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Wednesday, April 25, 2007

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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THE SENATE

Wednesday, April 25, 2007

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

Prayers.

[*Translation*]

SENATORS' STATEMENTS

TRIBUTES

THE LATE HONOURABLE JACK WIEBE

The Hon. the Speaker: Honourable senators, pursuant to rule 22(10), the Leader of the Opposition has requested that the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Jack Wiebe, who died on April 16, 2007.

[*English*]

Hon. Marilyn Trenholme Counsell: Honourable senators, it is with sadness for the family and friends of the Honourable Jack Wiebe that I offer these words. I know that I speak for colleagues in the Senate when I say that many of us would have wished to be at his state funeral yesterday in Swift Current, Saskatchewan. I know, also, that during these days our thoughts and prayers have been with his beloved wife, Ann, and their children.

When I met Their Honours in 1997, they wanted to be called Jack and Ann, and that defined their relationship with others, wherever their journey together took them, throughout the 46 years of their wonderful marriage.

During our meetings together as vice-regal representatives, the Honourable Jack Wiebe saw things clearly, responsibly and simply. No pomp, no pretension, only principle.

His honesty, his caring and his smile won him a multitude of friends from all walks of life and in countless places. Premier Lorne Calvert said this following his death: "Jack Wiebe's trademark was his great affection for people . . . . There was something about Jack Wiebe's roots in that prairie soil of Herbert and that country that just never left him . . . ."

• (1335)

In the Senate of Canada, this son of the country, this Prairie farmer, this representative of the people in the Saskatchewan legislature, this Lieutenant-Governor, this senator brought enormous cumulative experience, sound judgment, common sense and dedication to our chamber.

At the time of his retirement, in her tribute to such a fine human being, Senator Carstairs told a story, "The only time Jack ever said no to the leadership of the Senate was when he refused to cancel a trip to Disneyland with his grandchildren." At this sad time, I am sure that they remember those precious days.

Perhaps the most moving — and the most significant — Senate tribute came from Senator Oliver:

> He had that partisan streak ... but on the other side ... he was our own philosopher-king ...
>
> Jack was instrumental in helping our committee produce a landmark report on climate change ...
>
> In a private note ... to me, ... he indicated that he was leaving ... His last handwritten sentence ... reads as follows: "It will now be up to you to ask the tough questions."

Senator Oliver concluded that, "Jack will certainly be missed . . ."

My fellow senators, the life of Jack Wiebe offered us friendship, inspiration and at the last, a challenge. We must ask the tough questions humbly and with integrity.

We must not rest until our final hour, and at that moment perhaps, we will know as Jack Wiebe did that life has not been in vain. We remember him with respect, with gratitude and with affection. We ask God to be with Ann and their family.

Hon. David Tkachuk (Acting Deputy Leader of the Government): Honourable senators, I met Jack in a by-election in 1977. It was so long ago. He was a member of the Davie Steuart Liberals and we were starting to build the Conservative Party of Saskatchewan.

It was one of the hardest-fought by-elections in which I have ever been involved. Our job was to place second, which we did. The NDP won that seat, but Jack was there all the time fighting for the Liberal Party.

He died a week ago after a battle with cancer. When news of his death spread, tributes poured in from around the country. He was well known, well respected and, more importantly, he was well liked. It was difficult not to like him.

One of those tributes captured his essential character. It noted that he was just as comfortable meeting with the Queen as he was meeting with his fellow hog farmers. He had the opportunity to do both during his 30 years as a hog farmer and the six years he spent as Lieutenant-Governor of Saskatchewan. He was appointed to that position in 1994, the first farmer named to the post in nearly 50 years.

No matter how high he climbed, Jack never forgot where he was from — a son of the prairie from a small town called Herbert. That town was in his blood and so was politics.

Jack's great-grandfather emigrated from Russia to Kansas and his son, John Wiebe, moved from there to Herbert. In a way, the family never left; or when they did, they never failed to return.

Then there was politics. Jack's grandfather was the first mayor of Herbert when the town was formed in 1912. Jack's father, whose first name was Herbert, also served as mayor of Herbert from 1928 to 1954 — so long that some people thought the town was named after him. More likely, he was named after the town.

Jack followed in the footsteps of his forbearers. He was first elected as a Saskatchewan MLA in 1971 and re-elected in 1975. After serving as Lieutenant-Governor, he was appointed to the Senate of Canada in 2000, an appointment from which he retired in 2004.

He brought to this chamber a certain dignity and man-of-the-soil humbleness. He left the Senate far too soon, as he did this earth. In fact, that puts me in mind of something he once wrote when he was Lieutenant-Governor:

> Another year has passed; it seems at even greater speed than previous years. It has been written: you'll find as you grow older that you weren't born such a very great while ago after all. Time shortens up.

God bless you, Jack.

• (1340)

Hon. Jane Cordy: Honourable senators, I also wish to pay tribute today to the Honourable Jack Wiebe. Jack was appointed to the Senate shortly before I was, in the spring of 2000. I had the pleasure of serving with him on the Standing Senate Committee on National Security and Defence. Anyone who has served on that committee knows that the members see a lot of each other and get to know one another very well.

Jack was a fine gentleman. One did not have to be speaking with him for very long to find out that he was from Saskatchewan. He loved his home province and he took great pleasure in telling others about where he lived. Jack was an honorary colonel in the military. While he had great respect for all who served and have served in our Canadian military, he had a particular admiration for our reservists. His fellow committee members knew that they did not have to ask questions in this area — because this was Jack's area of expertise. He was such an advocate for reservists and a promoter of the fine work they do in serving Canada.

It was a pleasure working with Jack in the Senate. My thoughts are with his wife, Ann, and his family.

MR. BERT BROWN

APPOINTMENT TO SENATE

Hon. David Tkachuk (Acting Deputy Leader of the Government): Honourable senators, I rise to commend the Prime Minister on announcing his intention to appoint Bert Brown to the Senate. In doing so, Prime Minister Harper is acknowledging Mr. Brown's years of work for the cause of reforming this chamber. When he made his announcement, the Prime Minister stated:

> No Canadian has done as much to advance the cause of Senate reform as Bert Brown. He has been a tireless advocate for democratization of the Upper House for over two decades. He ran in three Alberta Senate elections and he is the only Canadian to be elected twice as a Senator-in-waiting. In short, he is a perfect role model for elected Senators.

Not so commendable, honourable senators, was Liberal Leader Stéphane Dion's attempt to criticize Mr. Brown by stating that the Prime Minister is not appointing "the best person" for the job. Mr. Dion also said that the appointment of Mr. Brown is not in the interest of Alberta — never mind that Alberta followed the best of democratic traditions in selecting Mr. Brown and that a majority of Albertans voted for him. According to Mr. Dion, they got it wrong. I am sure that not one Albertan or other Canadian would agree that the Prime Minister should override the democratic process that took place in Alberta and defer to Mr. Dion when it comes to deciding what is in Alberta's best interests — not one, with the obvious exception of perhaps some in this house.

Honourable senators, the current Liberal leader's remarks are highly unfortunate. They display a lack of understanding about the history of Senate reform issues and its resonance not only in the province of Alberta but in other provinces as well.

Bert Brown will be a tremendous addition to this chamber and I know that all honourable senators will welcome him.

TRANSPORT

CRUISE SHIPS— DUMPING OF SEWAGE IN COASTAL WATERS

Hon. Pat Carney: Honourable senators, coastal Canadians in British Columbia have raised concerns about the dumping of sewage by cruise ships in their waters, turning coastal waters into cruise-industry toilet bowls. The April 19, 2007, issue of *The Georgia Straight*, a local British Columbia publication, featured an article by Andrew Macleod entitled "Cruise on down to our dumping ground." The report describes how cruise ships dump tonnes of sewage in Canadian coastal waters with impunity. Checking out the story, because it seemed to be bizarre, I found that, incredibly, Canada has no legal recourse to prevent cruise ships from dumping sewage other than to defer to Transport Canada's voluntary guidelines. Developed in 2003 by Transport Canada in conjunction with Environment Canada, the Pollution Prevention Guidelines for the Operation of Cruise Ships under Canadian Jurisdiction set out the current regulatory requirements as well as the practices that cruise ships have voluntarily agreed to follow. However, because they are voluntary, there are no enforcement mechanisms or legal sanctions for breach of the regulations and practices. For example, a ship owned by Celebrity Cruises Incorporated was fined $100,000 in Washington State for spewing sewage into Juan de Fuca Strait, which borders my home on Saturna Island, but to Canada, CCI paid nothing, despite admitting that it fouled Canadian waters three times.

• (1345)

Coastal communities welcome the cruise ship industry, but they are also justifiably concerned about the pollution left behind by the ships. Vancouver Port Authority estimates that the cruise sector generates more than 13,000 jobs annually and that each ship brings $2 million to the region every time it ties up at the dock.

The problem is that the 33 Vancouver-based cruise ships that will churn through B.C. about 300 times this summer will carry nearly 1 million passengers, each of whom produce 3.5 kilograms of garbage per day, not including liquid waste. Many of these ships carry more than 2,000 people, making them the equivalent of floating cities, with all the consumer needs and wastes you would expect from a luxury resort of that size. Much of the ships' time will be spent in the confined waters of Hecate Strait, the Inside Passage and between Vancouver Island and the mainland, where the whale population is already vulnerable.

Although a number of pollution regulations have been made under the authority of the Canada Shipping Act, currently none of them apply to the discharge of sewage by ships. Transport Canada published proposed regulations in the *Canada Gazette* Part I on June 17, 2006 that would consolidate the various existing regulations regarding ship-source pollution and include many new provisions not contained in existing regulations, including provisions to prohibit or control sewage discharges from all vessels, including cruise ships. Transport Canada officials state that these regulations have not yet been finalized or put into effect.

I hope that honourable senators will agree with me that the government should act as soon as possible to enforce these new regulations and to put them into effect so that those who live in coastal communities can be assured that their waters will not be one giant septic tank.

AFRICA MALARIA DAY

Hon. Rod A. A. Zimmer: Honourable senators, for most Canadians, the word "net" conjures up positive images, thanks to the protective connotation of terms such as "social safety net" and, at this time of season, with the Stanley Cup playoffs, "hockey nets." In many African countries, nets provide for needs on a more fundamental level, by preventing the spread of malaria.

Malaria is caused by a parasite that is transmitted by mosquitoes. It is endemic in most of sub-Saharan Africa and in parts of North Africa, and its toll on human life is grim. It claims more than 1.3 million lives a year, and in Africa it is the largest single cause of death of children under five years of age. Pregnant women are also particularly vulnerable as malaria infection increases the risk of maternal and neonatal death, miscarriage and stillbirth.

Honourable senators, there is hope for curbing the transmission of this dreadful disease. Insecticide-treated bed nets provide a physical barrier at night when mosquitoes are most likely to deliver their devastating bites. Bed nets have been shown to reduce malaria transmission by up to 50 per cent, and at a cost of only $10, one net can protect a child for up to five years. Since several children and adults may use one net, it can protect several lives.

