse."

Following their victory in Europe on May 8, 1945, the medical units were disbanded, and a number of nurses remained in Europe to look after the military and civilian prisoners of war freed from the camps.

I pay tribute as well to the 50,000 women who worked during the Second World War. Canadian Forces successes in military campaigns are in large part due to the work of these women, at home and abroad. I wanted to include the contribution of all these women in the tributes we are today paying to our valiant veterans, who continue to fill us with pride 60 years on.

[*English*]

Hon. A. Raynell Andreychuk: Honourable senators, as we celebrate the sixtieth anniversary of Victory in Europe Day, I wish to bring to your attention a quotation from a young Dutch boy, A.P. Speelman, in "Thank you, Canada," which indicates that our veterans are not forgotten. He states:

> I am 17.
>
> I was not born until after the war.
>
> I am able to go to school.
>
> I have a buzz-bike.
>
> I have parents.
>
> I have never gone hungry.
>
> I don't know what war is!
>
> What is Hunger?
> What is a concentration camp?
> What is a bomb?
> What is fear?
>
> I know we are free!
>
> I know who liberated us!
>
> I know what they sacrificed!
>
> Thanks a million for our Freedom.

Colleagues, these words from a young person's heart say so much about sacrifice and freedom that I am certain they make us all proud to be Canadian.

Hon. Senators: Hear, hear!

ROUTINE PROCEEDINGS

STUDY ON ISSUES AFFECTING URBAN ABORIGINAL YOUTH

REPORT OF ABORIGINAL PEOPLES COMMITTEE—GOVERNMENT RESPONSE REFERRED TO COMMITTEE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, pursuant to the order adopted by the Senate on Wednesday, November 3, 2004, I have the honour to inform the Senate that the response of the government to the sixth report of the Standing Senate Committee on Aboriginal Peoples, entitled *Urban Aboriginal Youth: An Action Plan for Change*, was tabled in the Senate on April 19, 2005. Pursuant to rule 131, this response is deemed referred to the Standing Senate Committee on Aboriginal Peoples.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

TENTH REPORT OF COMMITTEE PRESENTED

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

Thursday, May 5, 2005

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

TENTH REPORT

Your Committee recommends that the following funds be released for fiscal year 2005-2006:

Legal and Constitutional Affairs (Legislation)

Professional and Other Services	$ 45,000
Transport and Communications	$ 25,320
Other Expenditures	$ 2,000
Total	**$ 72,320**

(includes funding for conference attendance)

National Finance (Legislation)

Professional and Other Services	$ 42,600
Transport and Communications	$ 10,000
Other Expenditures	$ 500
Total	**$ 53,100**

(includes funding for conference attendance)

Respectfully submitted,

GEORGE J. FUREY
Chair

The Hon. the Speaker: When shall this report be taken into consideration?

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

• (1410)

SCRUTINY OF REGULATIONS

SECOND REPORT OF JOINT COMMITTEE PRESENTED

Hon. John G. Bryden, Joint Chair of the Standing Joint Committee of the Senate and House of Commons for the Scrutiny of Regulations, presented the following report:

Thursday, May 5, 2005

The Standing Joint Committee for the Scrutiny of Regulations has the honour to present its

SECOND REPORT
(*Report No. 75 — Disallowance*)

Pursuant to section 19.1(1) of the *Statutory Instruments Act*, R.S.C. 1985, c. S-22, as amended by S.C. 2003, c.18, and having notified the Minister of Fisheries and Oceans in accordance with section 19.1(2) of that Act, the Joint Committee resolves that subsection 36(2) of the *Ontario Fishery Regulations, 1989*, as enacted by SOR/89-93, be revoked.

The text of the provision it is proposed to disallow is reproduced in Appendix A to this Report. Appendix B includes the statutory notice to the Minister of Fisheries and Oceans as well as correspondence subsequently received from the Honourable Geoff Regan, P.C., M.P. and the Honourable David Ramsay, Minister of Natural Resources of Ontario. The Committee's reasons for disallowance are set out in Appendix C.

Pursuant to section 19.1(5) of the *Statutory Instruments Act*, the resolution contained in this Report shall be deemed to have been adopted by the Senate or the House of Commons on the fifteenth sitting day after the Report is presented to that House unless, before that time, a Minister files with the Speaker of that House a motion to the effect that the resolution not be adopted.

A copy of the relevant *Minutes of Proceedings and Evidence* (*Issue No. 9*, First Session, Thirty-Eighth Parliament) is tabled in the House of Commons.

Respectfully submitted,

JOHN G. BRYDEN
Joint Chair

(*For appendix to report, see today's* Journals of the Senate, *Appendix, p. 849.*)

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

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

GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA

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

Hon. Jerahmiel S. Grafstein, Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, May 5, 2005

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

FOURTEENTH REPORT

Your Committee, to which was referred Bill S-25, An Act to amend the Act of incorporation of The General Synod of the Anglican Church of Canada, has, in obedience to the Order of Reference of Wednesday, March 23, 2005, examined the said Bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

JERAHMIEL S. GRAFSTEIN
Chair

APPENDIX

Bill S-25, An Act to amend the Act of incorporation of The General Synod of the Anglican Church of Canada

Observations of the Standing Senate Committee on Banking, Trade and Commerce

There is some concern that investments should always be made in the best interest of members of the Anglican Church of Canada, and it is expected that investors will act with due diligence in selecting investments. Although the Committee is aware that the provisions of the Ontario *Trustees Act* would have to be respected, we point out the prudent investor rule contained in the *Bank Act,* the *Trust and Loan Companies Act* and the *Insurance Companies Act*:

> The directors of a bank (company) shall establish and the bank (company) shall adhere to investment and lending policies, standards and procedures that a reasonable and prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.

In our view, investments should be selected bearing in mind the prudent investor rule noted above.

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

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

NATIONAL BLOOD DONOR WEEK BILL

FIRST READING

Hon. Terry M. Mercer presented Bill S-29, respecting a National Blood Donor Week.

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

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

BANKING, TRADE AND COMMERCE

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

Hon. Jerahmiel S. Grafstein: Honourable senators, I give notice that at the next sitting of the Senate I will move:

> That the Standing Senate Committee on Banking, Trade and Commerce be authorized to sit at 3:30 p.m., on Wednesday, May 11, 2005, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

WORLD HEALTH ORGANIZATION

NOTICE OF MOTION IN SUPPORT OF GOVERNMENT OF TAIWAN REQUEST FOR OBSERVER STATUS

Hon. Consiglio Di Nino: Honourable senators, I give notice that at the next sitting of the Senate I will move:

> That the Senate call on the Government of Canada to support the request of the Government of Taiwan to obtain observer status in the World Health Organization.

QUESTION PERIOD

NATURAL RESOURCES

NOVA SCOTIA AND NEWFOUNDLAND AND LABRADOR—SPLITTING OF REVENUE-SHARING AGREEMENT ON OFFSHORE OIL REVENUES FROM BUDGET IMPLEMENTATION BILL

Hon. Ethel Cochrane: Honourable senators, my question for the Leader of the Government in the Senate concerns the implementation bill for this year's federal budget. In response to my recent question on whether the government should split the Atlantic accord from the budget bill, the Leader of the Government in the Senate said:

I am advised it is not the government's policy to split Bill C-43 in any way, shape or form.

Senator Comeau: Wow.

Senator Cochrane: Last week, however, the government and the NDP made a deal that added to the budget $4.6 billion in spending and removed corporate tax cuts. If the federal government intends to follow through on this deal, it will have to split those tax cuts from the bill in some way, shape or form.

My question for the Leader of the Government in the Senate is: In light of these recent events and given the precedent that has been set with the NDP, will the federal government now remove the Atlantic accord from the budget implementation bill and present a separate bill to Parliament quickly?

Hon. Jack Austin (Leader of the Government): Honourable senators, I am grateful to Senator Cochrane for her question. First, with respect to the additional measures, a companion bill to Bill C-43 will be introduced authorizing the expenditures by the Government of Canada. There are, of course, times when budget bills are amended for technical purposes. However, on the principal subject of Senator Cochrane's question, we must take a look at some of the political realities in which we live. It would take unanimous consent in the other place to split the bill. As I said in the previous answer to the honourable senator, the political allies of the Conservative Party in that place, the Bloc Québécois, have made it clear that they do not support the Atlantic accord and will not be prepared to support any changes.

In order to achieve passage of the Atlantic accord, as the honourable senator will be aware, and which I believe all honourable senators would like to see passed into law, it will take only the Conservative Party to support Bill C-43.

Senator Comeau: Bring on the bill.

Senator Cools: A tiny little matter.

• (1420)

Senator Cochrane: As the honourable senator is aware, we supported the budget bill in its original form. However, there are now so many issues surrounding Bill C-43, such as funding for daycare, student loans and municipal infrastructure, that many questions remain unanswered, although that is not to say that we cannot remove these three or four pages in respect of the Atlantic accord and simply pass the bill. It would require only one person committed to doing such a thing. If the Prime Minister was committed to the accord when he announced it last year in St. John's, he should put his signature on this immediately and pass it.

The government and the NDP have claimed that they support the Atlantic accord. It is odd that during their recent dealings neither party appears to have sought its swift passage by separating it from the federal budget. Would the Leader of the Government in the Senate tell the house if removing the offshore agreement from this budget implementation bill was ever part of the negotiations between these two parties?

Senator Austin: Never. Senator Cochrane must take seriously my response to her first question because it is a bar to all the other things she may want, although there are other bars. In parliamentary terms, the government wants to see child care funded; we do not know whether the Conservative Party wants to see child care funded. The government wants to see health care funded; we do not know whether the Conservative Party wants to see health care funded. The government wants our cities program funded, which is in Bill C-43; we do not know whether the Conservative Party supports the cities program. I could go on with all of the other measures in the budget. The honourable senator cannot cherry-pick this budget in these circumstances.

This is a very good budget and the Conservative Party was right to say that it was a very good budget when it was introduced. Unfortunately, polls changed the will of the Conservative Party with respect to this budget.

Senator Cochrane: Was this deal with the NDP considered cherry-picking?

Senator Austin: As Senator Cochrane is known to be a great supporter of social policy in this country, I would have thought that she would support the additional aid to the social policy objectives of the arrangement.

Senator Cochrane: And the Atlantic accord, senator.

Senator Austin: As we do, too.

CITIZENSHIP AND IMMIGRATION

HUMAN SMUGGLING

Hon. A. Raynell Andreychuk: Honourable senators, my question for the Leader of the Government in the Senate is on another topic. A joint intelligence study conducted by the RCMP and the Department of Citizenship and Immigration reports that almost 12 per cent of the people who arrived in this country between 1997 and 2002 were linked in some way to smuggling operations. This number represents just under 15,000 people. As a result of this activity, the report argues that "Canada has emerged as a preferred destination in the human smuggling marketplace."

As honourable senators are aware, there is a link between human smuggling and trafficking. It is often those who are least able to help themselves who are subject to trafficking: women, children and often the poorest of the poor coming from the poorest countries. What is the federal government doing to dispel this perceived reputation around the world that Canada is a haven for people-smuggling operations? What steps are we taking to deter or effectively stop smuggling?

Hon. Jack Austin (Leader of the Government): Honourable senators, I concur with Senator Andreychuk that human smuggling is one of the gravest of crimes. It is to be deplored and action must be taken against it. The government intends to introduce legislation shortly to deal with the issue.

Senator Andreychuk: This is not a new issue. The government knew in June 2003 from an RCMP report that warned Canada soon would witness an increase in illegal migrants and people smuggling. Not long after the report was released, the U.S. State Department criticized Canada's efforts to prosecute human traffickers as being "uneven." It ranked our efforts at combating the problem alongside such countries as Rwanda and the Democratic Republic of Congo — two countries that are in a state of conflict. In light of this report and these perceptions, why did the government not take steps two years ago or propose further legislation in an attempt to stop this smuggling? Will the government do so immediately?

Senator Austin: Honourable senators, at times I wish that supplementary questions took into account the response to the first question.

In this case, as I have said, the government is planning to introduce legislation soon. It is not a significant comment to say that a report was released in 2003 and we are still waiting for action. Senator Andreychuk is aware that these issues are much more complicated and that steps must be taken in accordance with international norms and the practices developed in international institutions to deal with such issues. Canada has to be in concurrence with those steps. The honourable senator is quite aware of these practices.

The comparison of Canada to other nations is also not appropriate because our circumstances are entirely different and the evaluation of the facts does not demonstrate any parallels.

Senator Andreychuk: The comparison was not mine but was made by Canada's neighbour, the U.S. My question was: How are we changing those perceptions? What steps have we taken to demonstrate to the United States our attempts at improvements?

The United Nations and some countries have been working continuously on this issue. At the international level, this is not a new issue. We know the shortcomings in the laws and we know what we have to do: work with our allies. Again, what steps are being taken by the government so that when we represent Canada around the world we can assure people in crisis situations that we are taking this issue seriously?

Senator Austin: Honourable senators, I hope that when legislation is introduced, Senator Andreychuk will be supportive of it and help to give it speedy passage.

Hon. Anne C. Cools: Honourable senators, each day in this chamber I hear, "pass this bill quickly; pass that bill quickly."

The Hon. the Speaker: Did Senator Cools wish to respond to the question?

Honourable senators, I would like to explain what has happened. I apologize for being distracted when I heard Senator Cools speaking. I assumed that she wanted the floor and so I gave her the floor. I now offer the Leader of the Government in the Senate the floor to respond to the honourable senator's question.

Senator Austin: Honourable senators, I did not hear the question of Senator Cools.

Senator Cools: Honourable senators, I was merely responding to the leader's remarks to another senator inviting support for and hasty consideration of a bill. It seems to be a matter of course now in this chamber to expect each and every bill to be passed hastily. I merely wondered aloud about this way of operating that seems to have become a practice.

My question for the Leader of the Government is: Why the haste? Why is it necessary to pass legislation so speedily?

• (1430)

Senator Austin: Honourable senators, it seems to me that the statement of Senator Cools is rhetorical.