Spread the Net is a campaign whose objective is to raise enough funds to purchase 500,000 bed nets. Its co-founders, the Honourable Belinda Stronach, Rick Mercer and Nigel Fisher of UNICEF Canada, recently announced that Liberia will receive 33,000 nets. On a recent visit to Ottawa, Liberian President Ellen Johnson-Sirleaf expressed her great appreciation for the donation, which will surely help save the lives of many children in her country.

Honourable senators, today is Africa Malaria Day. Please join me in recognizing the ongoing effort of projects such as Spread the Net and in celebrating the young lives that will be spared the ravages of malaria.

GOVERNOR GENERAL

RECENT COMMENTS IN THE MEDIA

Hon. Jim Munson: Honourable senators, I rise today to address some of the negative commentary in *The Globe and Mail* toward the Right Honourable Michaëlle Jean. As honourable senators have no doubt heard, Ms. Jean has decided to lighten her schedule in order to get some well-deserved rest. This announcement has seemingly given some of my former colleagues in the press an opportunity to denigrate any and all work she has done in her vice-regal position.

I understand the media's role is to shine a light in the darkest corners of our society, but in this situation I believe that the commentary is completely off base. We were all here when Ms. Jean was sworn in to her vice-regal duties. Her charismatic personality actually livened up this wonderful place. Her inspirational story continues to inspire generations of new Canadians.

In her role as Commander-in-Chief of the Canadian Forces, she has been welcomed with open arms by our men and women serving overseas, especially those serving in Afghanistan.

• (1350)

She gave them hope and a sense of purpose. She visited Africa and showed the developing world a side of Canada that sadly is not seen as often as one would like these days, one of compassion. Her caring face says to the world's poorest, "I understand what you have been experiencing, but you must see that there is hope, that there is a way out of poverty's crushing grip."

Honourable senators, it is interesting that upon returning to Haiti, her place of birth, she was welcomed as a national hero. That does not happen very often in this country. Michaëlle Jean is a national treasure, one that should be celebrated as the face of a new Canada and should not be denigrated.

ROUTINE PROCEEDINGS

STUDY ON INTERNATIONAL OBLIGATIONS REGARDING CHILDREN'S RIGHTS AND FREEDOMS

FINAL REPORT OF HUMAN RIGHTS COMMITTEE TABLED

Hon. A. Raynell Andreychuk: Honourable senators, I have the honour to table the tenth report of the Standing Senate Committee on Human Rights, which deals with the rights of children, and I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

Hon. Senators: Agreed.

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

FIRST NATIONS LAND MANAGEMENT ACT

BILL TO AMEND—FIRST READING

Hon. David Tkachuk presented Bill S-6, an act to amend the First Nations Land Management Act.

Bill read first time.

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

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

[*Translation*]

ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

POLITICAL COMMITTEE MEETING—
FEBRUARY 28-MARCH 3, 2007—REPORT TABLED

Hon. Rose-Marie Losier-Cool: Honourable senators, pursuant to rule 23(6), I have the honour to table, in both official languages, the report of the Canadian Branch of the Assemblée parlementaire de la Francophonie respecting its participation in the meeting of the Political Committee of the AFP, held in Pré-Saint-Didier, Valle d'Aosta, Italy, from February 28 to March 3, 2007.

[*English*]

QUESTION PERIOD

FINANCE

LOSS OF JOBS TO FOREIGN COUNTRIES AND
RESTRICTIONS ON FOREIGN INVESTMENT—
GOVERNMENT POLICY

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators know that Canada's economy will evolve in the global village. Over the past years, several manufacturing jobs have been transferred to other countries, China and India, as an example, among others.

• (1355)

In the meantime, the government is proceeding with the closure of 23 consulates that are helping Canadians do business abroad. The same government has introduced a new regime for income trusts, resulting in a loss of jobs to those who normally work at head offices, because many companies are being transferred to other countries.

In the interim, Canadian companies such as Alcan, Bombardier, Québécor and many others have seen interest deductibility being questioned and changed, or in the process of being changed, not knowing exactly where we are with this.

Mr. Thomas d'Aquino, Chief Executive and President of the Canadian Council of Chief Executives, said recently that changes announced in the budget "may seriously undermine the competitiveness of Canada's homegrown champions . . . ." As we know, Bombardier and Alcan have Canadian shareholders and Canadian professionals working for them, and their research is also completed in Canada.

My question to the Leader of the Government in the Senate is the following: With respect to the policy of transferring jobs to other countries and preventing companies from investing abroad under the same conditions, when will this government address the whole economic situation and change its policy?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for her question.

According to Canada's employment numbers, it is clear that, at the present time, we are not experiencing a job loss situation. As a matter of fact, there is a severe labour shortage in certain sectors of the economy.

As I have said in this place before, and as the Minister of Finance has said, our tax fairness plan will restore balance and fairness to the federal tax system by creating a level playing field between income trusts and corporations. In the same way as do corporations, the market can now evaluate trust businesses on their own economic merits, rather than on a tax-advantage basis.

In response to the honourable senator's specific question and in view of the comments she has raised regarding Thomas d'Aquino, officials in the Department of Finance are discussing the details of these proposed changes, including transition issues, with industry representatives as they develop the legislation.

Senator Hervieux-Payette: There may be labour shortages in some parts of the country, but I can tell the government leader that in many parts of my province of Quebec, as well as in other places in Canada, we are not gaining jobs but losing them.

In the meantime, a Quebec-based company, Bell Canada, seems to be on the block for privatization and as such will be bringing in foreign investors who will sell the best parts of the company and deprive Canada of a true blue chip institution.

What will this government do to prevent this indirect takeover by foreign investors and make sure this company, which is in fact a landmark of Canada, remains in Canadian hands?

Senator LeBreton: I thank the honourable senator for her question. I am sure Senator Hervieux-Payette understands and appreciates that it would be highly inappropriate for me or for anyone else in the government to comment about an activity in the marketplace today. I shall simply undertake to make the honourable senator's views, as she has expressed them, known to my colleagues.

Senator Hervieux-Payette: I am seeking to ensure that the policy of this government is followed. First, consultation should occur before decisions are made. Second, all policies should keep good jobs in Canada and provide us with the possibility of having a say in future policies.

Senator LeBreton: The Minister of Finance, the Minister of Industry and other ministers, have engaged in much consultation with industry and business. As the honourable senator would understand, having been a member of cabinet herself, decisions such as this are, one would hope, made after consultation. That is what happened in this case.

• (1400)

REVIEW OF COST OF FOREIGN ACQUISITIONS

Hon. Jerahmiel S. Grafstein: Honourable senators, this will not be a new topic to the Leader of the Government and the opposition because I raised the issue, as my leader did today, on March 21, immediately after the budget was introduced on March 19. This is a narrow question that is difficult and damaging to the Canadian business sector; the deductibility of interest. I will not belabour the point; it has been well argued and understood by the Leader of the Government in the Senate.

In the press today I noticed that again the minister indicated that he is reviewing the subject, as the Leader of the Government has said. He indicated that he should be finished within two weeks and legislation should be ready by May. Later on we also have the views of an outstanding former adviser to the Department of Finance, who is very well known to a number of committees of this place; Mr. Farber. Mr. Farber is now in private practice, and he said he urged the government to defer the matter until it can be studied by a new panel being set up to review international tax law.

I am delighted to hear that Mr. Flaherty is changing his mind about the budget; all to the good. However, the uncertainty persists, and that puts Canadian companies in the global marketplace at a distinct competitive disadvantage to their American and European competitors. I urge the government to stop immediately, return to the initial policy, which is to allow deductibility right away, and then continue the government's review to determine if this is the most appropriate policy in the circumstances.

We have had this circumstance before. Previous ministers of finance — certainly Mr. Chrétien, most certainly Mr. Martin — made extensive consultations before they made a major shift in tax policy. In this instance there was not that consultation; it was contrary to any consultation.

Now we have a budget, we have made a mistake, and I would hope the minister would move to stop it so that Canadian companies are not at a competitive disadvantage. That is the way we lose jobs, reputation, credibility and sacred trust.

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): Honourable senators, since taking office we have improved the competitiveness of the tax system. For example, we have lowered corporate tax rates and eliminated the corporate capital tax. This proposed restriction on interest deductibility will help protect the Canadian tax base and will address issues raised on many occasions in the past by the Auditor General.

The honourable senator has a wonderful way of trying to put words in people's mouths. In answer to Senator Hervieux-Payette, I said officials are discussing the details of this proposed change with industry representatives as they develop the legislation, including the transition issues.

Senator Grafstein: The minister has said he will have legislation available by May; that is a few days away. Will the Leader of the Government undertake that the legislation will be tabled in Parliament on May 1, or immediately thereafter, in order to clear up the uncertainty?

Senator LeBreton: I will not comment on the timetable of the Minister of Finance, but I will undertake to raise with him the concerns of Senator Grafstein.

TREASURY BOARD

FEDERAL ACCOUNTABILITY ACT—
PROCLAMATION OF REMAINING SECTIONS

Hon. Lorna Milne: Honourable senators, it has been 135 days since Bill C-2, the so-called Accountability Act, received Royal Assent. However, like a lot of activity concerning this government, it is a lot more sizzle than steak.

Since December 12 a few portions of this act have been proclaimed, but large tracts of this vast and disorganized piece of legislation have yet to come into force. Of the parts that are in force, many of the structures surrounding the new positions created by Bill C-2 have not been put into place. When will this government stop claiming credit for merely passing the accountability act and start showing leadership by actually putting it into force and by abiding by its rules and regulations?

• (1405)

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): As the honourable senator knows, the Federal Accountability Act received Royal Assent on December 12, 2006. We delivered on an election promise. It has been well acknowledged by the Canadian public that it is very satisfied with the content of this act. Implementation of the act is now under way. Some provisions are already in force and came into force immediately upon Royal Assent. We are working with the departments and the various stakeholders to ensure that the changes in the act are being implemented.

The remaining provisions will come into force as the necessary regulations are written, as I explained previously to Senator Milne. Just last month, we undertook consultations related to the new Lobbyists Registration Act, the Public Servants Disclosure Protection Act came into force on April 15, and Minister Toews announced the expansion of the Access to Information Act to additional Crown corporations by September 1 of this year.

Senator Milne: I thank the Leader of the Government in the Senate for her response, but I have to tell her again that Canadians are getting tired of simple rhetoric. Canadians want action and leadership; they want the Minister of Public Works and Government Services to step aside and order a contract not to

be awarded until the matter is cleared by an independent source. Canadians want ministers to do that when there is a perceived conflict of interest.

Speaking of conflict of interest, it was a large element of Bill C-2. In fact, it was 52 pages of the bill, the majority of which fell under section 2 of the act. Has section 2 been proclaimed? At what stage is the government in putting into place this conflict of interest regime? In the meantime, what code of conduct are cabinet members following while they wait for section 2 to be proclaimed? Are members following the previous act that disallowed apparent or prospective areas of conflict or are they following the yet-to-be-proclaimed code of conduct, which is a much weaker regime?

Senator LeBreton: First, as a member of the cabinet, I can tell the honourable senator that I am well pleased by the conduct of every one of my cabinet colleagues. People have conducted themselves with the highest degree of integrity, and we are following all of the codes that were presented to us by the Privy Council Office and by the former Ethics Commissioner.

In terms of the particular question, I will take it as notice. Again, we were sworn in as the new government 14 months ago and during that time, the ministry and the government have conducted themselves with honesty and integrity, and Canadians recognize that.

PUBLIC WORKS AND GOVERNMENT SERVICES

AWARDING OF CONTRACT TO CGI GROUP INC.— POSSIBLE CONFLICT OF INTEREST

Hon. Lorna Milne: Honourable senators, my question is directed to the Minister of Public Works and Government Services.

The minister's government was elected on a slogan to clean the government "whiter than white" and he stated on February 27, "It is imperative that Canadians have confidence in the fairness, openness and transparency of the government's procurement activities."

An increasing number of Canadians and some of the national media that are not noted for their friendliness to the Liberal side of this chamber are asking for an inquiry into this contract. They are rapidly losing confidence in the accountability of the minister's department. Will the Minister of Public Works and Government Services become an example to his own government and recuse himself from the Treasury Board committee that oversees the procurement of this contract? Will the minister respect his own accountability act and step aside so that Canadians can regain the little confidence they have left in this aging government?

• (1410)

Hon. Michael Fortier (Minister of Public Works and Government Services): Honourable senators, yesterday I appeared before the House of Commons Standing Committee on Government Operations and Estimates, where I answered several questions from the honourable senator's colleagues on this topic. I was accompanied by several senior bureaucrats from the department, including the deputy minister. The deputy minister was asked point blank to comment on the conduct of the minister and his staff with respect to awarding contracts. I would invite the honourable senator to read what he said. From the get-go, we have not been involved, directly or indirectly, in any contractual situation in the department, as it should be.

I am not setting myself as an example; I think what I am doing is the right thing. This is how the department should be run. That was confirmed by the deputy minister, who, by the way, was appointed by the former Liberal government.

Senator Milne: Honourable senators, I have a further supplementary. As I stated before, we are pretty well aware that this government has selectively proclaimed only bits and pieces of its vaunted accountability act. Of the few parts proclaimed, many do not have the necessary structures, representatives or even office-holders to administer the legislation. Conveniently for the minister, one of the forgotten or ignored sections of the accountability act is the creation of a procurement ombudsman, whose very mission is to review procurement practices and investigate potential conflicts of interest.

Therefore, will the minister withhold awarding this contract until the long-overdue appointment of the procurement ombudsman is made, and will the minister allow the accountability act to finally shed a little light on this murky subject?

Senator Fortier: I wish to thank the honourable senator for her fourth question. If her colleagues from the other place had actually spoken to her before she asked that question, they would have told her that yesterday the deputy was asked this very question, to which he replied that they are now down to the short strokes with a few candidates. They are likely to be appointing someone soon. Advertisements were placed in national newspapers — a head hunter was contracted — and several interviews have been conducted. The deputy minister expressed certainty that the name of the procurement ombudsman will be announced shortly.

For the honourable senator's information, the procurement ombudsman's position will not be what the honourable senator believes it will be. The procurement ombudsman, for example, will receive complaints from some suppliers — but not suppliers that have lost contracts. Suppliers that have lost contracts have other avenues of complaint; they can go to various administrative tribunals, or even to the Federal Court. They would not go to the procurement ombudsman. The ombudsman will be there to handle complaints from other pockets of suppliers and will be there to provide both the minister and Parliament with suggestions on how to beef up and improve the procurement process. That individual would not necessarily be the right person for what the honourable senator has in mind.

The good news, however, is that the person will be appointed shortly and so the honourable senator should be happy.

Senator Milne: Will the minister postpone until then?

FINANCE

BANKRUPTCY AND INSOLVENCY LAW— INTRODUCTION OF AMENDING LEGISLATION

Hon. Yoine Goldstein: Honourable senators, my question is directed to the Leader of the Government in the Senate. The season for perennials is upon us, so I shall ask yet again a perennial question about insolvency legislation.

One would have thought that urgent requests from a multiplicity of stakeholders would move the government to forge ahead in this essential framework legislation, but nothing has happened. We know this government harbours great disdain for courts and for judges not of their stripe, but last month the Ontario Court of Appeal said this — and I am quoting from *The Lawyers Weekly,* Vol. 26, No. 48, which refers, in part, to that judgment:

> At the very least consideration ought to be given to amending the BIA to reflect the existing state of the common law . . .

The article goes on to say:

> The judges pointed to the 2003 report of the Senate Banking, Trade and Commerce committee, which urged Parliament to revamp the bankruptcy law in line with fairness, accessibility, predictability, responsibility, cooperation, efficiency and effectiveness.

Once again, the article quotes, in part, the judgment of the Ontario Court of Appeal:

> The situation before us reflects none of those principles ...

• (1415)

Aside from the stakeholders who have been urging the government to proceed with the legislation which it has in hand, the courts are now urging the government to proceed with the legislation which it has in hand.

When will the government take a few moments off from imposing its neo-con agenda on the people of Canada and start passing legislation which the people of Canada want, need and demand?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): I thank the honourable senator for his question. I am well aware of the courts asking that the government move quickly on this matter. This has been a difficult piece of legislation, as honourable senators know, because of our experience with it in the last Parliament. Ministers Blackburn and Bernier and their officials are working to try to write this legislation and get it right this time.

I was planning to apologize to Senator Goldstein for taking so long in providing a proper response to him, until the last part of his question, which I think was unnecessary. First, a "neo-con government" does not address issues such as settling the residential schools issue; a neo-con government does not resolve the hepatitis C issue or apologize to the Chinese head tax victims. Those were all issues that confronted the honourable senator's government, not our government. If that is what "neo-con" means, I am very proud of it.

Senator Goldstein: Honourable senators, my question remains. When will the government bring forward this legislation, which I have seen and which exists? All the government has to do is introduce it. When will the government do so?

Senator LeBreton: As soon as possible, Senator Goldstein.

Senator Goldstein: When is "as soon as possible"?

Senator LeBreton: "As soon as possible" is exactly what it is: as soon as possible.

THE ENVIRONMENT

KYOTO PROTOCOL—POLICY ON CLIMATE CHANGE

Hon. Grant Mitchell: Honourable senators, the defeatism and negativity that this government brings to the debate on Kyoto never ceases to amaze me. It is as though they have no vision of what the possibilities are when we pursue Kyoto properly, for the economy, for quality of life and for our leadership role in the world.

Could the Leader of the Government in the Senate please tell us: Are they mired in this negativity and defeatism because they just cannot understand how capable Canadians are to rise to great challenges, or because the Leader of the Government in the Senate knows that her government simply cannot lead Canadians to meet those challenges?

Hon. Marjory LeBreton (Leader of the Government and Secretary of State (Seniors)): If honourable senators ever want a living, breathing example of a person who is mired in negativity, they should look in the mirror of Senator Mitchell. The fact is that Minister Baird will be announcing the government's plan tomorrow, and it will be the first such plan that has ever been offered up by a government in this country. We are confident that it will be a fair, reasonable and balanced plan that will address the concerns related to the environmental issue as well as the industries that it will impact.

Senator Mitchell: Why is it that this government simply cannot understand the capability of Canadian business leaders to achieve the things that need to be achieved under Kyoto? For example, the forestry industry in this country has achieved not only its Kyoto obligations, but also seven times its Kyoto obligations already, five years before 2012.

• (1420)

Senator LeBreton: We do understand and we do have a plan. As Minister Baird rightly pointed out when he appeared before the Senate committee last week, as have many third-party experts, the previous government had costed the commitments to Kyoto and that may be why we never saw the previous government do anything about it.

ANSWER TO ORDER PAPER QUESTION TABLED

CANADA PENSION PLAN

Hon. David Tkachuk (Acting Deputy Leader of the Government) tabled the answer to Question No. 28 on the Order Paper dated February 27, 2007—by Senator Callbeck.

CANADA ELECTIONS ACT

BILL TO AMEND—MESSAGE FROM COMMONS—
DISAGREEMENT WITH SENATE AMENDMENT

The Hon. the Speaker: Honourable senators, I have the honour to inform the Senate that a message has been received from the House of Commons to return Bill C-16, to amend the Canada Elections Act, and to acquaint the Senate that the House of Commons disagrees with the amendment made by the Senate to the bill.

Honourable senators, when shall this message be taken into consideration?

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

POINT OF ORDER

Hon. Tommy Banks: Honourable senators, I rise to propose what I believe is a point of order. I was reminded of it when Senator Stratton was questioning me about the budget of the Standing Senate Committee on National Security and Defence. He said that there were presently six members of that committee. I responded that I thought there were in fact nine members of that committee because the Senate has determined there are nine members of that committee as set out in the *Rules of the Senate* in the appropriate place.

That conflict arose because three members of that committee, namely Senator Tkachuk, Senator Meighen and Senator St. Germain, have not attended the committee's meetings since February 27.

The point of order has to do with rule 85(3) and 85(4), and actually 85(2) as well. Rule 85(2) says that at the beginning of every session the Committee of Selection will make recommendations as to members of the committee. The Senate then accepts that recommendation — or it did in this case — and establishes who the members of the committee are.

Rule 85(3) says that those members shall "serve for the duration of the session for which they are appointed."

• (1425)

Rule 85(4) allows for the changes in the membership of the committee by the Leader of the Government or the Leader of the Opposition and sets out the means by which that can be done.

The least important part of my point of order has to do with the notice that was given, headlined "Notification of Change in Committee Membership," which says, "Pursuant to rule 86(4), notification is hereby given of changes in the membership list of the following committee."

Honourable senators, there is no such thing as rule 86(4). No such rule exists, so the piece of paper is wrong. It then says "the Standing Committee on National Defence and Security." That is not the committee's correct name; but those are the minor points. I am assuming that is merely a typographical error. However, then it says that the senators affected by this notice are Senator Tkachuk, Senator Meighen and Senator St. Germain and that there are substitutes pending.

Honourable senators, I think that a reading of rule 85(4), which talks about a change in the membership of a committee, refers not to a change in the number of the members of that committee, but rather to the committee's membership. It contemplates, I expect — and this is the question — that there is an obligation, when the Leader of the Opposition or the Leader of the Government makes a change in the membership of a committee, that a member, having been removed, will be replaced in some reasonable time.