TRANSPORT

AIRLINE INDUSTRY—SCREENING OF PASSENGERS AGAINST UNITED STATES GOVERNMENT WATCH LIST OF TERRORISTS

Hon. Pat Carney: Honourable senators, my question is directed to the Leader of the Government in the Senate. He is, of course, aware that senior Canadian Transport officials have met with the U.S. Department of Homeland Security with regard to a U.S. proposal that would obligate Canadian air carriers to screen their passengers against U.S. anti-terrorism watch lists when domestic flights fly over U.S. territory, as the honourable senator and I do on a weekly basis. As many as 1,000 flights of this nature take place per week.

Could the Leader of the Government please update us on the progress of these discussions, if he can find his place in the book?

Hon. Jack Austin (Leader of the Government): Honourable senators, it is incumbent upon me to reply to the last few words of Senator Carney's statement. As honourable senators know, there is only one minister in this chamber, and the Leader of the Government in the Senate is required to respond to questions that relate to the entire ministry of Canada. There is from time to time a desire to assist by answering senators opposite more speedily, and that is done by having a reference book to which I can turn to provide answers. If there is a difficulty with that, I am prepared not to bring a book here and simply to take notice of all questions and provide responses as delayed answers.

I now move to the substantive part of Senator Carney's inquiry. Senator Stratton would like me to be succinct, so I will say, honourable senators, that this matter is under the most active consideration — which is a different category from just "active consideration" — and discussions are underway between Canada and the United States with respect to the application of the rule to Canadian over-flight.

Senator Carney: Honourable senators, my supplementary question is addressed to the Leader of the Government as well. I am glad that he has instructed us on the difference between "most active consideration" and "active consideration," because we can take that into consideration on the timing of some of these issues.

The Office of the Privacy Commissioner of Canada has said that the U.S. proposal raises a host of privacy issues. This office will also do a privacy impact assessment of the U.S. proposal if it is adopted.

The honourable minister is an expert on aspects of international law. How can the government equate this need to be helpful to the Americans in fighting terrorism with the fact that our privacy laws and procedures must be respected?

Senator Austin: Honourable senators, the issues are both separate and conjoint. We have statutes that are to be applied with respect to the laws of Canada. Privacy is, of course, one of those areas, and it impinges upon our relations with other countries, in particular, in this case, the United States.

As honourable senators know, we have a special committee reviewing the anti-terrorism legislation, the former Bill C-36, and these issues are being examined through evidence before that committee.

It is always very difficult to balance the security of Canadians, in light of worldwide-reaching terrorist activity, with the values of privacy and other civil rights that are so very important to us. The primary duty of any country is the physical security of its citizens. The United States is acting on its own "bottom" — if I may use that expression — with a view to protecting the security of its citizens. Its unilateral actions do, of course, impinge on other countries. When we see what their starting points are, we will, as would any government of Canada, take steps to see whether and how the objectives of the United States and Canada can be reconciled.

This is a normal practice in such areas as trade, with which Senator Carney is quite familiar. Conflicts of objective need to be resolved, in this case both bilaterally and within Canada, and that is what is taking place in the Special Committee on the Anti-terrorism Act.

Senator Carney: Honourable senators, I appreciate that answer, but it seems to suggest that our privacy laws would be changed to accommodate U.S. interests. That is a legitimate government objective, if that is what the government chooses to do, but was that the intent of the minister's answer?

If our privacy laws cannot accommodate the American objective of controlling passengers over U.S. territory, are our laws supreme or is U.S. action supreme on this issue?

Senator Austin: Honourable senators, to state the obvious, our laws are supreme in Canada and United States laws are supreme in the United States, and the United States has the sovereign right to determine the terms on which anyone is transported across U.S. airspace.

I did not suggest that we were about to accommodate or to change. I described the "geography" of the issue and said that discussions are underway. At the moment, I have no way of signalling to this chamber where those discussions will go.

[*Translation*]

CITIZENSHIP AND IMMIGRATION

CITIZENSHIP STATUS OF SPOUSES AND CHILDREN OF VETERANS WHO MARRIED OVERSEAS

Hon. Pierrette Ringuette: Honourable senators, my question is for the Leader of the Government in the Senate. A number of young New Brunswickers came back to Canada after the Second World War with war brides and, in some cases, babies born in the countries where the fathers had been stationed. In the chaotic circumstances of their return, they did not receive the necessary citizenship and immigration documents. Nevertheless, these people paid for years into the pension and other plans.

Now, these dependants of veterans, some of whom live in my region, have reached retirement age. They have been paying into the system but have never been officially recognized as Canadian citizens and they cannot receive any benefits as a result. What is more, the documents they are being asked to produce are often unavailable. Their parents got married in Holland, France or some other country a long time ago, in some small village, the name of which no one remembers.

Can the Minister of Immigration take steps now to make it easier for the children of our veterans to have access to the same benefits as Canadians and to Canadian citizenship?

[*English*]

• (1440)

Hon. Jack Austin (Leader of the Government): I cannot answer Senator Ringuette's question in general, but I would be prepared to work diligently on the question in particular. If the honourable senator has particular cases to bring to me, I would be very happy to see what I can do to assist.

BUSINESS OF THE SENATE

Hon. Jack Austin (Leader of the Government): Honourable senators, while I am on my feet, I would inform the chamber that a bill presented by Senator Kinsella, Bill S-2, on an aspect of citizenship, will be given Royal Assent this afternoon.

[*Translation*]

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour of presenting two delayed answers to oral questions raised in the Senate. The first response is to a question raised by Senator LeBreton on April 19, 2005, concerning the recommendation of the RCMP's External Review Committee to reinstate Corporal Robert Read.

[*English*]

I also have a delayed answer in response to an oral question raised in the Senate by Senator Cochrane on April 14 regarding the reliability of weather forecasting and storm tracking in Newfoundland and Labrador.

ROYAL CANADIAN MOUNTED POLICE

REINSTATEMENT OF CONSTABLE ROBERT READ

(Response to question raised by Hon. Marjory LeBreton on April 19, 2005)

It should be noted that the Government of Canada does not involve itself in the day-to-day operations of the RCMP. In the case of Corporal Read, the Commissioner did not agree with the ERC's recommendation that he be reinstated in the RCMP. His decision was based on the prior finding of an RCMP Adjudication Board that Corporal Read contravened the RCMP Code of Conduct between 1996 and 1999 by disclosing confidential/classified information to unauthorized persons, by retaining classified documents without authority, and by failing to obey a lawful order not to share information with any journalist. Although the Commissioner did not agree with the ERC's recommendation, Corporal Read has appealed his case to the Federal Court of Canada. At this time, we are awaiting a decision from the Federal Court, which is the recourse mechanism to the Commissioner's decisions involving grievance cases.

The RCMP already has mechanisms in place to protect those employees in the Force who choose to disclose wrongdoing. In fact, the RCMP legislation goes further and specifies that an RCMP member would be in violation of the RCMP Code of Conduct if he or she becomes aware of an offence and does not report it. Bill C-11, introduced by Minister Alcock on October 8, 2004, would require the RCMP, as an excluded organization, to establish procedures comparable to those set out in the Bill, for the disclosure of wrongdoing, including the protection of persons who disclose the wrongdoings, as soon as possible after the coming into force of the legislation.

THE ENVIRONMENT

NEWFOUNDLAND AND LABRADOR—RELIABILITY OF WEATHER FORECASTING AND STORM TRACKING

(Response to question raised by Hon. Ethel Cochrane on April 14, 2005)

On Wednesday, March 16, a high water and wave event occurred in a number of communities in Trinity Bay, with the highest impacts felt in Cavendish and Flat Rock. An intense storm, well off shore, generated waves which rode along the high tide to create an extreme erosion event in the communities, damaging a breakwater and roadways. Indications of high ice pressure along the shore and higher than normal water levels were issued in the Marine Synopsis leading up to and during the event. As well, a Special Weather Statement had been issued on the Monday, two days earlier, indicating the same information and was later reissued on the Wednesday for the evening high tide, including the expected recurrence of high wave conditions. The Special Weather Statements are faxed automatically to the Newfoundland and Labrador Emergency Measures Organization. However, a Storm Surge Warning was not issued because the information available to the forecaster leading up to the event indicated water levels only marginally higher than normal that would not warrant a full warning.

The quality of our existing services notwithstanding, Environment Canada is committed to continued improvement in its forecast performance, especially in extreme weather situations. A number of steps are being taken which will contribute to further enhancing the forecast quality over the next year as well as to alerting emergency organizations and key users. Among these steps, Environment Canada is increasing its use of Special Weather Statements to alert the public to potential dangers and the uncertainty in the forecasts and warnings. In addition, steps have been implemented to provide early briefings of potential concerns to Newfoundland and Labrador Emergency Measures Organizations.

In order to improve the weather service in the long term, not only in Newfoundland and Labrador, but for all of Atlantic Canada, Environment Canada created the Atlantic Storm Prediction Centre in Dartmouth which is a consolidation of the forecasting functions from the former Weather Centres in Gander, Newfoundland and Labrador, Fredericton, New Brunswick and Dartmouth, Nova Scotia. The Centre is co-located with the new Marine and Coastal Meteorology Laboratory in order to bring the latest meteorological research into the forecast operation. In addition, Weather Preparedness Meteorologists have been established in Newfoundland (Gander and St. John's) as well as in the other Atlantic provinces to interact with media, emergency organizations and special users. In Gander, the National Marine Services Office has also been established to develop services for the Marine Community, nationally.

As a result, Environment Canada's meteorological team in the Atlantic Storm Prediction Centre, in Dartmouth, is made up of well—trained, talented and dedicated individuals who strive to deliver the best possible forecasts to the public at all times. Nearly half of our forecasters at the Centre came from the Newfoundland Weather Centre in Gander and the majority of the others have experience working in Newfoundland.

In March of this year, there were several challenging storms that developed rapidly over the Atlantic Ocean south of Atlantic Canada. This type of storm is not unusual, but a lack of surface weather information in this area and the fact that our computer models of the atmosphere often have difficulty with storms in this area makes forecasting extremely difficult regardless of the location of the forecast office.

In fact, the suite of tools that forecasters use to develop forecasts is unchanged: surface observations, radar, satellite imagery, numerous atmospheric computer models and automated guidance tools. Forecasters in any location analyze this information and, based on their experience and judgment, issue forecasts.

Meteorology has never been a perfect science: there is always a level of uncertainty in the production of weather forecasts and there will always be situations that are not predicted accurately. Our quest is to increase the accuracy for which we constantly monitor our performance. That being said, an analysis of the forecast accuracy of the public forecasts in Newfoundland since the move to the Atlantic Storm Prediction Centre compared to those issued over the last number of years at the Newfoundland Weather Centre indicates no significant change in forecast accuracy.

Environment Canada will therefore continue to develop the Atlantic Storm Prediction Centre and its associated units, a strategy we believe will provide the best quality forecast to the citizens of Newfoundland and Labrador in the future.

CITIZENSHIP ACT

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-2, to amend the Citizenship Act, and acquainting the Senate that they had passed this bill without amendment.

[*Translation*]

PATENT ACT

BILL TO AMEND—MESSAGE FROM COMMONS—
SENATE AMENDMENTS CONCURRED IN

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons, acquainting the Senate that the House of Commons has agreed to the amendments made by the Senate to Bill C-29, to amend the Patent Act, without amendment.

[*English*]

ORDERS OF THE DAY

BUDGET IMPLEMENTATION BILL, 2004, NO. 2

THIRD READING—MOTION IN AMENDMENT—
DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Dallaire, for the third reading of Bill C-33, a second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004.

Hon. Donald H. Oliver: Honourable senators, I am pleased to rise today to speak to third reading of Bill C-33, a second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004.

In my second reading remarks to this chamber, I outlined, in what I thought was a balanced way, the issues with respect to clarification and retroactivity. I will not repeat those remarks today. Instead, I wish to lay out for honourable senators the recent activities of the Standing Senate Committee on National Finance with respect to this important bill.

At the outset, I should like to commend Senator Day, deputy chairman of the committee, for his excellent overview of the government's perspective of this bill.

My remarks will deal with what is called the GAAR, Canada's General Anti-Avoidance Rules, and how our committee dealt with those issues.

Before telling you who came before the committee, let me restate the basic issue. Bill C-33 clearly states that the General Anti-Avoidance Rules would apply if there is a misuse or abuse of the Income Tax Act, the income tax regulations, the income tax application rules or any bilateral tax treaty. It also proposes that the new provisions of GAAR should apply from its inception in 1988.

When the Minister of Finance, the Honourable Ralph Goodale, appeared before our committee, he said, in reference to Bill C-33:

> ...this is not an explicit case of retroactivity. This is clarification of something that has existed from the beginning, since 1988...
>
> There is a basic saving grace here for taxpayers. If there is no abusive avoidance behaviour, then the taxpayer has nothing to worry about. It is only in the case where there is that behaviour that the action is proposed to be taken.

Honourable senators, our committee heard 17 witnesses who spoke principally on the issue of GAAR and charities. The evidence, the debate and the questions were technical, sometimes difficult, comprehensive, sometimes emotive, and challenging.

The majority of the witnesses who appeared said that the proposed amendments to section 245 of the Income Tax Act will expand the range of transactions to which GAAR may apply. Many of those witnesses were concerned with the retroactive nature of the proposed amendments to the act.

Honourable senators will know that retroactivity, by its very nature, is inimical to justice and to equity. This was perhaps best stated in this chamber last week by Senator Joyal in his analogy to criminal law in this country when he said:

> What is legal today cannot, by an act of Parliament, be made illegal tomorrow such that you cannot be charged for what you did legally yesterday in good faith and in full respect of the law.

I practiced law for 32 years, and one of the things that I remember from law school is that Canada is founded upon principles that recognize the rule of law. I am one of those who believes that Bill C-33 is inconsistent with the rule of law, and fairness, because it proposes changes retroactive to 1988.

Honourable senators should know that this is not the first time that this committee has encountered difficulty with retroactive legislation. In the spring of 2003, a budget implementation bill came before the committee that contained a retroactive provision. In that instance, some school boards had gone to court to seek reimbursement of the Goods and Services Tax, GST, that they had paid for the transport of pupils. At that time, honourable senators, the committee outlined in detail what was offensive about retroactive legislation of that kind.

With respect to Bill C-33, our committee held extensive hearings, with 17 witnesses appearing in total. Before I tell you who the witnesses were and what some of them had to say, the general feeling, honourable senators, among many of the witnesses was that, if a government, any government, chooses to introduce retroactive legislation to impose tax, it must and should do so expeditiously, as soon as it becomes aware of the issue it wishes to address.

Our witness list included the Honourable Ralph Goodale, the Minister of Finance; the Honourable John McKay, Parliamentary Secretary to the Minister of Finance; Mr. Len Farber, Mr. Brian Ernewein and Mr. Geoff Truman, all from the Department of Finance; Brian Carr, Co-chair, CBA-CICA Joint Committee on Taxation and Chair of the CBA National Taxation Law Section; Mr. Paul Hickey, Co-chair, CBA-CICA Joint Committee on Taxation, Canadian Institute of Chartered Accountants; Mr. Roger Tassé, Q.C., Senior Partner, Gowlings law firm and former Deputy Minister of Justice and Deputy Attorney General and principal constitutional adviser to the federal government; Mr. Scott Wilkie, Senior Partner, Osler, Hoskin and Harcourt; Ms. Georgina Steinsky-Schwartz, President and CEO of Imagine Canada; Mr. Bob Wyatt, Executive Director, Muttart Foundation; Ms. Hillary Pearson, President and CEO, Philanthropic Foundations Canada; Mr. Carl Juneau, Personal Income Tax Division, Finance Canada; Mr. Wayne Adams, Director General, Income Tax Ruling Directorate, Canada Revenue Agency; Mr. Yvan Roy, ADM and Counsel to the, Department of Finance; and on the last day, we heard from Mr. Marc Lalonde, currently a senior partner at Stikeman Elliott and former minister of a number of different portfolios including Finance, Justice, Health and Welfare, Federal-Provincial Relations, and Energy, Mines and Resources.

Honourable senators, I should now like to take you through some of the arguments of Mr. Roger Tassé. He came before the committee because he was deeply concerned about the proposal to make the substantive changes to GAAR retroactive to September 1988. His feeling, he stated, was that it was unfair to Canadian taxpayers, and it was poor public policy.

Honourable senators, Roger Tassé made it clear that the concept of retroactivity is not something that is new to parliaments or provincial legislature. It has happened before. As he put it:

• (1450)

> The making of legislation retroactive so that it will apply back to a date earlier than the date on which it is adopted, as we all know, is not a new phenomenon. I would not be surprised if most, if not all legislatures, have resorted to retroactivity from time to time in the exercise of their legislative authority.
>
> And in matters where legislatures had not specifically provided for a retroactive application of their legislation, the courts have been called upon to determine the proper application of the well-established presumption against the retroactive application of legislation.
>
> A law is retroactive when it is made to apply to the past so as to change the effects it had in previous years and on the basis of which individuals and enterprises have conducted themselves. But, in the interest of fairness, equity and the stability of our legal environment, our courts have, including at the highest level, approved retroactive reading of legislation in exceptional circumstances. There are, indeed, situations where retroactivity is justified.

Honourable senators, after he elaborated further on some of the circumstances in which Parliament and legislatures have found justification in retroactive legislation, he then asked the question:

> Does this proposal C-33 constitute acceptable retroactive clarifying legislation?

Honourable senators, taxpayers should be able to expect certain tax results when they plan their investments on the basis of the rules as they know them and as they understand them. The budget proposals refer to the changes to the GAAR as being "clarifying in nature," but the budget proposals do not mention that they would be made retroactive. The notes to Bill C-33 refer to the changes as a provision to ensure that the GAAR apply to transactions affected through the misuse or abuse of the regulations or tax treaties, but again, there is no reference to retroactivity. It was hidden.

Mr. Tassé, the former Deputy Minister of Justice, said:

> My view is that Finance Canada, in proposing that the changes to the scope of the application of the GAAR to include tax treaties and the regulations retroactive to 1988, has not followed its own 1995 *Comprehensive Guidelines*.

Honourable senators, I will not take you through all those guidelines, but they are listed in the transcript for you to read, and I will refer to a couple of clauses of one of them.

One of the guidelines that the department itself, when determining whether it could have clarifying legislation, stated was "that the amendments must reflect a long-standing, well-known interpretation of the law." The department's document goes on to state:

> When the Department publicly and unequivocally advocates a given interpretation over a long period of time and where such interpretation has been followed by most taxpayers in the filing of their income tax returns, it does not unduly disrupt the reliance of taxpayers to amend the law so as to confirm this interpretation following an adverse decision which, while constituting a legal interpretation of the existing legislation, has an effect equivalent to a change in law.

Honourable senators should know that the GAAR, when it was adopted by Parliament in 1988, by its very wording applied only to the Income Tax Act. Section 245 did not refer to tax treaties and did not refer to income tax regulations.

Roger Tassé and several other witnesses pointed out to the committee that Finance has adduced ''no evidence contemporaneous with the introduction of the GAAR which would show that the intent was that the GAAR would apply to tax treaties and the Regulations.''

Honourable senators, tax and tax interpretation is something that is left to a small body of Canadians who have become experts in that area. I am certainly not one of them. As I earlier said, however, we heard from representatives of the Joint Committee on Taxation of the Canadian Bar Association and the Canadian Institute of Chartered Accountants. From the time the GAAR was introduced, it has generated a considerable amount of discussion as to whether the GAAR applies to tax treaties.

The general view of tax practitioners, lawyers and chartered accountants who are experts in this field has been summarized in the submission to our committee by the joint committee. The joint committee's submission clearly shows that the consensus of tax practitioners, all the way back to 1988, was that there were serious doubts as to whether or not the GAAR applies to tax treaties. None of the experts who appeared before our committee, including experts from the Department of Justice and the Department of Finance, were able to bring forth any cogent evidence rebutting or contradicting the serious objections advanced from time to time by senior tax practitioners questioning CRA's argument that the GAAR can be applied in a treaty situation.

When appearing before our committee, Roger Tassé quoted from a Ms. Nathalie Goyette, a tax lawyer with the Department of Justice, who wrote of this uncertainty in 1995, 10 years ago, in a thesis published by the Canadian Tax Foundation. As to the applicability of GAAR to tax treaties, Ms. Goyette said the following:

> First, the wording of section 245 is deficient in that the only abusive transactions that can be impugned are those that are in abuse to the act; those that constitute abuse of tax treaties are not contemplated.

I repeat, honourable senators, she said that they are not contemplated. This is a tax lawyer with the Department of Justice in a learned thesis published by the Canadian Tax Foundation.

She later said the following:

> If the intention of the Canadian Parliament is that the taxation authorities should be able to invoke section 245 in respect to cases of abuse of tax treaties, then it has no option but to consider amending the provision.

But not retroactively.

We can see that the CRA's position has been anything but clear and unequivocal, to use the words in their own guidelines.

Honourable senators, the committee, after a major struggle, finally heard from the Honourable Marc Lalonde, a former senior cabinet minister of both Finance and Justice. He told our committee that he wished to register his full agreement with the presentations made by the joint committee of the Canadian Bar Association and Canadian Institute of Chartered Accountants and by Mr. Roger Tassé, Q.C., the former Deputy Minister of Justice in Canada. They all categorically rejected the recourse to the retroactive provisions contained in Bill C-33.

Marc Lalonde reminded our committee that the Department of Finance has always recognized that resorting to retroactivity had to be an exceptional measure that should only be used in exceptional circumstances. He then went on to paint a picture that this was not an exceptional circumstance and honourable senators ought to reject retroactive elements in this legislation.

The key to Marc Lalonde's compelling evidence is as follows. He asked us to assume the Department of Finance is correct and that there has been some misuse or abuse in certain circumstances. What then is the remedy? He reminded our committee that there are clear ways of dealing with such problems, but it is not by bringing in retroactive legislation going back to 1988, more than 17 years ago. Instead, he put it this way:

> The solution is not to retroactively grant to officials the right to decide what they think the law might have meant between 1988 and 2004. Under the Canadian democratic system, it is for the courts, not bureaucrats, to determine what the law currently is.

• (1500)

He later told our committee:

> If the Revenue Canada Agency is of the view that the law has not been respected, let it take the matter to the courts and let judges decide the matter.

Honourable senators, the Honourable Marc Lalonde, Roger Tassé, officials from the Joint Committee on Taxation of the Canadian Bar Association and the Canadian Institute of Chartered Accountants and others all pointed out that the cases that have so far been decided in the courts do not help the agency. On the other hand, the agency relies on some *obiter dicta* in one case, but here is what Marc Lalonde told our committee about that:

> On the occasion of his appearance before this Committee on April 20 last (p.1820-9), the Minister of Finance declared that the only judicial decision involving GAAR and treaties has been favourable to the Crown.

Honourable senators, I asked the Director General of the Income Tax Rulings Directorate of the Canada Revenue Agency, Mr. Wayne Adams, this question: "What will the passage of Bill C-33 do to the investigative work you are doing on GAAR-related cases?" This was his response:

> I do not know that it would represent a real change to any investigative action we take. Some of the commentary in the public has proven to be a distraction to our justice lawyers as they prepare to go to trial on these cases.

Some of the commentary in the public has been a distraction to some of the trial lawyers, and this is the basis upon which we bring in retroactivity?

Marc Lalonde summed it up best in his opening statement to our committee when he said:

> I did not know that the fact that lawyers in the Department of Justice could be distracted by a difficult legal problem should mean that you should retroactively legislate for 16 years and ensure that there will be no distraction for the lawyers and the Department of Justice. What has the Department of Finance got to fear?

Honourable senators, I want to conclude by saying a few words about the role of the Senate. On several occasions since I have come here, I have spoken openly about the role of the Senate and Senate committees and said that as a body of sober second thought we should look carefully at public policy issues. The doctrine of retroactivity to change the law at the expense of Canadian taxpayers, for which there is ample evidence that it is against the rule of law, is unfair and is a subject that should capture honourable senators' attention. I urge honourable senators to listen to the other senators who likewise wish to comment on the evidence that came before the committee and give it their due consideration.

Hon. David P. Smith: Would the honourable senator accept a question? I ask this in good faith, because I do not know the answer.

With regard to the representations made by Roger Tassé and Marc Lalonde, does my honourable friend know if they attended the committee at their own expense as public-spirited citizens, or were they there in their professional capacity representing some client on a fee-paying basis? If so, does the honourable senator know who the clients are?

Senator Oliver: Those questions were posed to the witnesses during the committee meeting. Mr. Tassé is a lawyer. He had given a legal opinion to a law firm in Ontario, and he said that this question arose when someone said, "Have you read Bill C-33 and did you know that there is a clause in it that might be retroactive?" He said, "No, I did not know that, but I will have a look at it." He then looked at it and said to them, "It is a retroactive clause." He indicated that he had been retained, and he gave that evidence. When he appeared before the committee, he was not appearing for that law firm or his law firm, and he was not appearing for any client.

Mr. Marc Lalonde said that he had been retained as a lobbyist and has registered as a lobbyist. The names of his clients are part of the public record. He gave the names of those clients. He also said that he wanted to appear before us, not because he was a registered lobbyist for clients who live outside of Canada, but because he is a former Minister of Justice and a former Minister of Finance.

MOTION IN AMENDMENT

Hon. Lowell Murray: Honourable senators, I shall propose an amendment right away and then speak to it as soon as His Honour has put it to the Senate.

I move, seconded by Senator McCoy:

> That Bill C-33 be not now read a third time but that it be amended:
>
> (*a*) in clause 52, on page 66, by replacing lines 9 to 15, with the following:
>
> "**(4) Subsections (1) to (3) apply with respect to transactions entered into after March 22, 2004.**"
>
> (*b*) in clause 53, on page 66, by replacing lines 21 and 22, with the following:
>
> "**(2) Subsection (1) applies to taxation years and fiscal periods that begin after 2004.**"; and
>
> (*c*) in clause 60, on page 73, by replacing lines 1 to 3, with the following:
>
> "**(2) Subsection (1) applies with respect to transactions entered into after March 22, 2004.**"

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

Senator Murray: Honourable senators, I think it will be obvious that the effect of the proposed amendments will be to remove the provision for retroactivity dating back 16 years and to make those provisions effective as of the March 2004 budget. Some honourable senators will also be aware that I tried these same amendments on at the committee, but they did not pass.

When Senator Austin was critiquing my speech at second reading last week, he suggested that the speech would have been better given after the committee and at third reading. I will resist the implicit invitation to repeat now what I said then, but I will observe that the views I expressed at second reading were strongly reinforced by the deliberations over three days of the Standing Senate Committee on National Finance.

Frankly, honourable senators, the government, and the Department of Finance in particular, had a very bad two or three days in that committee on this bill. The main arguments that they had put forward in support of this 16-year retroactivity were dubious enough on their face to begin with, but they were demolished by the expert witnesses that we heard at the committee.

Argument number one, which we heard from the minister and his officials at the very first of our three meetings on this bill, was that these provisions are not really retroactive at all.

• (1510)

The only support they got for this unusual and implausible assertion was from Mr. Scott Wilkie, a tax practitioner who came to support the provision. His argument was so subtle and technical as to be virtually incomprehensible to a layman. He rested much of his argument on what he perceived as emerging consensus in international law to crack down on tax avoidance in treaties. I believe I am putting it right. He told us that the legislation may be retroactive but the law would not be retroactive. So far as I am aware, no one quite understood what that meant.

He then told us that even if it is retroactive it does not hurt anyone because, after all, the Crown has to prove that there was an abuse in the first instance before they can proceed.

Against that position — and Mr. Tassé and others pointed it out directly to him — the issue is whether taxpayers who have arranged their affairs on advice on the basis of a law as it was then written and understood to be between 1988 and 2004 ought to be subject to a 16-year retroactive change in that law.

Our old friend Senator Frith used to subject some of these things to what he called the reasonable person test. The assertion of the government and one or two of its apologists to the effect that this provision is not really retroactive at all abysmally fails that test.

The second argument they use is that this retroactive measure is really a clarification, that from day one it has been the government's position that the General Anti-Avoidance Rule, the GAAR, applies to tax treaties and that this position was well understood and accepted in the tax community. That argument would be a powerful and perhaps decisive argument in favour of retroactivity if it were true, but at the committee — and senators can examine the testimony, some of which has been put on the record already by Senator Oliver — the government was utterly unable to substantiate its claim that this had been its position from day one and that the position was well understood in the tax community.