The Senate has determined that there are nine members of this committee. At the moment, there are six of us — I have the honour to be one of those members of the committee — who are doing the work. The committee's work is proceeding. Every member of that committee would rather that there were nine members of the committee present at its meetings, which take place on Mondays. I know that they would also prefer that those members were Senator Tkachuk, Senator Meighen and Senator St. Germain.

The main question, aside from the typographical errors in my point of order, is whether there is not an obligation on the Leader of the Opposition or the Leader of the Government, having removed — if that is what has happened — a member from a committee, to name a successor to the member of the committee so that there are, according to what I believe is an order of the Senate, the appropriate number of members of that committee. In the case of the Standing Senate Committee on National Security and Defence, that is nine. That is my point of order.

Hon. Colin Kenny: Honourable senators, further to the comments of Senator Banks, given that there is an order from the Senate following the report of the Committee of Selection, would one not be led to assume that when one is replaced — unless it is due to prolonged illness, death or resignation — it is a temporary matter; and that once the temporary occasion has passed, the order of the Senate creating the committee in the first place would pertain and the original members would go back on the committee?

Hon. Anne C. Cools: Honourable senators, I wish to join this debate in support of the point of order raised by Senator Banks, and supported by Senator Kenny.

I think many senators here know that for many years I have raised questions around the meaning of these rules. Perhaps we should begin by citing more carefully the relevant rules. Perhaps I should begin at the beginning, which is that membership on committees — in other words, composition, membership and the names of the individual senators — is a decision of this whole house.

The Committee of Selection makes recommendations to the Senate. If and when the Senate accepts them by a vote of all of its members, that recommendation then becomes an order of this Senate. Honourable senators, I would like to make clear that there is no power on earth to abrogate or to violate such an order of the Senate. That order of the Senate is binding on every member of the Senate, and it is even more binding on the leaders of the Senate, in particular the government leaders, because rule 85(4) accords a particular privilege to them to make alterations intended to be with the concerned senators' agreement. It is not possible for the Senate, in rules 85(3) or 85(4), to violate its own rules — its own orders. The Senate would not delegate a power to a leader that would have the effect of being contemptuous of its own orders.

• (1430)

Honourable senators, I have had no time to prepare on this matter. For the record, rule 85(3) of the *Rules of the Senate* states — and I quote:

> Subject to subsection (4) below, the Senators nominated under this rule shall, when their appointments are confirmed by the Senate, serve for the duration of the session for which they are appointed.

That rule cannot be violated. When the leaders in this place claim that they have such a power to do so, they are making a most fallacious claim. I do not know anywhere else in the world that such a claim or such actions could be so boldly asserted and performed as in this house. It is a source of great pain to me.

Let honourable senators understand that there is no power in rule 85(4) to violate any order of the Senate. For the record, rule 85(4) states — and once again I quote:

> Except as provided in subsection (2.1) above and subject to subsection (5) below, a change in the membership of a committee may be made by a notice filed with the Clerk of the Senate who shall cause such change to be recorded in the *Journals of the Senate*.

Again, the rule is clear. The rule speaks to a "change," which is an alteration or a substitution; the rule does not say that the leaders can do it. The rule states, in part, as follows: "a change in the membership . . . may be made by a notice filed with the Clerk of the Senate . . . ." Rule 85 describes the mechanics and the process, which is the completion of a form to be filed with the Clerk of the Senate. In fact, it is done with the committee clerks. Recently, I went to the Clerk of the Senate looking for some of those notifications and could not find them. Instead, I had to go directly to the committee clerks.

It becomes important for honourable senators to discern the nature and source of the power that the leadership in this place have usurped and taken unto themselves whereby they can make these changes arbitrarily, unilaterally and without consultation or discussion with other senators in a very bold-faced and shameful way. God knows and I know that it will be a long time before I shall ever accept that type of action. Let the pieces fall where they may.

Honourable senators, the intent of rule 85(4) is straightforward, to allow the system to function. If certain senators are ill and cannot attend committee meetings, the rules provide for a substitution to be made without a decision of the whole Senate. I was surprised to discover that, all of a sudden, after years of understanding the nature of the common law and the law of Parliament, some senators no longer understand what these rules mean. I do not understand how this ignorance suddenly comes out of the blue and takes charge of us all.

These rules are not pure mechanics. Rather, they are supposed to live alongside not only the principles that govern this place but also the common law. It is an ancient principle of the common law that any aggrieved or questioned person has a right to respond. The rule, as consistent with the whole body of the law of Parliament and that of the common law, is premised on the fact that the agreement of the senators to the change is a *quid pro quo*, and is absolutely vital and necessary. For the most part, it should be done with consultation.

I state categorically that there is no room in the *Rules of the Senate* for arbitrariness or for the maltreatment of senators or for the violation of senators' freedom and privileges to participate in the business of this place and of its committees. Some senators here may have taken those powers unto themselves, some may be intent on not creating too much fuss, threat or commotion, but there is no such power to do what they are doing because there is never a power to mistreat.

We come from the British tradition. There is never a power to mistreat, whether in the hands of families or in the hands of bosses or in the hands of superiors. There is absolutely no power or right to mistreat any human being. There was a time in history when anyone who set out to maltreat a member of Parliament did so with fear and trembling. In the days when parliaments and their members took themselves seriously, and governments took members seriously, to finger a member or to lay a hand on or to violate any individual member of Parliament was done with much risk. In those days, parliaments did not play around; and the message for those who offended was impeachment or other harsh measures.

I shall now speak about committees themselves — and about Senator Segal and other senators. Honourable senators, whereas the creation of the membership of the committee is a creature of the Senate, chairmen and deputy chairmen of committees are creatures of the committee. Let us not confuse the two, and let us not try to pretend that the two are synonymous. There is no rule in the *Rules of the Senate* by which the leadership can even claim authority to alter chairmen and deputy chairmen ruthlessly and suddenly, without notice, as has been done.

Let us understand very clearly, honourable senators, what I am saying here. The deputy chairmen and chairmen are nominated and elected by vote of the entire committee membership.

• (1440)

Any removal of that person from those positions cannot be the privilege of any leader because those persons, the chairman and deputy chairman, are creatures of the committee. As a matter of fact, what happened in the instance of the Foreign Affairs Committee is quite interesting. Resignations may be accepted or may not be accepted, but one thing is crystal clear: The correspondence around the business of Senator Hugh Segal and I believe Senator Michael Meighen, although I cannot remember very well — and their letters of resignation was most interesting,

expressing regret and unhappiness. The very language, the style and the turn of phrase showed very clearly that there was considerable pressure to resign from the committee leadership.

Honourable senators, in my instance, there was no resignation requested from me. I wrote no resignation. I made no resignation. Someone just did it. Someone just did it, and let people figure it all out. The record is there. Someone just asked what about my caucus. I can do less about them than anyone else can. The committee took someone's word. That is what the committee did.

I will tell you something, honourable senators. Nobody can resign anyone from anything. Can you imagine if the day came where a person could walk in here and say, "This senator has resigned," and the chamber just believes that that is a resignation? You cannot do that. We do not have to take the first course at any law school. All we have to do is to look at the basic common-law principles.

Honourable senators, it is time. If there is any doubt about the meaning of these rules, then they had better be clarified, because in the absence of these rules, sooner or later someone, some member of Parliament somewhere, will go to the courts to clarify the nature of the injustice that is being done to them in the name of party leadership. If the House is not willing to resolve these questions justly, sooner or later, someone else will do that. I know, because I have talked enough members and enough violated people out of starting up lawsuits. I have spent a lot of time doing that sort of thing.

In any event, in support of Senator Banks' point of order, I am trying not to talk too much about myself because I find the whole thing so shaming and shameful. Whenever a chairman or deputy chairman resigns from a committee, the committee always has the choice to accept or not to accept that resignation. It is just as if a minister resigns. Her Majesty's representative and the Prime Minister have the choice of accepting it or not. It does happen, and it used to happen often. This subject matter is so base, to my mind.

Honourable senators, those who have doubt can look up the record. The record of the Standing Senate Committee on National Finance at the end of September last year will show very clearly that someone went into a meeting, made an announcement to the effect that Senator Cools had decided to step aside from her duties and immediately made a motion to elect a new deputy chairman. That was the end of that. Honourable senators, I would go so far as to say that that was a void motion. I would say that was a defective motion that carried. Of course, it is a question of privilege. It was more than a question of privilege, too. These days adult senators are dealt with in this place as if they are little children, removed from committees and replaced on committees without their agreement and knowledge. This must be corrected.

We are talking about a change in membership, and all of a sudden no one knows the English language. It is the strangest thing. They are saying that a change may be made. That change means substitution, and it means temporary, and it means with the agreement of the individual senator, because no order of the Senate will ever tolerate or accept a violation of its own members, because the first order of the Senate is to uphold the rights and privileges of each and every single member of the Senate.

[Senator Cools]

Honourable senators, this is a mark of the decline or the deterioration in this place. Some of these things shock me deeply. I sat in this chamber some months ago as a press conference went on outside there while the mace was on the table. Maybe some people no longer have respect for the mace on the table, but I can tell you that there is a mystical, almost spiritual side to it, and I was taught that when that mace was on the table, it commands and demands a certain kind of quality of respect or deference. Yet, certain persons, the Prime Minister in particular, held a press conference right outside this Senate door, in which he said something like I curse the Senate every morning I wake up. I do not have the exact words in front of me, but it was something like, I wake up every day, and the Senate bothers me. I curse the Senate.

Honourable senators, I do not understand. We can operate in a system where we have some respect for the process, for the system that holds us together and for the principles and for the number of people who perished and who died to bring these systems into existence. Perhaps we could have some respect for them and not seek refuge in puerile, infantile, juvenile assertions that a leader can do anything he or she wants to do. In these systems right here, leaders now treat members worse, quite frankly, than I have ever known any servant to be treated. I was raised to believe that you treat those who serve you well, and I grew up in a society where servants were commonplace, quite frankly. I grew up with them, and the first thing you are taught as a child is to respect those who support you and to respect those who serve you.

Honourable senators, it is important that this place as a whole begin to look at what I would consider the state of human relations in politics and the state of human relations within party caucuses. I heard assertions some weeks ago that this is a caucus matter. First, this is not a caucus matter. Second, caucuses are secret societies; everyone forgets that. They are secret societies. There is no real formal process. There are no proceedings. Because they are secret societies existing in a grey, almost non-existent area of the law, it is all the more important that caucus relations be managed with a decent and serious hand, not necessarily a compassionate hand, but a circumspect and astute hand. The entire function of such a secret society must be based on moral character and the force of principles, conviction and intelligence, rather than on brute force.

• (1450)

Honourable senators, I grew up in a very different way from many of you here. Only a few weeks ago, I was talking about the influence that William Wilberforce had on my life as a child. It was profound. As non-White peoples, we were encouraged to look to those rules and systems in terms of producing equality in society and in terms of producing what we called in those days a "liberal society," which was the language that was used. Perhaps we should look at some of that.

This issue is very worrisome. I do not accept that caucuses can continue to function on the premise that they can dish out as much hurt and mistreatment as they wish to their members, and that the members have no choice but to endure it or to quit the caucus. It is time for a full examination of this matter. I hope that His Honour will look at this very seriously, because the law of Parliament and the orders of the Senate are not supposed to be dealt with in this capricious, cavalier way.

Honourable senators, caucuses were the great innovation in the development of parties. Parties are an informal structure, which means all the more that their method of operation should be in accordance with principles that can clearly and quickly be identified and universally accepted and agreed upon.

I hope not to sound as though I am complaining but, honourable senators, I am this country's first Black senator and the first Black female senator in all of North America. I have much public support in this country. I was chosen as number 72 in the CBC's 2004 competition on Canada's 100 greatest Canadians of all time, and was the only member of Parliament on that list. The first 35 were already deceased. I was number 72.

In addition, when the *Toronto Sun* ran its "10 Top Women" poll in 2004, I ran away with the contest. Apparently, I received over half of all the votes. I believe it was last year, 2006, that the *Toronto Sun* listed the 50 Canadians who made a difference, and again I was one of them, and again the only member of Parliament.

Honourable senators, if we are counting political support, if we are counting intelligence, if we are counting public acknowledgement and recognition, I certainly am qualified a thousand times over to sit on Senate committees and to be a chair or deputy chair of a committee. Honourable senators, it is sometimes very hard not to view these matters in racial terms.

[*Translation*]

Hon. Céline Hervieux-Payette (Leader of the Opposition): Honourable senators, in light of the question first raised by my colleagues, Senators Banks and Kenny, and the comments made by Senator Cools, I think that we need to take a look at rule 85. It seems to me that this rule provides only for appointing and selecting committee members at the beginning of a session and that the procedure for changing committee membership during a session is unclear.

I have been faced with this situation myself, and I can say that the Liberal caucus is very uncomfortable with the procedure. Senator Cools is correct in saying that it is the Senate's job, not the leaders', to confirm committee membership at the beginning of the session. The committees designate chairs and deputy chairs — in consultation with the leadership, I will admit.

Nevertheless, one of my team's main concerns is to find people who have the ability to dedicate the necessary time and energy to committee work. When a committee has begun its work, it is always difficult to think of someone to replace a colleague, for whatever reason.

His Honour the Speaker knows that I sometimes send letters saying that on a given day, we will change a person's mandate because they are absent; notice is given. But regarding notices, to get back to the original appointment procedure from the start of the session, I think that this issue is very obscure and I am not satisfied.

I have discussed it with my colleagues. It would be a good idea for the Senate Rules Committee or Your Honour's staff to help us with the interpretation and perhaps in amending our rules to have an easier and clearer way of proceeding during the session. I am not saying that there is not currently an underlying approach, but I think it is not very clear, especially when a number of people are asked to leave their positions in the middle of a mandate.

Would His Honour the Speaker provide some guidance on this matter? The Standing Committee on Rules, Procedures and the Rights of Parliament could study this issue. I agree with Senator Cools, who said that we cannot claim that a senator has resigned from a committee when that person was not on a committee. I do not think anyone needs a law degree to agree with that.

I think we need to repair the damage that has been done. We must figure out how to avoid these kinds of problems in the future. After all, they interfere with the quality of the work we do here in this chamber. This process prevents interested, competent people from serving on committees. We must be clear about how our work here in the Senate is managed. As we all know, at the beginning of the session, senators are invited to make choices. They each represent certain interests, and they can attend meetings of the committees that interest them and on which they would be capable of serving.

I think that our leaders have always complied with this unwritten rule. The Committee of Selection reports to the Senate, and the Senate adopts the report, so committee members are appointed by the Senate. I think we should change this procedure, and I invite His Honour the Speaker to comment on how we might resolve this dilemma.

[*English*]

Hon. David Tkachuk (Acting Deputy Leader of the Government): All of this over committee membership. I was one of those members. My life has not changed that much that I have noticed, but, nonetheless, this is an important matter. Let us cut to the chase.

Senator Banks, we know there are nine members on the committee, of which there are six now, because three have been suspended, and, honourable senators, this is not a valid point of order. Rule 85(4) is clear that a change may be made by a notice filed. It does not specify the length of time for which the change is effective. It is a clear exception contained within the rules.

• (1500)

Honourable senators, rule 85 clearly contemplates changes in the memberships after the Selection Committee has presented its report. The changes may be made in the form specified by rule 85(5), which is signed by the leader or a senator designated by the leader, typically the whip. Rule 85(4) says that it shall be a change in the membership. There is no limitation on the nature of that change or its duration. In this case, the change selected was to give notification that the name of the substitute was pending. In other words, it had not yet been determined. Frankly, it was a mechanism to draw attention to the situation where a committee of this chamber had decided to exclude completely government representation from the subcommittee.

In Beauchesne's sixth edition, paragraph 773 seems to support rule 85(4):

> A legislative or special committee's membership may be changed at any time in accordance with Standing Order 114(3) by the presentation of a notification signed by the Chief Whip of a recognized party.

As well, Erskine May, twenty-third edition, referring to the House of Lords, states that changes in memberships, even of committees set up under a standing order, which itself requires that memberships should continue for the remainder of Parliament, are by no means infrequent.

I ask that the Speaker rule that this is a not a point of order and accept our argument as follows: memberships in committees can be changed; there is a process to change that membership; we followed that process; and we were correct in doing so.

The Hon. the Speaker: Honourable senators, pursuant to rule 18(3), I have heard sufficient presentations from honourable senators on the point of order that has been raised. I was thinking of issuing my decision on this right away because I have some familiarity with the rule, but then I recalled that one of the six inscriptions that are in the Speaker's quarters says: *Nihil ordinatum est quod praecipitatur et properat*, which translates to mean: "Nothing that rushes headlong and is hurried is well ordered." It is from Seneca.

[*Translation*]

Honourable senators, as we say in plain English, "Haste makes waste."

[*English*]

In that spirit, I shall take the matter under advisement and report with a ruling in due course.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Hon. J. Trevor Eyton moved third reading of Bill C-26, to amend the Criminal Code (criminal interest rate).

He said: Honourable senators, I rise today to speak on Bill C-26, an act to amend the Criminal Code relating to criminal interest rates. I believe this bill that deals with the payday lending industry presents a pragmatic and effective way of delivering certainty to a market that until now has been largely unregulated. Most importantly, Bill C-26 paves the way for the protection of consumers who borrow from payday lenders.

No federal legislation specifically addresses the majority of issues surrounding payday loans. The lenders of payday loans are not deposit-taking institutions. The federal statutes and laws that govern mainstream financial institutions do not apply to them, and, as a result, payday lenders, representing a relatively new industry, fall for the most part into a legislative vacuum. When things go wrong for consumers, it is not clear to whom they should turn.

Make no mistake; we have seen that things can go wrong for users of payday loans. Payday loans come at a high price, after factoring in the interest charged and additional fees, including application fees, processing fees, convenience fees and other miscellaneous charges. In some cases, lending practices can be abusive. Sometimes borrowers do not understand the financial consequences of their loans, sometimes borrowers are not able to pay within the time stipulated and sometimes these lenders charge additional refinancing fees for revolving payday loans in successive pay periods.

Many payday lenders offer little explanation for fees and charges. Often, they use ambiguous descriptive terms, such as "verification fees," "defined benefit plans," or "finance charges" and similar phrases. Sometimes there is no disclosure of total fees. As a consequence of all this, consumers are left confused, while payday lenders appear to have free rein to do as they wish.

Provinces, meanwhile, perceive they face a barrier preventing effective regulation of a financial service that consumers clearly embrace, for, indeed, payday loans are popular and well used by Canadians in the millions. For example, the loans are arguably criminalized by virtue of the fact they exceed the 60 per cent limit established by section 347 in the Criminal Code. As the loans are illegal, regulators cannot intervene to control costs by any means that will ensure these loans are available to consumers. Bill C-26 proposes to respond to this quandary, coming as it does from some five years of consultation between the federal government and the provinces and territories. This bill creates a special exemption from section 347 that will enable provinces and territories to regulate the industry effectively by setting clear and acceptable rules. This bill does that by recognizing regulatory regimes that bring stability and certainty to the marketplace.

Let me be clear: The government is not imposing unwanted legislation on the industry as payday lenders have been generally supportive of Bill C-26. The industry realized a regulatory framework is necessary so the lenders can compete on an even playing field. Moreover, extensive consultations have taken place between the federal government, the provinces and territories and the industry represented by the Consumer Measures Committee, or the CMC. The CMC operates under Chapter 8 of the Agreement on Internal Trade, which, amongst other things, has a specific mandate to provide a forum between governments on issues relating to consumers.

The CMC struck a working group to look at the alternative consumer credit market. Since its inception, the working group's main focus has been to look at how the payday lending sector worked. The working group has examined the industry in depth. It twice carried out public consultations with industry, consumer advocates and academics, and it conducted a round-table discussion with stakeholders.

The result of all this work is Bill C-26. This bill paves the way for the provinces to establish regulatory regimes that bring stability and certainty to this particular marketplace. In fact, a number of provinces are well on their way to achieving that goal.

For example, the Province of Manitoba has already passed payday loan legislation. It will require companies to operate within a comprehensive provincial regulatory framework. It will also require that payday lenders be licensed and bonded. The Manitoba legislation empowers the Manitoba Public Utilities Board to set the maximum rate that lenders can charge. The law will prohibit new fees when loans are renewed, extended or

replaced, unless these fees are authorized by the public utilities board. The Manitoba legislation will also prohibit the practice of signing over future wages or car ownership. Consumers will also have the right to cancel a loan within 48 hours.

Additionally, the legislation in Manitoba gives the Consumers Bureau in that province the right to gain access to licensed premises and to make copies of records. By that means, the bureau will be able to gain access to premises where there is evidence that payday loans are being offered without a licence.

• (1510)

Nova Scotia, for its part, recently passed legislation that empowers the Nova Scotia Utility and Review Board to regulate payday lenders. The board can set "just and reasonable" maximum amounts for interest rates, fees and penalties. In addition, lenders must explain the full cost of loans, and the Nova Scotia legislation regulates the practice of rollovers and prohibits lenders from charging penalties when loans are repaid early.

Once these laws are in effect, consumers will know exactly where they stand, and lenders will know the restrictions on their business behaviour.

Saskatchewan and British Columbia have also recently introduced legislation that is largely consistent with that of Manitoba and Nova Scotia. I understand other provinces are watching with great interest.

Our goal, honourable senators, is to provide a framework where each of the provinces and territories that see a need to regulate the industry can do so. With the passage of Bill C-26, they will, each of them, be able to establish a regulatory regime that will set rules for the industry suiting their respective jurisdictions.

Let Bill C-26 pave the way for those jurisdictions that want to make payday loans more transparent, fair and straightforward for consumers.