The evidence was all to the contrary. I will quote briefly from what Mr. Tassé had to say about that matter:

> The Department of Finance has produced no evidence contemporaneous with the introduction of the GAAR in 1987-88 which would show that the intent was that the GARR would apply to tax treaties. Furthermore, shortly after the coming into force of the GAAR on September 13, 1988, the CRA published a detailed information circular analyzing the possible application of the GAAR to 22 separate hypothetical transactions, none of them involving the interaction between the act and either the tax treaty or a regulation.

Mr. Lalonde, when he came to it, told us that opinions are divided on the subject. Far from accepting the government's contention that its position was held from day one and was well understood in the tax community, Mr. Lalonde said:

> Opinions are divided on the subject. There have been debates in the legal and fiscal community on this subject for years. For whatever reason, the government decided to remain practically silent on the subject until the introduction of this bill, trying to go back some 16 years backwards.

Senator Oliver has placed on the record, and I will not do so a second time, the statements made, albeit as a private citizen in writing a thesis, by Nathalie Goyette of the Department of Finance, pointing out one of the deficiencies in the GAAR is that it does not apply to tax treaties and that if the government wanted it to apply to tax treaties it ought to legislate to that effect, but not of course, as Senator Oliver said, retroactively.

In addition, in the brief presented by the Canadian Bar Association and the Canadian Institute of Chartered Accountants, there is a four-page appendix of commentaries on the GAAR dating back from 1988, all through the years, indicating how unsettled are the opinions on the question of applicability of the GAAR either to income tax regulations or to tax treaties.

Now the reality is and the recent history is that there have been two cases — and I did raise this at second reading — in the courts in which the courts decided that the GAAR did not apply to regulations under the Income Tax Act. The government launched appeals of those cases and then dropped the appeals. That tells us something. There are two cases on the question of whether the GAAR applies to tax treaties. They were going to court and the government settled those cases on the courthouse steps. What that says to this layman is that the government was afraid it would lose, and instead of taking its chances in court, it came to Parliament with a provision to make its view on the applicability of the GAAR retroactive 16 years back.

[*Translation*]

Mr. Tassé was astounded to see the government take such an initiative. It is unprecedented. It is unheard of. That is what Roger Tassé testified.

[*English*]

The tax practitioners have been arguing about this issue for years, and Mr. Wayne Adams from the department and Mr. Yvan Roy, their legal counsel, acknowledged as much under questioning in the committee.

The third argument that they have used to discourage amendments, such as the one I presented today, is that if one makes such an amendment prospective, say from 2004 forward, this would imply necessarily that there had been something different in place from 1988. That argument, too, was disposed of in short order by the Canadian Bar Association, by Mr. Tassé and by Mr. Lalonde, who had only to cite the relevant part of the Interpretation Act. I will give honourable senators the flavour of Mr. Lalonde's testimony on that point. He said in committee:

> The argument that a prospective amendment would destroy the government's position for the past is bogus. Firstly, the Interpretation Act is clear on the meaning to be given to an amendment. Let me read it to you at article 45.2. I quote...

Then Mr. Lalonde quotes the relevant provision:

> The amendment of an enactment shall not be deemed to be or to involve the declaration that the law under that enactment was or was considered by Parliament or other body or person by whom the enactment was enacted to have been different from the law as it is under the enactment as amended.

Mr. Lalonde goes on:

> The federal Interpretation Act is quite clear and categorical in that respect. Nobody is entitled to conclude from an amendment introduced on a prospective basis, that it is changing the law or the practice as it is, that has existed before.

• (1520)

He goes on to say:

> My second point on this issue of the interpretation I have already mentioned. The officials testified yesterday, and they were adamant, that the law is clear on treaties. If it is clear, why do you need this amendment? Let the judges decide. Why do you need an amendment if it is clear?

Honourable senators, the effect of my amendment would be to make the GAAR applicable to tax treaties as of the budget of 2004, and that is for cases that would come up from 1988 until 2004. Let the government and the taxpayers take their chances in court. That is the effect of my amendment.

I wondered aloud when I spoke at second reading how a provision like this ever made it through the cabinet system that some of us know and have worked in.

Senator Cools: Strange.

Senator Murray: Mr. Tassé to some extent put his finger on it when he said that fiscal matters are so closely held in the Department of Finance that, as a result, a very few senior officials and the lawyers have decided that these measures do not really go through the normal cabinet vetting system of checks and balances. I think that is probably the case.

Mr. Lalonde, who is nothing if not thorough, took a look at this bill and mentioned that, in two pages of notes attached to this bill, while there is a reference to the GAAR, there is not the slightest hint that the provision will be retroactive, much less retroactive 16 years. He suggested, probably with good reason, that this same misleading information is what was probably in front of ministers. As he said, ministers do not spend their nights pouring over technical bills. They accept the word of their officials. The word of their officials in this case was that this bill is just a clarification and they were not to worry as it was nothing out of the ordinary.

Senator Cools: Do not worry, okay.

Senator Murray: Honourable senators, we are all aware that we are in a somewhat uncertain situation in Parliament these days. I believe that honourable senators, all of us, and perhaps in particular honourable senators on the government side, have been placed in front of a dilemma, which I believe to be a false dilemma. We are told that if an amendment to this bill passes, naturally, the bill would have to go back to the House of Commons. The problem is, first, one of timing. This is a budget implementation bill for the budget of 2004. We have already had the budget address of 2005, and that implementation bill is waiting in the queue until the 2004 implementation bill is passed.

The Hon. the Speaker: I am sorry to interrupt, but your 15 minutes have expired. Are you asking for additional time?

Some Hon. Senators: Yes.

Senator Murray: A short time, if I may.

The Hon. the Speaker: Leave is granted for an additional —

Hon. Bill Rompkey (Deputy Leader of the Government): The normal practice is an extention of five minutes, if Senator Stratton agrees.

Senator Cools: It is not a practice; it is something you have cooked up.

The Hon. the Speaker: It is agreed on five minutes.

Senator Murray: I hope I can make my point in fewer than five minutes. As honourable senators know, we are staring down the gun barrel of dissolution of this Parliament.

Senator Mercer: No, no! Four more years!

Senator Murray: We could possibly be in the situation in which the implementation bills for the budgets of 2004 and 2005 will die on the Order Paper. All these considerations are being put forward in an attempt to persuade honourable senators to vote down any amendment to this bill.

Honourable senators, I can speak only for myself on this, but we have faced these kinds of dilemmas before. Those of us who are old enough to remember or to have served under the late Senator Salter Hayden when he was Chairman of the Standing Senate Committee on Banking will remember how dilemmas were

resolved when he was a committee chairman. Typically, Senator Hayden would go to the responsible minister and negotiate with that minister a written commitment that at the first opportunity, when technical amendments to the bill were being brought in, the minister would correct the offending provision, whatever it was. On that basis and with that commitment, Senator Hayden would come to the Senate and persuade us to pass the bill as is. It is perhaps not a very elegant procedure, but it has been an effective one, not infrequently, in the past.

I can speak only for myself on this, but I understand very well the timing constraints and other pressures on the government and on honourable senators with regard to this bill. If the Senate agreed, I would withdraw my amendment if a commitment could be obtained from the minister, perhaps through the Leader of the Government in the Senate, to the effect that this 16-year retroactivity provision would be changed at the coming into force of those provisions, the date of which would be changed to 2004. On that basis, we could pass the bill as is and await the technical amendments that would come later on the basis of a minister's commitment.

I put that to honourable senators. It is not my role to negotiate with the Minister of Finance. There are honourable senators here who, I am sure, are able to be in touch with him and to try to persuade him that this would be an honourable course to follow at this stage. I put that forward because, honourable senators, no parliamentarian in a country like ours should be asked to vote for a provision like this, offensive as it is to one of the basic principles of our Constitution, namely the rule of law.

Some Hon. Senators: Hear, hear!

Hon. Jack Austin (Leader of the Government): Honourable senators, I would like to address the issues Senator Murray has raised with respect to Bill C-33. He has focused his attention principally on the General Anti-Avoidance Rule provision, clause 60 of Bill C-33.

It is clear there is a wide gap in understanding the factual situation. That gap cannot be reconciled by the Senator Hayden suggestion that Senator Murray put to the chamber a few moments ago because we are not looking at something that is a technical error in a bill to be corrected by a minister's undertaking to provide legislative change at a future time.

We are looking at quite a different situation, honourable senators. The situation is not that the matter is retroactive from the point of view of the government. The situation is, as I believe was demonstrated by the minister in his evidence and by other evidence before the Standing Senate Committee on National Finance — and I did attend some of their meetings — that there has been a long-standing knowledge on the part of the tax practice community as to the interpretation by the government, by the Department of Finance and the Canada Revenue Agency, that what is known as GAAR, the General Anti-Avoidance Rule, applied both to the regulations and to the treaties and was intended to do so from the initiation of the introduction of GAAR into the tax legislation in 1988.

• (1530)

I would point out that the provision to which we are referring was in legislation introduced by the Minister of Finance of the time, the Honourable Michael Wilson. It stretches the imagination that a measure would be introduced by a sophisticated Minister of Finance such as the Honourable Michael Wilson that would apply only to the domestic GAAR, would not apply to the regulations that stand entirely on the act itself and cannot enact further responsibilities — that is not the role of regulations — and would not apply to the tax treaties which are based on the same act. Why would a government at that time leave such an enormous lacunae in the tax system? It simply does not make sense. One assumes that the practice was understood from the beginning, and that is the position that the present Minister of Finance has taken, and that is the position that is taken by tax jurisdictions around the world.

Honourable senators, what took place over time was that certain tax practitioners gave advice to their clients that indicated that there might be a possible, what is known in the practice as, "loophole" in the tax law. The department made its position clear in many ways, some of which were cited in the minister's own presentation to the Standing Senate Committee on National Finance when the minister appeared on April 20, 2005. There were numerous tax conferences with government officials and, repeatedly, the government took the position that the GAAR applied both to the regulations and to the treaties.

However, the matter continued to be one of debate and, further, the matter continued to be one of litigation. It is not open to us in any way that is reasonable to argue that two tax cases settled on the steps of the court can be argued as a concession by the Department of Finance of its position. Complicated tax cases are initiated on many different grounds and are settled for many different reasons. Therefore, I submit to honourable senators that it is not necessarily helpful to argue from cases that are settled by mutual agreement.

Senator Murray mentioned an article written by an individual in the Department of Justice in 1995. However, in the case of *Equilease*, which was before the federal tax court in 1997, Justice Bowman — as he was then, today he is the Chief Justice of the Tax Court of Canada — said, in *obiter*, meaning in passing, that it was clear to him that the GAAR applied from the very beginning to the tax treaties.

That is not definitive in the sense that the case was determined by that particular issue. The case was determined on other issues, but the GAAR was one of the issues in that case. We can cite several expert tax witnesses before the Standing Senate Committee on National Finance, but Chief Justice Bowman is an outstanding tax practitioner and his views must be taken seriously and have been taken as reliable by the Department of Finance.

The situation here, as Senator Murray has said, is that this is a budget bill and it contains within it a number of provisions that affect tax communities in this country. Senator Day has

mentioned a number of those communities and I simply want to refer briefly to the measures that help those who care for people with disabilities. This bill provides that caregivers may claim medical and disability-related expenses that are incurred on behalf of dependent relatives.

This bill is also important to the voluntary sector, honourable senators. It proposes to modernize the regulatory regime for registered charities under the Income Tax Act. It recognizes the importance of small and medium-sized business and proposes that the increase in the small business deduction limit to $300,000 be accelerated by one year.

Honourable senators, there are many other items in this bill. Senator Rompkey has asked me to mention that this bill contains a special measure aimed specifically at helping soldiers in the Armed Forces and their families. This proposed provision is in recognition of their willingness to serve their country on high-risk international operational missions. The bill, effective January 1, would provide that Canadian soldiers and police would no longer be required to pay income tax on their income earned from such services. This exclusion applies on income up to the maximum rate of pay for non-commissioned members of the Canadian Armed Forces.

The bill also deals with the Air Travellers Security Charge, an issue that we have discussed in this chamber from time to time, and provides for a reduction in that charge.

It also deals with Aboriginal taxation and proposed amendments to the First Nations Goods and Services Tax Act to facilitate the establishment of taxation arrangements between the Government of Quebec and interested Indian bands situated in Quebec.

Honourable senators, with respect to the GAAR, I should like to read briefly from a portion of the address to the Standing Senate Committee on National Finance prepared by the finance minister on April 20, 2005.

Senator Stratton: If you are not a crook, you do not have to worry.

Senator Austin: With respect, the minister wrote of the GAAR:

> This rule is intended to prevent abusive or artificial tax avoidance schemes, without interfering with legitimate commercial and family transactions.
>
> In seeking to distinguish between legitimate tax planning and abusive tax avoidance, the general anti-avoidance rule aims to establish a reasonable balance between the protection of the tax base and the need for certainty for taxpayers in planning their affairs.
>
> Budget 2004 proposes to clarify that the act's general anti-avoidance rules apply to transactions effected through a misuse or abuse of the provisions of the Income Tax Regulations, a tax treaty or other federal legislation.

That is the simple purpose of this particular provision. It is to clarify a long-standing practice and it is to deal with anti-avoidance practices. Those are practices that have no realistic base in commercial or individual tax activity. They are simply artificial transactions, which are set up to avoid tax liability which otherwise the taxpayer would have incurred.

A simple illustration would be of a business established by a Canadian taxpayer in a foreign tax jurisdiction that is an actual business: it has assets; it has employees; it makes sales or it manufactures goods; it has a facility in the tax jurisdiction. An illustration of tax avoidance occurs when all of that is artificial in that it is simply paperwork with no real commercial activity taking place.

• (1540)

Honourable senators, the minister has truly said that if Canadian taxpayers have put themselves into a foreign tax jurisdiction and are conducting legitimate business, then certainly they do not fall within GAAR's anti-avoidance provisions. If their measures are simply tax planning to avoid Canadian tax — activity only to avoid tax with no true basis in a commercial or personal activity — then the anti-avoidance rules may apply.

I know that some in this chamber would like to see an accommodation in respect of this particular provision. I know that the Minister of National Revenue, John McCallum, would not agree, because I have had this conversation with him, to applying section 60 only to the tax years 2004 forward. The position of the Canada Revenue Agency is clear: it applies from 1988 as this government believes was intended by the government of former Prime Minister Brian Mulroney and the former Minister of Finance, Michael Wilson.

Honourable senators, I will speak to Minister McCallum, although not on Senator Murray's terms, because the minister will not agree to apply section 60 from 2004 forward. In the view of the government, the section has applied since 1988 and will continue to apply from that year.

Senator Murray: Take your chances in court.

Senator Austin: I will speak to the minister because there is a desire for some assurance as to how section 60 might be interpreted or applied. Whether I will be able to obtain additional assurances from the minister, I cannot say. The matter was raised with me in this chamber only a short time ago. I have not left the chamber because I wanted to hear the speeches of Senator Oliver and Senator Murray.

It is completely insufficient to say that the Government of Canada, or any taxpayer for that matter, can "take your chances in court." Honourable senators, the government has a position that it has placed before Parliament. This position was adopted in the other place. This is a confidence bill in the other place. It should be honoured in this place as a confidence bill in the other place.

Senator Murray is correct in saying that if the bill were amended in this chamber, which would be highly unusual for a budget bill, and then sent back to the other place, it could well be lost. Honourable senators, I would urge you to consider voting against the amendment proposed by Senator Murray.

Hon. Paul J. Massicotte: Honourable senators, I will speak on the same issue of the General Anti-Avoidance Rule. As senators are aware, in the proposed legislation GAAR would apply from 1988 to treaties and regulations. I acknowledge, with Senator Austin, that the bill contains many other issues that I treasure and deem important to Canadians such that Bill C-33 should be passed as soon as possible.

I will read a government response to the Seventh Report of the Standing Committee on Public Accounts:

> The fundamental legal principle of the rule of law, while it does not prevent the use of retroactive changes, clearly favours legal rules that are made public before their application. The importance of these considerations militates against the use of retroactive amendments to the tax legislation as an alternative to litigation. While it would be legally possible to legislate a retroactive correction or clarification every time, the dispute process reveals an interpretation of tax legislation and the Department of Finance disagrees that such an approach would result in a more complex legislation and would conflict with the principle that the court should be the final interpreters of the law and would undermine the certainty that taxpayers should be able to expect from the tax system.

I think all honourable senators agree with that. The argument that the minister raises and the argument of Senator Austin is that this is not a retroactive change and is truly a clarification or formalization of an existing, long-standing and clear understanding of our society. That technical argument is an important issue that we must address when we review this proposed legislation. To do that, it is necessary to go back in time as much as possible to determine what the practitioners, then Revenue Canada and the Department of Finance think about these issues in those years. How clear was this issue?

Senator Austin referred to a document, a copy of which is available, that indicates the Department of Finance has made a number of statements over the years. It is also important to note that in 1988, when the legislation was put in place, they did not issue an interpretation bulletin. Usually IT bulletins are used to define or clarify for the population how certain parts of acts are to be interpreted. We did not see an IT bulletin on this issue, and we have not seen one to this day.

Keep in mind that there was no formal pronouncement from Revenue Canada in 1989. Rather, we are referring to speeches made by the agency that tax practitioners attend. In 1989, then Revenue Canada said that they would possibly apply the GAAR in treaty shopping transactions. They specifically mentioned that issue. In 1993, they said that they may seek application. They did not say that they would seek it or should seek it but that they may seek it.

Mr. Lindsey, a tax practitioner, significant lawyer and principal author of the 1971 tax reform that implemented the recommendations of the famous Carter commission, made comments on this in 1988; and Mr Ward said in 1992 that the application of the GAAR treaty has not been determined. Mr. Richard Tremblay, a senior tax partner of Osler Harcourt said the same thing in 1995. Mr. Gregory said in 1996 that while GAAR may play a restrictive role in definitional matters related to tax treaties as suggested by others referred to above, it is doubtful that GAAR has general applications of tax treaties beyond this narrow connection. In 1999, Mr. Ward said that there may be very powerful arguments that GAAR should not be applied to abuse of the tax treaty. These gentlemen did not say that GAAR should not apply; rather they said that it was not clear that GAAR applies. It is probably an interest to Canadians that GAAR should apply. A review of the documentation makes it clear that it was indeed a very grey area because one cannot determine whether it applies or whether it does not apply.

We referred to Ms. Nathalie Goyette, senior practitioner in the Tax Litigation Directorate at Justice Canada, and Mr. Roger Tassé, former Deputy Attorney General of Canada, who both said the same thing. We have heard the same from representatives of the Canadian Bar Association and others. At committee, two government officials openly admitted on two occasions that the area is grey. They did not say it is clear but they said, yes, it is grey. Two lower court decisions stated that GAAR does not apply to regulations and another said that GAAR does apply to regulations. If the courts cannot agree, the inference is unclear.

Honourable senators, it is very clear that it is unclear and, therefore, it is understandable that people would act accordingly. Going back to 1988, it is against the principle of law; certainly it is against the principle of fairness. The other argument could be made that if it is so clear, why leave it? Why have a law? If it is clear, why would you have a law?

• (1550)

In my mind, like I said earlier, it is very clear that it is unclear. It is clear that people did not know how the law applied, and consequently, this proposed legislation is retroactive and punitive, and it is a serious injustice to that percentage of the population.

What is less clear to me is the issue that Senator Austin and Senator Murray addressed in the latter part of the discussion. We are in a political environment. Nearly all of us belong to a political party. As we saw the committee voting, there was a very partisan voting stance by many members. Obviously members of a party believe in the value system of their party and adhere to party beliefs. Many believe it is in the interest of Canada to support their party in situations like these.

I am also left with many questions about our responsibilities as senators. In reading Senator Joyal's book, it is clear that our principal responsibility is to Canadians and what is in the best interest of Canada. One can make the argument on a short-term basis that sometimes the best interest of Canada is supported and served by supporting your political party in certain situations. That area is more grey to me. How do we behave in these instances? I look forward to your comments.

I also appreciate that if we make an amendment and it goes back to the House of Commons, this bill, which has many merits, may not get passed.

I am reasonably new to this chamber. I look forward to the comments of honourable senators on how we split our loyalties between our parties and our friends. There is obviously strong pressure to adhere to the party, to belong and to please. I caution, however, that to the extent we divide our loyalties, loyalty to Canadians should nearly all the time override any loyalty or sense of friendship we have to the political party to which we belong to.

Hon. Anne C. Cools: Honourable senators, I rise to join this debate. I have grievous concerns about the provisions of this bill. I am pleased that Senator Murray has given me an opportunity to speak in favour of some of his three amendments to the bill. Couched as they are within one amendment, he proposes amendments to three different clauses of the bill.

With respect to the most troublesome one, I begin by placing the actual provisions of the bill on the record. I am referring to subclauses 60(1) and (2), which read as follows:

> **60. (1) *The Income Tax Conventions Interpretation Act* is amended by adding the following after section 4:**
>
> **4.1** Notwithstanding the provisions of a convention or the Act giving the convention the force of law in Canada, it is hereby declared that the law of Canada is that section 245 of the *Income Tax Act* applies to any benefit provided under the convention.
>
> **(2) Subsection (1) applies with respect to transactions entered into after September 12, 1988.**

Honourable senators, do not be fooled. Do not be misled into believing that this clause on the plain face of it can be anything other than a retrospective and retroactive enactment, because it precisely applies to anything after September 12, 1988. It is retrospective and retroactive with respect to the application of the law.

Honourable senators, I no longer have the naïveté of Senator Massicotte. I resolved my dilemma by crossing the floor. I no longer have to vote day after day on some pretty shoddy and unprincipled stuff.

Some Hon. Senators: Oh, oh!

Senator Cools: I could go on even longer. I have no problems.

There is no mention in the summary of Bill C-33 to one of the major thrusts of the bill, which is to create a statute reaching 17 years into the past. That, honourable senators, is a serious parliamentary matter. It is something that historically has been thought of as inimical to Parliament, even offensive and repugnant to Parliament.

We must differentiate between certain kinds of retroactive legislation and other kinds. For example, many budget bills are retroactive because they have to be, but they are usually retroactive to the day that the budget speech was made or to the day that the legislation was introduced. This provision is not of that nature. This clause is of the nature of reaching into the past to change policy and law after hundreds of thousands of Canadians have already concluded their business or personal affairs on the basis of what the law was at that time, which is extremely irregular and extremely improper. If we were living with a strong Parliament — a strong House of Commons and a strong Senate — both chambers would roundly condemn this sort of activity and would actually try to hold ministers to account. Holding a minister to account has become a thing of the past, but I will leave that discussion for another day.

On the question of this kind of extreme radical approach, I would like to cite just one or two authorities on the phenomenon of reaching back into the past to change the law. The language that is normally used is "prospective," meaning looking to the future, or "retrospective" in terms of going back.

We all know Blackstone and the other famous Englishmen constitutionalists, but we know less about the American jurists. I would like to use the opportunity today to put a statement on the record from one of the foremost giants of the law to come out of the United States of America, Theodore Sedgwick. I am reading from his 1874 book called *A Treatise on the Rules that Govern the Interpretation and Construction of Statutory and Constitutional Law*. This is not a recent book, but it is a good one.

Rules, principles and maxims govern how we draft and script laws and how we construct and construe statutes. Chapter 5 contains a small section headed "Retrospective Statutes." At page 60, Sedgwick states:

> Retrospective or retroactive statutes. A statute which takes away or impairs any vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already passed is to be deemed retrospective or retroactive. The power of a legislature to pass laws having such an effect has often been denied by philosophical writers.

Honourable senators, Sedgwick tells us that the practice of reaching into the past to create new disabilities, especially civil ones, or removing vested rights has often been denied. This is something that I want to put on the record very strongly today.

• (1600)

I also took the time to go to Sir William Blackstone, the English writer on the common law, who predates Sedgwick by 100 years. Sir William Blackstone, in Book One of the first edition, 1765 to 1769, of his famous book, *Commentaries on the Laws of England*, at page 46, said as follows:

> All laws should be therefore made to commence *in futuro*, and be notified before their commencement; which is implied in the term "prescribed."

Honourable senators, the preponderance and the weight of parliamentary opinion has been for centuries that retrospective legislation is to be avoided and is to be used only in exceptional circumstances. As a general principle of operation, it should be avoided.

The power that Parliament has over raising taxes is almost sacred. Revolutions have been fought over this very matter, and to my mind that adds a whole other dimension to this phenomenon.

I submit to honourable senators that retrospective legislation in respect of raising taxes and in respect of the Income Tax Act is even more repugnant than other retroactive legislation.

I tried but could get no discussion in the National Finance Committee whatsoever about the phenomenon of the use of retrospective legislation on a matter of taxation such as this, and I have a lot of trouble with that.

I reviewed the proceedings of that committee again, and I invite all honourable senators to do the same.

The committee heard from Mr. Marc Lalonde. It also heard from Mr. Brian Carr and Mr. Paul Hickey, co-chairs of the Canadian Bar Association and the Canadian Institute of Chartered Accountants Joint Committee on Taxation. Mr. Carr and Mr. Hickey both testified about the minister's assertions and strongly condemned the minister's position, as did former Deputy Minister of Justice Roger Tassé, who appeared in his capacity as an individual on May 2, 2005.

Mr. Marc Lalonde, a former Minister of Justice, a former Minister of Finance and a former holder of several other portfolios, appeared before the Standing Senate Committee on National Finance on May 3, 2005. I have great respect for Mr. Lalonde. I served in this place in the last months of Mr. Trudeau's government when Mr. Lalonde was a minister, and I have great respect for his clarity of mind and his intellect. He remains, to date, a former Liberal minister who has not been touched by any form of scandal or discredit.

I should like to record my disappointment that the steering committee chose to deny Mr. Lalonde the opportunity to appear before the National Finance Committee. In the full committee, that decision was reversed, and Mr. Lalonde was invited to appear.

I, for one, am always appreciative of the insights and knowledge that former ministers bring to many matters. They bring both the theoretical and the conceptual framework of Parliament and the principles of governance in concert with an understanding of the practical workings of government, which is always helpful.

On May 3, 2005, Mr. Lalonde said:

> I appear before you not only as an advisor to the law firm Davies Ward Phillips & Vineberg LLP, but also as a former federal Minister of Justice and Finance.
>
> I wish to register my full agreement with the presentations made by the Joint Committee of the Canadian Bar Association and the Canadian Institute of Chartered Accountants and by Mr. Roger Tassé, Q.C., a former Deputy Minister of Justice of Canada, which categorically reject the recourse to the retroactivity provisions contained in Bill C-33.
>
> The Department of Finance has always recognized that resorting to retroactivity had to be an exceptional measure that should only be used in exceptional circumstances.

This is a former Minister of Finance speaking.

I will repeat:

> The Department of Finance has always recognized that resorting to retroactivity had to be an exceptional measure that should only be used in exceptional circumstances. The proposed retroactive provisions contained in Bill C-33 do not meet the criteria enunciated by the same department in its report to the Standing Committee on Public Accounts of the House of Commons in 1995.
>
> What these amendments do here is to radically change the law retroactively to 1988. It is specious to argue that it merely clarifies the situation.

Mr. Lalonde is referring —

The Hon. the Speaker *pro tempore***:** I am sorry, honourable senator, but your time has expired. Are you seeking permission to continue?

Senator Cools: Yes, I would love to have permission.

Senator Rompkey: We will agree to five minutes.

Senator Cools: What would happen if I asked for six? Would I get four?

I must tell honourable senators that I am blessed. I pray and I meditate on the issues of vanity. My purpose in speaking is usually to record something that posterity can read for enlightenment. I do not speak just to hear the sound of my own voice.

Remember that Mr. Lalonde is rejecting, along with the other witnesses, Minister Goodale's evidence that this provision is a simple clarification that should be passed overnight with no debate. He rejects this evidence as specious, wrong and fallacious.

He went on to say:

> If the Department of Finance and/or the Canada Revenue Agency are of the view that there has been such misuse or abuse in some circumstances, there are clear ways of dealing with such situations. The solution is not to retroactively grant to officials the right to decide what they

> think the law might have meant between 1988 and 2004. Under the Canadian democratic system, it is for the courts, not bureaucrats, to determine what the law currently is. If the Canada Revenue Agency is of the view that the law has not been respected, let it take the matter to the courts and let the judges decide.