At the same time, I would emphasize that the bill does not interfere with the variety of possible policy choices provinces may make. Quebec, as we know, prohibits payday lending by setting a lending ceiling that is lower than the Criminal Code rate. It can continue to do so.

I urge all honourable senators to vote in favour of this bill. Provinces are awaiting its passage so that they can ensure that their consumers are properly protected through appropriate consumer protection legislation. Canadians, by these means, will have greater stability and certainty around this emerging industry.

Hon. Jerahmiel S. Grafstein: Honourable senators, I shall comment on this bill from the standpoint of the Standing Senate Committee on Banking, Trade and Commerce, which approved the bill without amendment but with some observations. I want to take honourable senators through those observations. They are brief, but it is important for the Senate to understand the importance, delicacy and complexity of this particular bill. It is short, but complex, and has far-reaching effects.

As you will recall, some time ago the Senate committee established a benchmark study on consumer protection in the financial services. In that study, the committee uncovered the payday lending business, and we were astounded to discover that the business had grown from $1 billion to somewhere between $2 billion and $5 billion in less than half a decade. It is an astounding growth of business, one that obviously fulfills a consumer requirement. The reason I say the range is from $2 billion to $5 billion is because we have a lack of information in the field itself.

The committee decided to report the bill without amendment — and I shall now quote from the report:

> . . . even though we have reservations about the Bill as drafted, because of the following factors.

This is a direct quote from our report.

> First, the Committee unanimously supports measures designed to facilitate the protection of consumers in respect of payday loan services and does not wish to delay access to legislated protection for these borrowers, some of whom we believe to be vulnerable. We have some familiarity with the section of the *Criminal Code* that would be amended by the Bill as well as with issues related to payday lending. In particular, in 2005, we examined a bill proposed by our former colleague, Senator Plamondon, which also sought to amend section 347 of the *Criminal Code*, and — in the context of our study of consumer protection in the financial services sector — heard from witnesses on the subject of alternative financial service providers, particularly payday lenders.

The report goes on to say the following:

> We continue to be somewhat puzzled by the reasons underlying the rapid growth of the payday lending sector.

As I say, we are puzzled because members of the financial sector are also puzzled. We were not able to track down or get precise numbers of the size of the growth of this particular business activity.

The report goes on to say:

> This growth suggests that the services provided by such lenders are needed by consumers. Important considerations for us are the reasons for the emergence and growth of this sector as well as what appears to us to be a lack of involvement by chartered banks in short-term, low-value lending.

The committee came to a strong consensus that we had not had adequate rationale as to why the banks have not fulfilled this particular need, and we hope to pursue that.

The report goes on to say the following:

> During its recent presentation to us on Bill C-37, the Canadian Bankers Association indicated that it, too, is perplexed. It also indicated that the chartered banks provide a range of credit options on a short-term basis. Nevertheless, the Committee believes that the payday lending sector's growth may be related, in part, to a relative unwillingness by Canada's chartered banks to lend to certain borrowers, who then become customers of payday lenders. Consequently, we

> urge Canada's chartered banks — which are federally regulated, belong to an independent complaint resolution mechanism, and are involved in some aspects of financial education — to begin making short-term, low-value loans.

Honourable senators, that is not a requirement; it is a suggestion by your Banking Committee. The committee, which has the powers, under this chamber, of oversight in the financial sector, will be following this issue closely. The deputy chairman and I intend to attend on the presidents of all the senior banks in Canada to ask for a direct understanding as to why they have been reluctant to move into this field. We have heard from their association, but we would rather hear from the principals themselves. When that happens, we shall report back to the committee precisely.

The report went on to say the following:

> Moreover, we believe that implementation of the proposed legislation could result in the federal government granting exemptions to designated provinces —

Senator Eyton pointed that out very carefully.

> — with insufficient assurances that provincial actions would provide the level and nature of consumer protection in this sector that this Committee seeks. As well, there is no assurance that all provinces will enact protection measures following enactment of this legislation. Finally, we are concerned that a patchwork of non-uniform protection measures could develop across the country.

I shall explain what happened here. Senator Eyton set this out very clearly, but I wish to add a brief comment. This is a federal-provincial matter, obviously. We have power in the federal field with respect to interest; credit is a power for the provinces. This has been a long-term negotiation and consultation between the federal and provincial governments. The previous government had long and extensive negotiations, and this government continued those negotiations with the various stakeholders. We developed what we considered to be a minimum, not a maximum, standard.

I go back to the report:

> Thus, we urge provinces, in adopting consumer protection measures pursuant to this Bill regarding the payday lending sector, to include minimum requirements in at least the following areas:

The bill was not clear on this, and we felt we could not legislate additional amendments because the provinces had completed a negotiation and it was not appropriate for us to change those negotiations unilaterally. Still, these were our concerns.

> limitations on rollovers and back-to-back loans; mandatory participation by payday lenders in an independent complaint resolution mechanism; mechanisms ensuring full and accurate disclosure of contract terms; acceptable debt collection practices; and a right for the borrower to rescind the loan and obtain full reimbursement no later than the end of the day following the making of the loan. Efforts made by payday lenders in the area of consumer financial education would also be welcome.

That is what our report said. Finally, we concluded with this — and I quote:

> Consistent with the Committee's mandate, we will continue to monitor developments in the payday lending sector, and hope that the enactment of Bill C-26 will allow effective protection to consumers. In our view, if the provinces fail to meet minimum standards in the areas indicated above —

We have effectively given them an agenda.

> — the federal government should take appropriate legislative action.

I shall end with this: This is not a bill where the government is delegating power to the provinces with respect to the criminal power, setting interest rates. This is a bill that allows the provinces to be exempt from a certain section of the Criminal Code provided they institute legislation. The bill has a bare-bones legislative requirement.

At any time, if the federal government or this chamber, after monitoring, comes to the conclusion that the status quo is not working well and that consumers are not protected and there are not minimum protective devices within the various provinces to ensure that the consumer is protected, there is no reason why the government of the day cannot legislate and take back this exemption and/or a private member's bill from this chamber could go forward to deal with it.

• (1520)

I undertake, on behalf of the committee, to continue to monitor this bill. The committee has unanimously decided to support this bill subject to those observations.

I understand that Senator Callbeck, who was a critic on our side, would like to speak as well. She is not here. I will take the adjournment in her name. There is no attempt to delay the matter; the honourable senator just wishes to speak to it.

On motion of Senator Grafstein, debate adjourned.

BUDGET 2007

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Comeau, calling the attention of the Senate to the Budget, entitled *Aspire to a Stronger, Safer, Better Canada*, tabled in the House of Commons on March 19, 2007 by the Honourable James M. Flaherty, P.C., M.P., Minister of Finance, and in the Senate on March 20, 2007.

Hon. Lowell Murray: Honourable senators, I thank the Deputy Leader of the Opposition for her courtesy in agreeing that I intervene in her stead and, as usual, on the condition that when I finish, the adjournment will continue to stand in her name.

When the Leader of the Government, Senator LeBreton, opened debate on this inquiry on March 29, she provided us with a comprehensive description of the main provisions of the budget. My remarks will be comparatively limited, focusing on federal-provincial-territorial fiscal relations. I want to assure honourable senators to my right that I do have some positive observations to make about the budget in this respect and I will come to them if time permits.

Meanwhile, I do say that the government is to be applauded — and here I would defer to our colleagues who come from the territories — for measures taken with regard to territorial financing. They have accepted the main recommendations of the O'Brien committee in this respect to bring territorial financing back to a formula-based program. They have built into the formula recognition of the quite different needs and circumstances among the three territories, and in particular that of Nunavut, where what we have, to all intents and purposes, is native self-government and where there are very serious problems and frankly horrendous social indicators. This is a matter that sooner or later the Senate may want to take up, if only for the purpose of keeping those problems front and centre before the government and before public opinion in this country.

The budget document entitled *Restoring Fiscal Balance in Canada* also confirms and reconfirms the intention of the government to get on with the negotiations on resource revenue sharing. I trust they will and I trust they will come to some satisfactory conclusion to a matter that has been dragging on without satisfactory conclusion for more than 20 years. So long as it has not been brought to a satisfactory conclusion, we cannot say we have been fair and just toward the territories and we will reap alienation on that account.

With regard to the controversy on federal and provincial relations involving the provinces of Newfoundland and Labrador, Nova Scotia and Saskatchewan, two promises were made by Mr. Harper before he became Prime Minister. One was that there would be zero inclusion of natural resource revenues in calculating the relative fiscal capacities of provinces. The second was that the equalization formula would contain no automatic cap on the equalization entitlement of any recipient province.

I will deal with the question of zero inclusion first. Here I would say that the surprise is not that Prime Minister Harper broke the promise, but that he made it in the first place. The idea of zero inclusion of natural resource revenues has a respectable enough academic provenance, with Professor Ken Boessenkool one of its prime advocates. The argument is that the exploitation of non-renewable natural resources and the revenue therefrom is like the sale of a capital asset: It is obviously nonrecurring. It is a one-off. The counter argument is that those revenues, for the most part, go into the consolidated revenue fund, the general revenues of the provinces concerned, and are used to provide services and must be reckoned as part of a province's fiscal capacity.

The National Finance Committee of the Senate studied both arguments. We heard from Professor Boessenkool and others and reported in 2002 recommending not zero inclusion but 100 per cent inclusion of provincial revenues including natural resource revenues. In 2001-02 the Senate had crunched some numbers retrospectively and they are to be found in our report of March 2002 at page 24. I had had these numbers updated, with some help from the parliamentary library, just before the 2004 election.

The Senate Finance Committee came to the same conclusion, a second time, several years later — that is to say, there should be 100 per cent inclusion of natural resource revenues — in the report we tabled here in December of 2006. The provincial-territorial advisory panel appointed in 2005-06 by the Council of the Federation also projected the impact of zero inclusion of natural resource revenues and those projections are to be found on page 84 of our report entitled *Reconciling the Irreconcilable: Addressing Canada's Fiscal Imbalance*.

All projections come to the same conclusion. Zero inclusion would produce a big bonus for Saskatchewan and to a lesser extent British Columbia and Newfoundland and Labrador, but all other recipient provinces would take a big hit. The total equalization pie would be smaller and the share of the five other recipient provinces would be smaller.

Minister Flaherty's budget proposes not zero inclusion of natural resources, as promised by Mr. Harper and I might say Mr. Layton back in 2004, not 100 per cent inclusion, as recommended by the Senate committee twice and by the provincial-territorial panel once, but 50 per cent inclusion, as recommended by the federal expert panel chaired by Al O'Brien that reported in May 2006.

The 50 per cent inclusion is not, I say, a principled position; after all, 100 per cent of other provincial revenues are included. It is a pragmatic solution. While I have no right to speak on behalf of Saskatchewan or the two Atlantic provinces, my hunch is that while Newfoundland and Labrador and Saskatchewan would have continued to protest any inclusion of natural resource revenues, the 50 per cent solution might have been somewhat more palatable without the Ontario cap. It is the Ontario cap that does the greatest damage and if you want some detail on that you should read the testimony of the Minister of Finance of Saskatchewan when he appeared before our committee a week ago Tuesday.