Honourable senators, Mr. Lalonde continues throughout his testimony with his clear and lucid mind to destroy the rather weak and feeble testimony that was presented before the committee by Finance Minister Goodale, his Parliamentary Secretary John McKay, and his legal counsel Yvan Roy.

Honourable senators, the government seems to believe that, since the GAAR sections of this bill are so esoteric as to be of interest to only the small preserve in the country of tax specialists, it can get away with these provisions in the bill. In addition, the government seems to think that these provisions only have application to "a few wealthy people," and that that is justification enough.

• (1610)

I appeal to honourable senators to look at this bill. Senator Massicotte was talking about party loyalties. This is beyond party loyalties. This is about the question of the principles that found governance. This is about the principles that determine how we pass legislation.

The government's case has been skimpy, poor, frail — whatever word we wish to use. Government leader Senator Austin, just a few moments ago, again cited the *obiter dictum* of Mr. Justice Bowman. In my view, honourable senators, that proves my point, because the *obiter* that Senator Austin has been citing is not law. At best, it is some thoughts or musings or opinions of a particular judge. Senator Austin's repeated reference to that particular quotation proves the lack of a sound conceptual, intellectual and parliamentary foundation for this retrospective initiative.

I was most disappointed in the less than flattering, if not disparaging, statements that were made about Mr. Lalonde both in committee and here in the Senate. Perhaps they were not quite disparaging but they certainly would cause Mr. Lalonde's integrity, purpose and motivation to be questioned. Personally, I was disappointed that such statements found their way into the record of this debate. Mr. Lalonde stands very high in my esteem, and these days not many Liberals do.

[*Translation*]

Hon. Pierrette Ringuette: Honourable senators, I faithfully attend every meeting of the Standing Senate Committee on National Finance, of which I am a member. All the issues and all the bills that we study interest me. I share the views of Senator Massicotte and Senator Murray, and I also appreciate the comments of Senator Austin. However, there is information that I must provide honourable senators.

I have attended all the briefings organized by department officials, but at no time was retroactivity or clarification addressed. The issue of non-profit charitable organizations and the fact that 81,000 of these organizations would be affected was never discussed.

All the positive aspects of the bill, and there are many, have been outlined, but I have difficulty with the fact that, after taking such positive measures for all our fellow citizens, military and disabled persons, a bill concerning multinationals was included, although I cannot say this was done deliberately.

Rest assured, I am not affected by multinationals. That is not to say I do not know any. I am what we call an "average citizen." However, the average Canadian citizen definitely has an interest in having legal and equitable rules in place, regardless of his or her income.

My colleagues all commented on the issue of retroactivity. I have no legal training, but I can tell you one thing: a very simple logic underlies this issue. Indeed, based on the testimonies that we heard from departmental officials, the 1988 legislation is very clear. If it is clear, why do we need to clarify it? If it was made very clear in 1995 with the court's decisions, why do we need these two retroactivity elements? If it had not been clear, why not have included these two elements in the 1996-97 budget? There is something here that I cannot figure out, and I find this hard to accept.

The other point that I want to bring to your attention has to do with clause 35, which deals with charitable organizations in our country. A letter was faxed to my office this afternoon, and I would like to read it to you:

[*English*]

> Dear Senator Ringuette,
>
> Re: Bill C-33: Disbursement Quota Income Tax Act Amendment.
>
> We were heartened to see the interest taken by the Senate National Finance Committee on the effect of Bill C-33 on registered charities when we testified on May 2.
>
> That brings me to another point. The Senate National Finance Committee was the only parliamentary committee that took the time and respected the non-charitable organizations of this country and heard their representations in front of it this week.
>
> Your comments at the hearing and during the committee's subsequent deliberation on May 3 indicate a keen understanding of the difficulties this legislation will pose for charities. You plan comments on third reading.

That is what I am doing, honourable senators. The letter continues:

> Bill C-33 contains the most significant changes to the regulation of federally registered charities in more than 20 years. This legislation profoundly alters the disbursement quota requirements. There is the obligation on charities to spend a certain portion of their receipted donations and/or assets on charitable activities in three specific ways:

(a) It makes charitable organizations registered after March 23, 2004, budget announcement date, subject to a requirement to annually disburse 3.5 per cent of its capital assets on charitable activity and imposes the same requirement on existing registered charities, starting in 2005.

(b) It makes both parties in interorganizational transfers between registered charities subject to meeting a disbursement quota requirement whereas previously only the funding charity had to count the transferred amount in its disbursement quota.

(c) It reduces the annual capital asset disbursement quota requirement for foundations from 4.5 to 3.5.

• (1620)

Let me pause for just a second. Department officials testified before the committee that clause 35 is meant to standardize foundations and charities. In my part of the world, there are not many foundations. We are relatively poor. However, with clause 35, foundations go from an obligated disbursement of 4.5 per cent to 3.5 per cent, whereas non-charitable organizations, namely a normal community non-profit organization which previously had no disbursement requirement, go from zero to 3.5 per cent.

As well as the substantive changes, the bill introduces new concepts such as enduring property and a capital gains pool, which further complicates registered charities' compliance with the Income Tax Act. The disbursement quota requirements are now far too complex for the typical charity with less than half a million dollars in annual revenues and relying exclusively on volunteers to understand. Even where a charity has one or two paid staff, it will not possess the expertise to deal with this type of complex regulatory requirement. Indeed, there are even disagreements among lawyers and accountants as to the effect of these changes on charities, never mind volunteers.

Aside from the excessive regulatory burden this places on sector groups, it will result in some important negative consequences for certain charities. Specifically, the amount of funds many groups have available to meet core costs will be reduced, and cash poor charities risk erosion of their capital assets.

In the question you posed to us on May 2, you raised the issue of a charity that provides low-income housing. As we told you, we do not know whether that charity is going to have to worry about its repair and replacement reserves, or even the value of their housing in trying to determine whether it met its disbursement quota. Potentially, museums, land trusts and charities that operate sports arenas and others are going to be caught in an impossible position.

The original public policy rationale behind the disbursement quota, principally controlling fundraising costs and precluding unlimited accumulation of capital by foundations, has been superseded by court rulings and other measures. Arguably, these policy goals may no longer even be achieved by the current provisions.

At this stage, with respect to the bill becoming law, we are considering how best to move forward and maintain the liberty of contacting you.

This letter is signed by the three witnesses who came to us from Imagine Canada, Philanthropic Foundations Canada and the Muttart Foundation.

Honourable senators, the points addressed in that letter are cause for concern.

In my community, people work for youth organizations. They sell on a yearly basis in our small, low-income community tickets for a motorcycle so that they can support the local hockey rink. On a yearly basis, they may raise $25,000 to $30,000, which they need.

I am also familiar with non-profit groups that have built social housing for our senior citizens. On a yearly basis, they put aside a reserve. A reserve is a capital asset and, therefore, this provision applies. There are 81,000 non-profit organizations in this country and over 2 million volunteers. The other place did not even take the time to meet with them at their request. We did. I think that we also need to look further into this bill at third reading to see how we can accommodate and redress the concerns of various senators.

Hon. Sharon Carstairs: Honourable senators, I am pleased to rise and participate in this debate. My honourable colleague on the other side, not the one who just spoke but the previous senator, made reference to the Honourable Marc Lalonde. I think almost all of us in this chamber have a great deal of respect for the Honourable Marc Lalonde, but interestingly enough, my respect for him comes less from his position as a former finance minister than his position as a former health minister. It was in the latter position that Mr. Lalonde recognized, for the very first time, that we had to move away from health care as being a sickness policy toward the concept of health care being a wellness policy. For that, I am deeply grateful to the former Minister of Health, the Honourable Marc Lalonde.

Having said that, however, I would like to commend the steering committee for its decision, not with respect to Mr. Lalonde, but with respect to the position of not having lobbyists appear before a committee of the Senate. I know we have done it in the past, but I think it is wrong. I do not think we should, as a general principle, have paid lobbyists appear before our committees because their evidence, with the greatest of respect to Mr. Lalonde or anyone else, is a reflection of those who pay them.

Honourable senators, I am married to a lawyer. Some of the lawyers in this chamber may disagree, but he would argue very strongly as follows: "You tell me what you want an opinion about, and I will give you the opinion." That is part of what lawyers do. They look to those sides of an argument that would best build their case; so be it. That, too, is what a lobbyist does. He looks to those arguments that would best build his case.

It would be wonderful, honourable senators, if we lived in an absolutely black and white world.

Senator Cools: I thought we did.

Senator Carstairs: The reality is we do not. When it comes to making decisions as to how we will vote on a particular piece of legislation, we cannot look at just one provision. We must look at all of the provisions within the proposed legislation and decide, on balance, whether it is legislation that does more for us in a positive way or does more for us in a negative way. If it is one that does more for us in a negative way, I would suggest voting against it. If, on the other hand, it is legislation that does more for us in a positive way, then I would suggest that we should support the legislation.

Senator Massicotte raised the issue about party loyalty, and, obviously, we are politically in a difficult situation at this particular point in time, of which we are not really a part. It is something going on in the other chamber. Having said that, we have our own particular partisan loyalties. That is true.

More important, I have policy loyalties. I have loyalties on policy issues with respect to what needs to be done in the best interests of Canadians.

When I look at this legislation, I am most concerned about the policy issues. I am concerned that this legislation helps families save for their children's education. I think that is an important policy objective.

• (1630)

I am positive about the tax credit in education because it will allow those who are pursuing additional course work while employed, provided their employer has not paid for that education, to benefit from a tax credit. That is a positive measure.

I consider the measures with respect to persons with disabilities to constitute an extraordinarily positive initiative.

All honourable senators know of my deep concern surrounding the issue of Canadians who are dying and the need for quality care for those individuals. Most of those individuals, at the end of their lives, are disabled, and many of their families will be able to take advantage of this particular tax provision as they go through that difficult time. Clearly, that is a provision in this proposed legislation that speaks to me most eloquently.

With the passage of this bill, the men and women of our Armed Forces who are serving in high-risk areas will not be required to pay income tax on the money they earned while they were in that high-risk area. That is a clear expression of our respect for the service these men and women provide to each and every one of us.

As I read through the bill, I see many positive measures. However, I cannot ignore the legitimate concern that has been raised by some senators in this chamber. The issue, honourable senators, for lack of a better phrase, is called "tax avoidance." I am a citizen like everyone else. If I can avoid taxes, I will do so. I am a human being. I go through my income tax form — I still pride myself on doing my own — and I look for any single measure for which I may qualify which may entitle me to an additional deduction. I believe that any normal Canadian would do that.

Then I consider the fact that the government passes tax strategies. Senator Massicotte said that he could find no government statements. I found some. The Canada Revenue Agency, in 1989, at the Pacific Association of Tax Administrators Conference, said clearly that they intend to use the general anti-avoidance rule in situations where there is a blatant use of the treaty provisions and treaty-shopping transactions. They said, in 1995, in the Protocol to the Canada-U.S. Tax Convention, that general anti-abuse provisions apply in conjunction with the convention in both the United States and Canada. They talked about it in the tax conference report of 2001, saying that Canada takes the view that it is free to apply its domestic anti-avoidance rules to counter abusive treaty-shopping arrangements. I think the tax department was clear in what they were trying to do in the 1988 budget.

There will be those members, including the honourable senator opposite, who do not agree that they were clear. There will be disagreement amongst us in this chamber.

Honourable senators, for me, the policy initiatives in this particular document outweigh the concern on which there is some disagreement. I will support this bill because I believe it is positive legislation that will benefit the people of Canada.

Hon. Senators: Hear, hear!

Debate suspended.

[*Translation*]

ROYAL ASSENT

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

RIDEAU HALL

May 5, 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 bills listed in the Schedule to this letter on the 5th day of May, 2005, at 4:03 p.m.

Yours sincerely,

Barbara Uteck
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

Bills Assented to Thursday, May 5, 2005:

An Act to amend the Citizenship Act (*Bill S-2, Chapter 17, 2005*)

An Act to amend the Patent Act (*Bill C-29, Chapter 18, 2005*)

[*English*]

BUDGET IMPLEMENTATION BILL, 2004, NO. 2

THIRD READING—MOTION IN AMENDMENT—
ALLOTMENT OF TIME FOR DEBATE—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Dallaire, for the third reading of Bill C-33, a second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004;

And on the motion in amendment of the Honourable Senator Murray, P.C., seconded by the Honourable Senator McCoy, that Bill C-33 be not now read a third time but that it be amended:

(*a*) in clause 52, on page 66, by replacing lines 9 to 15, with the following:

"(4) Subsections (1) to (3) apply with respect to transactions entered into after March 22, 2004.";

(*b*) in clause 53, on page 66, by replacing lines 21 and 22, with the following:

"(2) Subsection (1) applies to taxation years and fiscal periods that begin after 2004."; and

(*c*) in clause 60, on page 73, by replacing lines 1 to 3, with the following:

"(2) Subsection (1) applies with respect to transactions entered into after March 22, 2004.".

Hon. Anne C. Cools: May I ask the honourable senator a question, since so many of her remarks were directly pointed at me?

Senator Carstairs: No.

Your Honour, other senators wish to speak, so I would defer.

Hon. Serge Joyal: Honourable senators, I do not wish to speak about the reliability of the testimony of Mr. Lalonde or Mr. Tassé. However, the question has been raised by our colleague Senator Smith. To say the least — I will be upfront — I was surprised that Senator Smith raised this question. Senator Smith sat in cabinet with Mr. Lalonde at the same time that I was a minister of the Crown. Mr. Lalonde made a clear statement on page 930-15 of the transcript of the committee when he testified on May 3. He was quite upfront about the origin of his mandate, as was Mr. Tassé when he testified, and I refer to page 1230-57 of his testimony. I will make a few comments on this because it is a serious issue.

Senator Cools: It is very serious.

Senator Joyal: I would not like the impression to be created that honourable persons are selling their services and that, if you put enough money on the table, they will defend your cause. This is, to me, a simplistic view of what I call the reputation and professional background of somebody.

I will relate a personal experience with Mr. Trudeau. As many of you know, Mr. Trudeau went to practise law at a major law firm in Montreal. He was there giving advice, and he was open to accept advice. Mr. Trudeau told me clearly that he would not take cases in which he did not believe. In other words, he was not for sale.

I have known Mr. Lalonde since 1971. At that time, I was special assistant to the Honourable Jean Marchand. I worked with him in caucus and I worked under him as a leader of our caucus. I also worked under him in cabinet as a senior minister. I have worked with him over the past 20 years. I have been policy chair of the Liberal Party for the Quebec wing, and I have worked with him in his efforts as co-chair with former Senator Kolber of the Laurier Club. I am now working with him, as he is the chairman of the Liberal organizing committee for the next campaign. Mr. Lalonde is not somebody who has tried to hide his past.

• (1640)

I have been in touch with him for the last 21 years since he left Parliament in 1984. I have followed his professional involvement. He has been an adviser to the Vietnamese government in the drafting of their new constitution. He did so in South Africa. South Africa adopted the federal model and they tried to import as much as possible the multicultural concept that we have in our society, the independence of our Supreme Court, a Charter of Rights and Freedoms and so forth. I will not go on at length.

Mr. Lalonde took those mandates because he strongly believed that the principle at stake in the mandate he was undertaking, either nationally or internationally, was in the prolongation of what he had been fighting for all his life when he was a member of Parliament or a minister of the Crown.

I would like to put that in the record, honourable senators, because I think the honourable senator who has raised the issue that the Senate, as a practice, should not hear lobbyists has a sound starting position. However, when we want to know more about Charter implications, why should we be deaf to Roger Tassé? Roger Tassé was the Deputy Minister of Justice when I co-chaired the special standing committee on the drafting of the Charter of Rights and Freedoms. I worked with him daily at 7 a.m. before we resumed the sitting at 9 a.m. to review the testimony and what we could expect from the brief we had received and so on.

Again, I have remained in touch with Roger Tassé all those years. As a matter of fact, although I was not expecting to mention that today, when we had the clarity bill — a very difficult, intense issue in this house — I thought that there were some aspects of it that were very difficult to accept as is. I consulted Roger Tassé on the basis of the interpretation of the substance of the BNA Act, the Constitution Act, 1867.

I can testify to honourable senators that Roger Tassé would not come forward in a special committee of Parliament to testify in the support of one principle or another just because he would be receiving big bucks.

Senator Smith: Who suggested that?

Senator Joyal: I am not suggesting that; I am expressing my opinion, Senator Smith. I am trying to establish the credibility of the two experts who were heard at the committee. You ask for bona fides. That question, in fact, was answered in the minutes of the committee, if the honourable senator had just taken time to read them. That would have prevented this house from being led to believe that those two witnesses were not credible. That is why I mention that. Believe me, I am very happy to mention that here today.

Senator Smith: I never suggested that at all.

Senator Joyal: The second point — if Senator Smith feels aggrieved, there are procedures —

Senator Smith: I do.

Senator Joyal: There are procedures in the rules and you can stand up and raise a point of order.

Senator Cools: He should get up and clarify what he said.

Senator Joyal: I want to commend the Leader of the Government in the Senate for having supported the committee to hear witnesses. I think it was helpful for the role we have in this chamber. Again, I know it is a difficult issue and I know it is a very politicized issue, and I commend the Leader of the Government in the Senate for having facilitated the hearings of the committee.

It is a very important aspect of our work that when there is a difficult issue, we are not afraid of diving into it, of looking at all aspects of it and coming to a fair and reasonable conclusion. That is what I call sober second thought.

Senator Cools: That is right.

Senator Joyal: This issue is difficult. It is difficult because, as many of you have said previously, if it was as clear as some would pretend, we would not have to look back 16 years. In fact, I think there are reasonable grounds for a reasonable person to come to a conclusion that is not that reasonable.

I know that honourable senators have been inundated by quotations today, but as a matter of fact, shortly after the coming into force of the tax measures in 1988, the CRA published a detailed information circular analysing the possible application of the GAAR at that time. They gave 22 separate hypothetical transactions, but none of them related to international treaties or to regulation.

As the Leader of the Government in the Senate will understand, there was a grey zone left. That grey zone was never made clear by a court decision. The Leader of the Government in the Senate is right; Justice Bowman is an expert witness for whom I have the greatest respect. As a matter of fact, I had a friend pleading in front of him less than a month ago and he told me how shrewd Mr. Justice Bowman is. However, I want to remind the Leader of the Government in the Senate that when Mr. Justice Bowman commented on the application of the GAAR to international treaties, he said, "I have not devoted much time to the principles to be followed in interpreting tax treaties."

Even Justice Bowman was qualifying his *obiter* by stating that this is not an issue he has canvassed all around and which he can give us a definite answer on. As the Leader of the Government in the Senate is a lawyer, he will understand this was a side comment on the basis of the decision that the justice made in the case.

I do not think, if you would get advice from your lawyer friends, that the basis of your position is one on which a justice has said, "I have not devoted much time" to try to study those principles. I do not think you would feel very safe to go and spend money in court.

Senator Cools: Absolutely.

Senator Joyal: There is in this issue, as Honourable Senator Massicotte has mentioned, an important issue. I would like to commend Senator Massicotte for having raised it, because it is sometimes an issue with which we wrestle in isolation and we are very shy to come forward in front of our colleagues.

There is some kind of sentiment of fear for honourable senators to come forward in this chamber and say, "I feel torn. I feel torn between my party allegiance — because I want to support the position of my party, be it the official opposition, be it the government position — and my duty to the Senate, which is very clear. My Senate duty is enshrined in my oath of office, and my oath of office is to give advice and consent."

To give advice is to stand up and express your views — your advice, what you personally think, not what the Liberal Party thinks, not what whoever else thinks. Honourable senators are summoned here to give their opinion after having paid due reflection and, in this case, having read some of the material.

On the other hand, honourable senators are members of a party. As members of a party, they have an obligation to their party. That obligation is of a particular nature in this chamber. This is a chamber where the government is accountable, but not responsible. There is, honourable senators, a fundamental difference between the two concepts, between the two words. Those words are enshrined in our Constitution.

When we say the government is accountable, it means that the government has to come in the chamber and answer for its decisions, its omissions, its initiatives or its legislation. Once the government has been made accountable, there is a decision to be taken if it will be kept in office or thrown out. That is where the government is kept responsible.

In this chamber, honourable senators try as much as we can to keep the government accountable, that is, to answer for its decisions, its initiatives, its programs, its omissions or its lack of decision or its wrong decision, sometimes, but we cannot vote down the government. Why? Because in our Constitution, there are two chambers and one chamber cannot say the government should be thrown out and the other say no, the government should stay in.

We would be in a permanent deadlock.

• (1650)

The forefathers wisely thought the government should be responsible for whether it is kept in power or thrown out. Members are elected in the other place. In this place, the government is solely accountable because we are not elected. We are appointed. We are appointed until age 75. Whatever happens in the other place in the upcoming months, we will not change seats in this place. We will all be here expecting to receive the legislation or the initiatives of future governments, whomever that may be. We are here up to age 75 for a specific reason: to remain independent when we give our advice, so we freely give our advice.

Again, I return to the question that Senator Massicotte raised. Senator Carstairs, Senator Day, Senator Ringuette and many others have pointed out that there are many measures in this bill that we all support and feel represent good, sound policy for the whole of Canada. However, there is one measure that many of us feel, with the greatest respect to those who believe the contrary, raises a fundamental issue enshrined in the rule of law, which is that once a bill is adopted, citizens should know their responsibilities and obligations and the tax that he or she has to pay.

What do we do? We are damned if we do not adopt this bill, and we are damned if we vote the bill down.

The Hon. the Speaker *pro tempore***:** I regret to inform the honourable senator that his time has expired. Does he wish leave to continue?

Senator Joyal: Two minutes.

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

Hon. Senators: Agreed.

Senator Joyal: Thank you, honourable senators.

Is there a way out of this conundrum? I think that Senator Murray has opened the door. We have seen in this chamber, under previous leadership, a bill introduced dealing with Aboriginal people and the non-derogation clause. I want to commend the Leader of the Government in the Senate at the time who introduced the commitment from the minister to come forward with the definition of the non-derogation clause. Our Aboriginal people were very much concerned with the application of that bill. We have since seen the minister come forward with the commitment letter whereby the minister would take it upon himself to introduce further measures to address this particular situation.

This practice is not uncommon in the fiscal or tax field. In the last five and a half years there have been more than 200 instructions from the Department of Finance giving general interpretation to fiscal problems that might be raised in the application of certain tax provisions. I would plead with the Leader of the Government in the Senate to express to the Minister of Finance our deep concern that he give as much consideration as he can to coming forward with instructions or a circular whereby the principles of equity would be maintained in the interpretation of those provisions.

The Honourable Leader of the Government in the Senate is a lawyer. He will understand that the common law always carries with it the notion of equity. When a situation produces something that is contrary to the principle of justice, we take a decision in equity. It is the last argument.

I suggest to the leader that there is an opportunity in the upcoming days for the Minister of Finance and government officials to reflect upon what the Honourable Senator Murray has proposed. The fact that so many of those instructions or letters of undertaking have been drafted by the Department of Finance is an indication that this option should be explored so that we can reconcile what the Honourable Senator Massicotte has expressed. We have expressed the reasonable concern of this house and we have sought the benefit of redress that we feel would bring fair and equitable solutions to the problems we have today.

ALLOTMENT OF TIME FOR DEBATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I move:

> That pursuant to rule 38, in relation to Bill C-33, a second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004, no later than 3:15 p.m. Tuesday, May 10, 2005, any proceedings before the Senate shall be interrupted and all questions necessary to dispose of third reading of the Bill shall be put forthwith without further debate or amendment, and that any votes on any of those questions be not further deferred; and
>
> That, if a standing vote is requested, the bells to call in the Senators be sounded for fifteen minutes.

The Hon. the Speaker *pro tempore***:** Honourable senators, this motion is moved under rule 38, which reads as follows:

> At any time while the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate may state from his or her place in the Senate, that there is an agreement among the

representatives of the parties in the Senate to allot a specified number of days or hours to the proceedings at one or more stages of any item of government business. At the same time, without notice, the said Leader or Deputy Leader may propose a motion setting forth the terms of such agreed allocation and every such motion shall be decided forthwith without debate or amendment.

Is there agreement?

Hon. Terry Stratton (Deputy Leader of the Opposition): I would like to give a brief explanation that, in essence, what we are doing is having a form of closure on debate with which we on this side do not agree. We felt quite comfortable that we could have had a fulsome debate on the amendments, have a vote, and then continue with debate on the main motion.

However, the government did not feel comfortable with that proposal. While we have problems with the general anti-avoidance rule portion of the bill, there are other aspects of the bill that are needed. If one goes through the list, as Senator Carstairs has partially done, it explains the need for the bill.

The government should be reprimanded strongly for having brought forth a controversial piece of legislation, but it is typical of this government that they do this with things that are very beneficial to Canadians. We disagree with that practice vehemently. We think it is wrong on principle.

The GARR is a contentious issue. While Senator Carstairs argued about not having registered lobbyists appear before committees, we must be careful when we say that.

Hon. Anne C. Cools: There is no such thing.

Senator Stratton: That would mean that people who are interested in the environment and belong to organizations would have difficulty appearing before our committees.

• (1700)

Where do you legitimately put a fence around this that would preclude only the people we deem to be lobbyists? Then we would get into the definition of lobbyist. We should be free and open. As long as that lobbyist fully explains who he is working for, the fact that he is being paid and that his position will be a certain position, I see nothing wrong with that. If declaration is made, then you should be able to proceed, particularly with a man like Marc Lalonde who had a strong background in government.

Our side has reluctantly agreed to this simply on the basis that we can only achieve so much as we proceed down the road with this bill. The numbers today in this chamber simply do not allow for defeat of the bill or amendment of it.

There is a point of principle to be made on the GAAR, which is that people in this chamber have spoken out against the GAAR for a particular reason. They gave strong, cogent reasons for doing so. I sat through those Finance Committee meetings. Even the representatives from the Department of Finance could not convince us with a straight face — I thought, at any rate — that what they were doing had a real basis in fact. I believe it was something just simply could not properly explain to anyone who sat in and listened to the evidence presented.

We on this side will reluctantly go along with this motion based on those arguments. We will see what happens on Tuesday. I do not think there is an issue here that we should really weigh the balance of whether this bill should pass or not. We could attempt to delay the bill because the government is in very serious danger of falling. There was a motion put forward today that was ruled out of order. Had that motion been ruled to be in order, there would have been a vote in the other place on Monday or Tuesday. For that reason, we must weigh the balance of whether this bill is worth delaying until the government falls, and if it does, then what service have we done to Canadians if this bill then does not pass?

We must weigh the good parts of this bill, and there are some good parts that our side would support. We may quite strongly disagree with the GAAR. We simply do not agree with the arguments that have been placed before us. We have to weigh that balance. As Senator Joyal, Senator Massicotte and others have said, we have our parties and then we have Canadians.

With that I will sit down and our side will reluctantly go along with this motion.

Hon. Lowell Murray: Honourable senators, the motion presented by Senator Rompkey, I suspect, is not debatable. Perhaps I might be permitted, with your indulgence, to ask a question of the Deputy Leader of the Government.

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

Hon. Fernand Robichaud: The motion is not debatable.

The Hon. the Speaker *pro tempore***:** It is not a debatable motion.

Senator Murray: I wanted to ask the Deputy Leader of the Government, first, whether the time of 3:15 is cast in stone. I am aware that there were two or three other senators who want to take part in the debate. No one has authorized me to speak on their behalf and I will not, but it occurred to me that if the vote is scheduled later in the afternoon, say for 4 p.m. or 5 p.m., there might be an opportunity for one or more of them to take part.

Second, honourable senators know what I think about 15-minute bells. We have been through this before. I will simply say that if my amendments have to be voted upon, I will be seeking a standing vote at whatever time is agreed. I say that so no one will be caught short by a standing vote.

Senator Rompkey: I simply underline one of the points that Senator Stratton made in his remarks. One of the underlying concerns is what is happening in the other place. If we are to get the bill through and it receives Royal Assent, we have to have Royal Assent while the House of Commons is sitting. To be sure of getting the bill passed and having Royal Assent, we thought it would be better to err on the side of caution, set Royal Assent for Tuesday and get the whole thing completed.