This brings me to the cap. The problem, as I have suggested, with the cap for Saskatchewan, in a nutshell, is that Mr. Harper, seconded by Mr. Layton, promised there would be none, and then imposed it in the context of 50 per cent inclusion of natural resource revenues.

• (1530)

For Newfoundland and Labrador and Nova Scotia, the issue is whether the offset payments to Nova Scotia and Newfoundland and Labrador under the offshore accords should be included in calculating the fiscal capacity of those two provinces.

There is a history to this. Honourable senators will be relieved to know I will not rehearse the whole thing going back to the discussions under the Trudeau government, its then Energy Minister Jean Chrétien and those Atlantic provinces on this subject. Suffice it to say that previous federal and provincial governments defined the offshore agreements as economic development agreements. They were pursuant to section 36(1) of the Constitution Act, 1982, not section 36(2), the provision that deals with equalization.

Some may say — and have said — that this is mere semantics; but the recipient provinces contend that there is no more justification for including those payments in calculating relative fiscal capacity than there would be to include, say, federal transfers for infrastructure to Ontario and other provinces in calculating their relative fiscal capacity.

The more recent history begins with Prime Minister Martin in the 2004 election when he made a public commitment to Newfoundland and Labrador — and at least inferentially to Nova Scotia — that the offsets would not be included in calculating the fiscal capacity of those provinces for purposes of equalization entitlements. When the election was over and the time came to dot the Is and cross the Ts on Mr. Martin's commitment, officials in the federal Department of Finance began to interpret his commitment and to define it in their own terms — and they were relatively limited and narrow terms.

Among the limits they tried to impose was the so-called "Ontario cap" on the equalization entitlements of Newfoundland and Labrador and Nova Scotia. That set off a heated and dramatic controversy between Ottawa and those two provinces that ended only when Prime Minister Martin overruled his officials and signed agreements with Newfoundland and Labrador and Nova Scotia that honoured his earlier commitment to those provinces.

Fast-forward to 2006; a new government comes to office. The equalization program was due — overdue, actually — for renewal, and the Department of Finance found a minister in Mr. Flaherty and a prime minister in Mr. Harper who were willing to adopt as their own the policy that Mr. Martin, in some moments of political lucidity, had refused.

As the Bible says, "the stone that the builder rejected has become the cornerstone. Those of you who were at church at Easter will recognize the citation from the Book of Psalms.

The result for Nova Scotia and Newfoundland and Labrador is that the Flaherty budget of 2007 has put them between a rock and a hard place. They can elect to stay with the old system, including the offsets, but without the benefit of the 10-province standard that other recipient provinces will get as a result of the new formula; or they can go with the new system in which they will have to accept the Ontario cap, and thereby forego possible benefits from the offshore development in the years ahead. This is what one commentator on television described as "equalization by multiple choice," and it is not what the Conservative Party promised.

All that being said — I think that I have said this before — with regard to federal-provincial fiscal relations, Mr. Harper's speech in Quebec City on December 19, 2005, is the right way to go. When it comes to the specific question of fiscal imbalance, the policy of the present government is a considerable improvement over that of its predecessor, which denied that fiscal imbalance existed or could exist in this country.

Mr. Dion himself, when he was Intergovernmental Affairs Minister, regurgitated the Department of Finance brief to the effect that federal and provincial governments have access to the same revenue sources; and if the provinces need more money, let them raise taxes. If you do not believe me, read the letter that the provincial-territorial panel received from Mr. Goodale and his colleague, Madam Robillard, then Minister of Intergovernmental Relations, at page 107 of our panel's report, when they said:

> The position of the Government of Canada concerning the so-called fiscal imbalance is well known. The government does not believe in the existence of a fiscal imbalance between the federal and provincial governments in Canada. Both orders of government have access to all the major sources of tax revenue and have complete autonomy in setting their tax policies to address spending pressures related to their respective responsibilities.

That was their policy. I think Mr. Flaherty is right when he says, as he said in the 2007 Budget document, *Restoring Fiscal Balance for a Stronger Federation*:

> Fiscal imbalance is about better roads and renewed public transit, better health care, better equipped universities, cleaner oceans, rivers, lakes and air, training to help Canadians get the skills they need. It is about building a better future for our country, and that means getting adequate funding to provincial and territorial governments.

The improvements that were made on the horizontal fiscal imbalance was to put equalization back on a formula-based footing. They now measure relative fiscal capacity on the basis of a 10-province standard, not a 5-province standard, as had been the case for 20 years or more; and they collapse the representative tax system into something more rational and coherent and, with the exception I have noted, the inclusion of all revenues.

The grave problem, of course, is the Ontario cap. I want to say a further word. I hope I have the time. Do I have the time?

The Hon. the Speaker: You can ask for leave to continue.

Senator Murray: I will ask for leave and I hope when my five minutes are up —

Hon. Anne C. Cools: Articulate the amount you want.

Senator Murray: I will get through this if it is granted.

The problem of vertical fiscal imbalance, as seen by the provincial-territorial panel, is that provincial expenditures — notably in health care and post-secondary education — are forecast to grow faster than provincial revenues and would bring provincial governments into deficit positions within six years. We were forecasting 5.7 per cent annual increase in health care, 3.8 per cent annual increase in elementary and secondary education and 4.5 per cent increase in provincial expenditures on post-secondary education. If our forecast was exceeded by 1 per cent, the provinces would plunge into deficit much sooner.

Even in the most conservative estimate, health care and education will account for 75.4 per cent of provincial-territorial revenues in 2024-25. If we are off by 1 per cent, it will account for 91.6 per cent of provincial-territorial revenues and 76.2 per cent of provincial-territorial spending.

The budget confirms the 6 per cent annual increase in the Canada Health Transfer, as negotiated by the previous government, out to 2013-14. It puts the Canada Social Transfer for post-secondary education, children and social transfers on the same legislative track — that is to 2013-14 — which is a good thing.

They propose to go to equal per capita cash for all the provinces. While they put $687 million in to pay for this in terms of the increases to Ontario and Alberta and to keep the other provinces whole for one year, the fact is that the other recipient provinces will be losers. The richer, more populous provinces will be getting much more cash, whereas the increase will be far less for the poorer provinces going forward, and we heard this in some detail from Mr. Van Mulligan a week ago.

Restoring equalization to a formula-based program is an important step forward. Confirming the 6 per cent annual increase in the Canada Health Transfer is the right thing to do. I think the 3 per cent escalator provided for in the Canada Social Transfer is quite inadequate, given the problems that post-secondary education faces and the fact that post-secondary education has been disadvantaged over a long number of years because of the ever-increasing financial demands of health care. The 3 per cent escalator will prove to be, and is, inadequate.

• (1540)

A promise in the budget "reconfirms" limiting the use of the federal spending power. For those honourable senators opposite who might become antsy about any limitation on the federal spending power, I say that when we asked her at the committee this past Tuesday, Ms. Barbara Anderson, Assistant Deputy Minister of Finance, confirmed that this wording is almost identical — my phrase, not hers — to the Social Union Framework Agreement negotiated by the Chrétien government with nine of the provinces. I hope that when the time comes, the government will seek to legislate an agreement on limits to the federal spending power which we did not do with the Social Union Framework Agreement and to include some protocol with regard to direct federal spending to individuals and institutions in areas of exclusive provincial jurisdiction.

Finally, there is much talk in the documents about earmarking amounts within the Canada Social Transfer specifically for post-secondary education, social programs and support for children, to which Senator LeBreton referred in her speech. The federal government can "earmark" and "earmark," but the fact is that these are unconditional grants, and the provinces will spend them as they choose to do so, pending some more concrete agreement between the federal government and the provinces. It is nice to see what the government has in mind and it may help to put the feet of the provinces to the fire on some of these priorities. However, essentially, these are unconditional grants, and we should not forget that going forward.

I know that Senator Moore has an Inquiry on the Order Paper that deals with just this matter. Perhaps there will be an opportunity for me and others to revisit the subject when it comes up for debate.

On motion of Senator Tardif, debate adjourned.

FOOD AND DRUGS ACT

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Dallaire, for the third reading of Bill S-205, to amend the Food and Drugs Act (clean drinking water).—(*Honourable Senator Comeau*)

An Hon. Senator: Question!

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

Hon. Senators: Agreed.

An Hon. Senator: On division.

Motion agreed to and bill read third time and passed, on division.

HUMAN RIGHTS

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—STUDY ON LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP—REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the eighth report of the Standing Senate Committee on Human Rights, (budget—study on an invitation to the Minister of Indian and Northern Affairs—power to hire staff), presented in the Senate on March 29, 2007.—(*Honourable Senator Fraser*).

Hon. A. Raynell Andreychuk: Honourable senators, I move the motion standing in my name.

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

Motion agreed to and report adopted.

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

FOURTH REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the fourth report of the Standing Committee on Rules, Procedures and the Rights of Parliament (amendments to the Rules of the Senate—questions of privilege and points of order), presented in the Senate on April 18, 2007.—(*Honourable Senator Di Nino*)

Hon. Consiglio Di Nino: Honourable senators, I would like to do something not often done in this place. The issue referred to the committee was looked at by committee staff and I would put on the record today how impressed I was with their detailed knowledge of the *Rules of the Senate of Canada* and their skills in proposing solutions to the questions raised. I thank them for their great work.

Honourable senators, on October 26, the Speaker ruled on a point of order dealing with notice that had been given by a senator in this place on a question of privilege. In his ruling, the Speaker agreed that a certain degree of information regarding the question of privilege is required in the notice so that it meets the requirements of the Senate. The Speaker also noted that there exists a lack of clarity in the *Rules of the Senate of Canada* on when questions of privilege and points of order may or may not be raised.

The Speaker suggested that the Standing Committee on Rules, Procedures and the Rights of Parliament examine the question of how these issues might properly be reflected in the *Rules of the Senate of Canada* and to more closely define the limits placed on when points of order and questions of privilege may be raised during the different divisions of Senate proceedings in the chamber.

After consideration, our committee has decided to amend the rules as outlined in its fourth report. In effect, the changes can be described as follows:

Rule 23(1) has been changed to clarify that the periods of time when points of order are not allowed include Senators' Statements, Routine of Business, Question Period and Delayed Answers. It is felt by the committee that the proposed changes more clearly define this question. As well, honourable senators, the phrase "provided that the written notice shall clearly identify the subject matter that will be raised in a question of privilege" has been added in substance in the appropriate sections of the *Rules of the Senate* in order to meet the objectives of clarifying this requirement for notices of questions of privilege to be raised. It is hoped and believed that this additional language will assist senators in keeping in mind the needs of other senators to properly prepare themselves for an important procedure to the operation of the Senate.

The *Rules of the Senate* have been amended to clarify that questions of privilege "arising out of proceedings in the chamber during the course of a sitting can be raised as notice immediately or the following sitting day at the choice of the aggrieved senator."

This change can be found in the proposed 43(3.1), grouping it with the rest of the sections that deal with this process and removes it from the sections under Rule 59, which appeared to have created confusion as to whether it could be invoked and, if so, when. I trust this outlines the intent of the proposed changes to the rules that were prompted by the speakers, and I move the motion standing in my name.

• (1550)

The Hon. the Speaker: The adoption of the report is being moved by Senator Di Nino, seconded by Senator Nolin.

We are now on debate on that motion, whether to adopt the fourth report, which has in it recommendations. If we adopt the report, those recommendations will constitute a change in the rules as spoken to by the report.

Hon. Anne C. Cools: Honourable senators, I should like to speak in this debate, so I move the adjournment of the debate.

In his remarks, I believe Senator Di Nino said the committee decided to change the rules. No such decisions have been taken. It is the vote of the chamber.

On motion of Senator Cools, debate adjourned.

BUSINESS OF THE SENATE

Hon. Anne C. Cools: Perhaps I could raise a question that has to be addressed today. Honourable senators, in looking at today's Order Paper I noticed that my inquiry on Remembrance Day and the contribution of the Arab peoples has disappeared. I do not know what happened, but it has disappeared. I noticed a few days ago that some weeks ago Senator Comeau, the deputy leader, had taken the adjournment. I had inquired of him a couple of days ago whether he was planning to speak to it, because I wanted to be able to take the adjournment myself, to be able to speak to it and to respond to other senators who have spoken. I am concerned that maybe Senator Comeau did not do that yesterday. He told me he would.

An Hon. Senator: He was not here.

Senator Cools: I do not know that. I wonder if I could have leave to have it reinstated.

The Hon. the Speaker: On this point, Senator Cools is advising us that the item was at the fifteenth day, and she operated under the assumption that Senator Comeau, who we know attended the funeral of Mr. Yeltsin on short notice, was not here, so I think there was a bona fides mistake.

If it is agreeable to honourable senators, I will verify that, and would we not agree that Senator Cools would not be disadvantaged and that we could by leave make sure that that item is at day 15 tomorrow?

Is that agreed, honourable senators?

Hon. Senators: Agreed.

SCRUTINY OF REGULATIONS

FIFTH REPORT OF JOINT COMMITTEE— DEBATE ADJOURNED

Leave having been given to revert to Other Business, Reports of Committees, Item No. 14:

The Senate proceeded to consideration of the fifth report of the Standing Joint Committee for the Scrutiny of Regulations (Report No. 79 — Broadcasting Licence Fee Regulations, 1997), tabled in the Senate on March 20, 2007.—(*Honourable Senator Eyton*)

Hon. J. Trevor Eyton moved the adoption of the fifth report of the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations.

He said: Honourable senators, in recent years, there has been a significant increase in the frequency with which Parliament has delegated authority to impose fees and other charges. There has been a corresponding increase in the number of instruments

requiring such payments for purposes of cost recovery. Developments in this area are clearly of interest to Parliament. The fifth report of the Standing Joint Committee of the Senate and the House of Commons for the Scrutiny of Regulations draws the attention of the Houses to certain of these developments.

On December 14, 2006, the Federal Court ruled that the fees imposed by Part II of the Broadcasting Licence Fee Regulations, 1997 are illegal because they are in fact a tax imposed without Parliament's authority. The court based this conclusion on the fact that Part II fees could not be considered charges paid in exchange for a service since they were not used to fund a regulatory scheme. Rather, they were used to collect general revenues and were not set aside for broadcasting purposes. Moreover, there was no reasonable relationship between the fees and the cost to government of regulating the broadcasting industry.

The sums involved are and were substantial. Over the seven years for which figures were provided to the court, the fees collected exceeded the Department of Industry's expenditures in regulating broadcasting by $539.6 million, an average of more than $77 million per year.

The reasoning of the court reflected concerns raised by the standing joint committee, which observed in its seventy-third report that the Part II fees bore many characteristics of a tax.

There is a distinction in law between a fee and a tax. A fee is said to be a charge prescribed for the services of a public officer or for the grant or recognition of a privilege or right, while a tax is generally defined as a compulsory payment imposed in order to raise revenue for a public purpose. Parliament frequently empowers a delegate to levy a fee. On the other hand, the authority to impose a tax is rarely delegated. Indeed, the courts have held that there is a presumption against the delegation of that authority. In other words, if Parliament wishes to delegate authority to impose a tax, it must do so in express and unequivocal language. Where the power to impose a fee is exercised in a manner such that the resulting charge is more properly characterized as a tax, the fee in question must be seen to be unlawful.

In its judgment, the Federal Court quoted extensively from a paper prepared by the standing joint committee exploring the legal distinction between a tax and a fee that was presented at the Third Commonwealth Conference of Delegated Legislation held in London in 1989. The judge observed that, at that time, "comments were made by those Parliamentary members experienced and charged with reviewing delegated legislation" that "arguably reflect legitimate expectations of those within Parliament as to the meaning and use of the word 'fee' in legislation." Thus, the court emphasized the importance to be accorded the words used by Parliament when it confers the power to impose charges.

The question of whether broadcasters are entitled to a return of the monies paid as Part II fees remains the subject of an appeal. The joint committee's fifth report notes that a recent decision of the Supreme Court of Canada, namely, the *Kingstreet Investments* decision, will no doubt have a bearing on this question. In that decision, the Supreme Court ruled that there is no general immunity affecting recovery of an illegal tax. According to the court, when taxes are illegally collected, they must be returned, subject to limitation periods and to remedial legislation if it is deemed appropriate. The Supreme Court went on to say that respect for the principles set out in the Canadian Constitution was at the core of its decision. In particular, it was observed that the principle of "no taxation without representation" is central to our conception of democracy and the rule of law.

In its report, the standing joint committee fully agrees with this viewpoint, reflecting as it does the fundamental need for Parliament's clear authorization providing for the lawful collection of both fees and taxes.

On motion of Senator Tardif, debate adjourned.

HUMAN RIGHTS

MOTION TO AUTHORIZE COMMITTEE TO STUDY ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE 2006 RESOLUTION ON ANTI-SEMITISM AND INTOLERANCE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Fraser, for the Honourable Senator Grafstein, seconded by the Honourable Senator Cook:

That the following Resolution on Combating Anti-Semitism and other forms of intolerance which was adopted at the 15th Annual Session of the OSCE Parliamentary Association, in which Canada participated in Brussels, Belgium on July 7, 2006, be referred to the Standing Senate Committee on Human Rights for consideration and that the Committee table its final report no later than March 31, 2007:

RESOLUTION ON
COMBATING ANTI-SEMITISM
AND OTHER FORMS OF INTOLERANCE

1. Calling attention to the resolutions on anti-Semitism adopted unanimously by the OSCE Parliamentary Assembly at its annual sessions in Berlin in 2002, Rotterdam in 2003, Edinburgh in 2004 and Washington in 2005,

2. Intending to raise awareness of the need to combat anti-Semitism, intolerance and discrimination against Muslims, as well as racism, xenophobia and discrimination, also focusing on the intolerance and discrimination faced by Christians and members of other religions and minorities in different societies,

The OSCE Parliamentary Assembly:

3. Recognizes the steps taken by the OSCE and the Office for Democratic Institutions and Human Rights (ODIHR) to address the problems of anti-Semitism and other forms of intolerance, including the work of the Tolerance and Non-Discrimination Unit at the Office for Democratic Institutions and Human Rights, the appointment of the Personal Representatives of

the Chairman-in-Office, and the organization of expert meetings on the issue of anti-Semitism;

4. Reminds its participating States that "Anti-Semitism is a certain perception of Jews, which may be expressed as hatred towards Jews. Rhetorical and physical manifestations of anti-Semitism are directed towards Jewish or non-Jewish individuals and/or their property, towards Jewish community institutions and religious facilities", this being the definition of anti-Semitism adopted by representatives of the European Monitoring Centre on Racism and Xenophobia (EUMC) and ODIHR;

5. Urges its participating States to establish a legal framework for targeted measures to combat the dissemination of racist and anti-Semitic material via the Internet;

6. Urges its participating States to intensify their efforts to combat discrimination against religious and ethnic minorities;

7. Urges its participating States to present written reports, at the 2007 Annual Session, on their activities to combat anti-Semitism, racism and discrimination against Muslims;

8. Welcomes the offer of the Romanian Government to host a follow-up conference in 2007 on combating anti-Semitism and all forms of discrimination with the aim of reviewing all the decisions adopted at the OSCE conferences (Vienna, Brussels, Berlin, Córdoba, Washington), for which commitments were undertaken by the participating States, with a request for proposals on improving implementation, and calls upon participating States to agree on a decision in this regard at the forthcoming Ministerial Conference in Brussels;

9. Urges its participating States to provide the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with regular information on the status of implementation of the 38 commitments made at the OSCE conferences (Vienna, Brussels, Berlin, Córdoba, Washington);

10. Urges its participating States to develop proposals for national action plans to combat anti-Semitism, racism and discrimination against Muslims;

11. Urges its participating States to raise awareness of the need to protect Jewish institutions and other minority institutions in the various societies;

12. Urges its participating States to appoint ombudspersons or special commissioners to present and promote national guidelines on educational work to promote tolerance and combat anti-Semitism, including Holocaust education;

13. Underlines the need for broad public support and promotion of, and cooperation with, civil society representatives involved in the collection, analysis and publication of data on anti-Semitism and racism and related violence;

14. Urges its participating States to engage with the history of the Holocaust and anti-Semitism and to analyze the role of public institutions in this context;

15. Requests its participating States to position themselves against all current forms of anti-Semitism wherever they encounter it;

16. Resolves to involve other inter-parliamentary organizations such as the IPU, the Council of Europe Parliamentary Assembly (PACE), the Euro-Mediterranean Parliamentary Assembly (EMPA) and the NATO Parliamentary Assembly in its efforts to implement the above demands.

On motion of Senator Cools, debate adjourned.

THE SENATE

MOTION TO URGE CONTINUED DIALOGUE BETWEEN PEOPLE'S REPUBLIC OF CHINA AND THE DALAI LAMA—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Di Nino, seconded by the Honourable Senator Andreychuk:
>
> That the Senate urge the Government of the People's Republic of China and the Dalai Lama, notwithstanding their differences on Tibet's historical relationship with China, to continue their dialogue in a forward-looking manner that will lead to pragmatic solutions that respect the Chinese constitutional framework, the territorial integrity of China and fulfill the aspirations of the Tibetan people for a unified and genuinely autonomous Tibet.

On motion of Senator Cools, debate adjourned.

The Senate adjourned until Thursday, April 26, 2007, at 1:30 p.m.

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Wednesday, April 25, 2007

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