That was what informed our discussions this morning, and that is the procedure I think we should follow. I concur wholeheartedly with Senator Stratton. There are many good measures in this bill that will not come into effect. Senator Austin, Senator Carstairs and others listed them. Therefore, we have to make sure the bill does not fail. In order to do that we have to pass it expeditiously, while the House of Commons is still sitting. That is why we took the decision we did, and I think we should stand by it.

Senator Cools: This is such an unusual measure. Senator Rompkey should provide more explanation because it seems to me that on the strength of these half dozen Conservatives sitting here, there is no danger that the bill will be delayed or lost. If honourable senators are worried about opposition from their own benches, their own government senators, then they should be open with us all. The way our proceedings have been moving ahead today, it appeared the house was coming to the logical conclusion of at least a voice vote on the amendments. That is my first point. The Deputy Leader of the Government should be open with the house because there is no danger that these four Conservatives here could do much to delay anything today.

Is it possible that the time of 3:15 for the vote could be moved forward to at least 4:15? A few senators may want to speak. Senator Rompkey must provide this explanation because the government controls the whole agenda. The government controlled the agenda when this bill reached this chamber.

The Hon. the Speaker *pro tempore***:** Unless leave is granted, I believe the senator is debating.

Do Senator Rompkey or Senator Austin wish to respond?

Hon. Jack Austin (Leader of the Government): Honourable senators, the reason for the motion is to provide time for me to respond to the request of Senator Joyal and other senators. I am not sure how I will respond or with what, but at least it provides that time. Once this motion is passed, we can continue the debate. However, if the opposition side wishes to forgo Question Period on Tuesday, that would provide further time for debate on Bill C-33.

An Hon. Senator: Question!

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

Some Hon. Senators: Agreed.

Senator Cools: On division.

The Hon. the Speaker *pro tempore***:** On division.

Motion agreed to, on division.

Senator Robichaud: Question!

The Hon. the Speaker *pro tempore***:** Are honourable senators ready for the question on Senator Murray's amendment?

Senator Stratton: Go right ahead. Let us get this done.

• (1710)

Senator Murray: Honourable senators, I rise on a point of order. We have just passed a motion stating that all questions are to be put no later than 3:15 on Tuesday.

An Hon. Senator: No later than.

Senator Murray: Yes, you have me there. There is still —

Senator Austin: I move the adjournment of the debate if there are no other speakers on this bill at this time. If there is another speaker, we will listen.

Senator Stratton: Are we certain that no other senator wishes to speak to the main motion on the bill itself?

Senator Cools: I do.

The Hon. the Speaker *pro tempore***:** Senator Austin, do you have a motion to adjourn?

Senator Austin: I move the adjournment of this debate.

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Austin, seconded by the Honourable Senator Rompkey, that further debate be adjourned until the next sitting of the Senate.

Senator Cools: I rise on a point of order.

The Hon. the Speaker *pro tempore***:** Senator Cools on a point of order.

Senator Cools: Senator Austin is not capable of moving the adjournment because he has already spoken on this today.

Senator Robichaud: I move the adjournment of the debate.

Senator Austin: You are not the Speaker, Senator Cools. Let the Speaker run the chamber.

The Hon. the Speaker *pro tempore***:** Senator Robichaud.

[*Translation*]

Senator Robichaud: Honourable senators, I move that further debate on the motion be adjourned until the next sitting of the Senate.

On motion of Senator Robichaud, debate adjourned.

[*English*]

CANADA TRANSPORTATION ACT

BILL TO AMEND—SECOND READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Corbin, for the second reading of Bill S-6, to amend the Canada Transportation Act (running rights for carriage of grain).—(*Honourable Senator Kinsella*)

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, Senator Kinsella was prepared to speak to this bill today but is unavoidably away. I wish to adjourn the debate in his name so that he may speak next week.

Hon. Senators: Agreed.

On motion of Senator Stratton, for Senator Kinsella, debate adjourned.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

NINTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the ninth report of the Standing Committee on Internal Economy, Budgets and Administration (budgets of certain committees), presented in the Senate on April 21, 2005.—(*Honourable Senator Furey*)

Hon. Marie-P. Poulin, for Senator Furey, moved the adoption of the report.

Motion agreed to and report adopted.

STATE OF POST-SECONDARY EDUCATION

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Callbeck calling the attention of the Senate to the state of post-secondary education in Canada—(*Honourable Senator Moore*)

Hon. Terry M. Mercer: Honourable senators, it is fitting that I rise today to speak on Senator Callbeck's inquiry on post-secondary education as, just this past Monday evening, I spoke to the National Student Commonwealth Forum's opening debate on this very topic. I was encouraged by the participation of this group of high school students who came together to explore issues and policies.

I spoke to these students about youth leadership, emphasizing education as their gateway to a prosperous future. As parliamentarians, we cannot ignore the simple truth that youth are the future of Canada. They are the leaders of tomorrow. Our community colleges, universities and technical institutions are the breeding grounds for independent thought and the development of future leadership.

Honourable senators, it is not without irony that discussions surrounding education at all levels are a major concern for youth as they begin to become involved in politics and policy discussion. It should be a major concern for all Canadians, regardless of age. These high school students are starting to worry about how they will afford the next phase of their education, and rightly so. They have to worry about their futures, their careers and their ability to pay back their student loan debt, and so must we. We must share their concerns. Too often, we, as a society, live in the moment and forget to think about the future.

Honourable senators, one of the most important assets for the betterment of society is a highly sophisticated and relevant education system. Education is the solution to a multitude of problems, from health care, to poverty, to international development.

How can we improve our society? I will concentrate on two areas that I think are important: funding and the administration of the system.

Currently, post-secondary education is funded out of the larger Canada Social Transfer from the federal government to the provinces. We all know that the provincial governments have responsibility for the administration of education. However, the federal government is starting to play a larger role. In fact, it must.

Funding under the Canada Social Transfer is increasing, but all levels of government and all citizens need to realize that increasing funding is not the only solution.

• (1720)

A proposal to separate education funding from the broad social transfer has arisen through various student organizations, including the Canadian Federation of Students and the Canadian Alliance of Student Associations.

Prior to Christmas, I had the honour to chair a policy development committee of the Atlantic caucus of our government to explore policy in a variety of areas, including education. The Young Liberals of Canada also studied this issue in detail separately.

As a result of cooperation between the youth, members of Parliament, senators and student organizations, an excellent policy proposal was passed at the recent biennial convention of the Liberal Party of Canada that I believe will go a long way to secure a financially available education system in this country, a separate Canadian education transfer to all provinces.

I believe we all must explore the idea further to bring it to reality. However, funding is not the only problem, and increasing the funds necessary is not the only solution. Multi-faceted approaches need to be explored to address the issue of the current student debt as well. No one should be prevented from furthering their education because of their financial state. This is simply not acceptable and, I believe, not the Canadian way.

Too often, too many of our students face high levels of debt when completing university. Many programs are available to students, including the Canada Student Loans Program and the Millennium Scholarship Fund to reduce the amount of loans required.

How can we further reduce the burden of high loan debt for students? It may be, perhaps, through tax incentives, loan forgiveness or increased grants.

Would it be possible to make the whole payment of student loans tax deductible? Could we, as the Government of Canada, afford that? Could the provinces? A better question is whether we can afford not to. These are the questions we need to ask ourselves.

Honourable senators, in order to be successful, Canada must ensure that education becomes one of our most important priorities. While we all know that health care is number one on everyone's list, we must recognize that every major policy area is interconnected with a sound and available education system.

It is also very important to recognize that university is not for everyone. We must acknowledge that community colleges, trades and skills training, and other alternate forms of education are vital parts of the education infrastructure in this country. We must ensure that funding is fair and equal across all of these forums.

As someone who has worked a long time in the not-for-profit sector, it is easy for me to recognize that a poor education can result in poor health and poor lifestyle choices. Healthy, well-educated Canadians will show the world that Canada is a leader. All government programs should work in concert to foster this healthy well-educated state. We need to work harder to harmonize our priorities and our ideas. We need to challenge ourselves, our governments, and, indeed, all Canadians.

We need to make people realize that educating our citizens is at the heart of a prosperous future, as this will be the major fight of the 21st century. A knowledge-based society requires a sound education system. The economy demands it. We should demand it, and I solicit your support for the motion of Senator Callbeck.

On motion of Senator Rompkey, debate adjourned.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Peter A. Stollery, pursuant to notice of May 3, 2005, moved:

> That the Standing Senate Committee on Foreign Affairs have power to sit at 3:30 p.m. on Wednesday, May 11, 2005, even though the Senate may be then sitting, and that rule 95(4) be suspended in relation thereto.

Hon. Terry Stratton (Deputy Leader of the Opposition): If I may, I would like to ask Senator Stollery the reason for his motion, because we are rising at four o'clock, as is our normal fashion, and he wishes to begin the hearing at 3:30. Perhaps it is a minister, hopefully?

Senator Stollery: Thank you very much, honourable senators. Yes, we have Minister Carroll, and this is the time that she can come and that is the reason for the request.

The Hon. the Speaker *pro tempore***:** Do we have agreement, senators?

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** Is the house is ready for the question?

An Hon. Senator: Question!

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

Motion agreed to.

ADJOURNMENT

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

Hon. Bill Rompkey (Deputy Leader of the Government): 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, May 10, 2005, at 2 p.m.

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

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, May 10, 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, May 5, 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	05/03/23*	8/05
S-18	An Act to amend the Statistics Act	04/11/02	05/02/02	Social Affairs, Science and Technology	05/03/07	0	05/04/20		

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-3	Bill, C-3, An Act to amend the Canada Shipping Act, the Canada Shipping Act, 2001, the Canada National Marine Conservation Areas Act and the Oceans Act	05/03/21	05/04/14	Transport and Communications					
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	05/02/15	0	05/02/22	05/02/24*	3/05
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	05/02/22	0	05/03/21	05/03/23*	10/05
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	05/02/10	0	05/02/16	05/02/24*	2/05

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-8	An Act to amend the Financial Administration Act, the Canada School of Public Service Act and the Official Languages Act	05/03/07	05/03/21	National Finance	05/04/14	0	05/04/19	05/04/21*	15/05
C-10	An Act to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts	05/02/08	05/02/22	Legal and Constitutional Affairs					
C-12	An Act to prevent the introduction and spread of communicable diseases	05/02/10	05/03/09	Social Affairs, Science and Technology	05/04/12	2	05/04/14		
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	05/02/10	0	05/02/10	05/02/15*	1/05
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	05/02/23	Transport and Communications	05/03/22	0 observations	05/03/23	05/03/23*	14/05
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	05/02/16	Aboriginal Peoples	05/03/10	0	05/03/21	05/03/23*	9/05
C-24	An Act to amend the Federal-Provincial Fiscal Arrangements Act and to make consequential amendments to other Acts (fiscal equalization payments to the provinces and funding to the territories)	05/02/16	05/02/22	National Finance	05/03/08	0	05/03/09	05/03/10*	7/05
C-29	An Act to amend the Patent Act	05/02/15	05/03/07	Banking, Trade and Commerce	05/04/12	2	05/04/14	05/05/05*	18/05
C-30	An Act to amend the Parliament of Canada Act and the Salaries Act and to make consequential amendments to other Acts	05/04/13	05/04/14	National Finance	05/04/21	0	05/04/21	05/04/21*	16/05
C-33	A second Act to implement certain provisions of the budget tabled in Parliament on March 23, 2004	05/03/07	05/04/20	National Finance	05/05/03	0			
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

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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	05/02/22	0 observations	05/02/23	05/02/24*	6/05
C-39	An Act to amend the Federal-Provincial Fiscal Arrangements Act and to enact An Act respecting the provision of funding for diagnostic and medical equipment	05/02/22	05/03/08	Social Affairs, Science and Technology	05/03/10	0	05/03/22	05/03/23*	11/05
C-41	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. 4, 2004-2005)*	05/03/22	05/03/23	–	–	–	05/03/23	05/03/23*	12/05
C-42	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2006 *(Appropriation Act No. 1, 2005-2006)*	05/03/22	05/03/23	–	–	–	05/03/23	05/03/23*	13/05

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	05/02/17	0 observations	05/02/22	05/02/24*	4/05
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	05/02/17	0 observations	05/02/22	05/02/24*	5/05

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	05/05/05*	17/05
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	Dropped from Order Paper pursuant to Rule 27(3) 05/02/22						
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					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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	Dropped from Order Paper pursuant to Rule 27(3) 05/02/22						
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	05/04/12	2 observations			
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	05/03/21	0	05/03/23		
S-15	An Act to prevent unsolicited messages on the Internet (Sen. Oliver)	04/10/20		Subject-matter 05/02/10 Transport and Communications					
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		Subject-matter 05/02/22 Aboriginal Peoples					
S-19	An Act to amend the Criminal Code (criminal interest rate) (Sen. Plamondon)	04/11/04	04/12/07	Banking, Trade and Commerce					
S-20	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	04/11/30		Subject-matter 05/02/02 Legal and Constitutional Affairs					
S-21	An Act to amend the criminal Code (protection of children) (Sen. Hervieux-Payette, P.C.)	04/12/02	05/03/10	Legal and Constitutional Affairs					
S-22	An Act to amend the Canada Elections Act (mandatory voting) (Sen. Harb)	04/12/09							
S-23	An Act to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations) (Sen. Nolin)	05/02/01							
S-24	An Act to amend the Criminal Code (cruelty to animals) (Sen. Bryden)	05/02/03	05/03/10	Legal and Constitutional Affairs					
S-26	An Act to provide for a national cancer strategy (Sen. Forrestall)	05/02/16							

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-28	An Act to amend the Bankruptcy and Insolvency Act (student loan) (Sen. Moore)	05/03/23							
S-29	An Act respecting a National Blood Donor Week (Sen. Mercer)	05/05/05							

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-25	An Act to amend the Act of incorporation of The General Synod of the Anglican Church of Canada (Sen. Rompkey, P.C.)	05/02/10	05/03/23	Banking, Trade and Commerce	05/05/05	0 observations			
S-27	An Act respecting Scouts Canada (Sen. Di Nino)	05/02/17	05/04/19	Legal and Constitutional Affairs					

CONTENTS

Thursday, May 5, 2005

PAGE

SENATORS' STATEMENTS

ROUTINE PROCEEDINGS

QUESTION PERIOD

ORDERS OF THE DAY

Available from PWGSC – Publishing and Depository Services
Ottawa, Ontario K1A 0S5